

**City of New York v Myers**

2023 NY Slip Op 34065(U)

November 15, 2023

Supreme Court, New York County

Docket Number: Index No. 450975/2022

Judge: J. Machelle Sweeting

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. J. MACHELLE SWEETING PART 62**

*Justice*

-----X

THE CITY OF NEW YORK

Plaintiff,

- v -

LLOYD MYERS,

Defendant.

-----X

**INDEX NO.** 450975/2022

**MOTION DATE** 08/30/2023

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

were read on this motion to/for JUDGMENT - SUMMARY.

In the underlying action, plaintiff The City of New York (the “City”) seeks to enforce a decision and order of the New York City Office of Administrative Trials and Hearings (“OATH”), wherein OATH imposed penalties on defendant totaling \$210,000.00 for defendant’s violation of New York City Administrative Code (“Admin. Code”) 28-210.1.

Now pending before the court is a motion by the City seeking summary judgment, pursuant to Civil Practice Law and Rules 3212, as a matter of law under the doctrine of *res judicata*, on the basis that the prior decision rendered after a quasi-judicial administrative proceeding by OATH already determined all dispositive issues in this case in the City’s favor.

Standard for Summary Judgment

The function of the court when presented with a motion for summary judgment is one of issue finding, not issue determination (Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395 [NY Ct. of Appeals 1957]; Weiner v. Ga-Ro Die Cutting, Inc., 104 A.D.2d331 [Sup. Ct. App.

Div. 1<sup>st</sup> Dept. 1985]). The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (Alvarez v. Prospect Hospital, 68 N.Y.2d 320 [NY Ct. of Appeals 1986]; Winegrad v. New York University Medical Center, 64 N.Y.2d 851 [NY Ct. of Appeals 1985]). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to the non-moving party (Assaf v. Ropog Cab Corp., 153 A.D.2d 520 [Sup. Ct. App. Div. 1st Dept. 1989]). Summary judgment will only be granted if there are no material, triable issues of fact (Sillman v. Twentieth Century-Fox Film Corp., 3 N.Y.2d 395 [NY Ct. of Appeals 1957]).

The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact, and failure to make such *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (Alvarez v Prospect Hosp., 68 NY2d 320 [N.Y. Ct. of Appeals 1986]).

Further, pursuant to the New York Court of Appeals, “We have repeatedly held that one opposing a motion for summary judgment must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form;

mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” (Zuckerman v City of New York, 49 NY2d 557 [N.Y. Ct. of Appeals 1980]).

### The City’s *Prima Facie* Case

The City argues that this matter arises from defendant’s violation of Admin. Code 28-210.1, which makes it unlawful to convert “any dwelling for occupancy by more than the legally authorized number of families or to assist, take part in, maintain or permit the maintenance of such conversion.” The City argues that defendant violated the statute, and was served with three different notices of violations (“NOV”): #035443858L, #035443859N, and #035443860K. For each of these NOVs, defendant was directed to appear for a hearing on January 15, 2020. Defendant failed to appear on that date and, accordingly, OATH issued default decisions with respect to all three NOVs, which had been mailed to defendant. Subsequently, the January 15, 2020 default order was re-opened at defendant’s request, and defendant was given notice of a new hearing date on July 16, 2020. Defendant again failed to appear, and OATH again issued default decisions with respect to all three NOVs, which were mailed to defendant. Each default decision was for the amount of \$70,000, which amounted to \$210,000 in total. (See City’s default decisions and records regarding mailings at NYSEF Doc. No. 13).

The City argues that these violations were fully adjudicated by OATH’s Hearings Division, and that under the doctrine of *res judicata*, the final decisions and orders of OATH, which are quasi-judicial determinations by an administrative agency, are binding upon the courts in subsequent lawsuits under firmly established case law. The City also argues that the court has no jurisdiction to review OATH’s decisions in this action, as OATH’s decisions were not the subject of a timely Article 78 proceeding, which is the only vehicle to challenge the merits of a final

administrative decision. As such, the City argues, the decisions have not been appealed and they are final and binding. In support of these arguments, the City submitted, *inter alia*, a sworn Affidavit by Anayansi Cervera, a Supervisor in the Penalty Processing Unit for OATH (NYSCEF Doc. No. 12).

Defendant filed opposition papers, but (as further discussed below) such papers did not dispute the City's central arguments, namely: that OATH is an administrative agency; that OATH's prior proceedings and the instant lawsuit involve the same issues; that OATH fully adjudicated these issues; that OATH issued decisions in which defendant was required to pay a total of \$210,000; and that these decisions are now binding under the doctrine of *res judicata*.

Given this, the court finds that based on the undisputed evidence, the City has made a *prima facie* showing of entitlement to judgment as a matter of law, and the burden now shifts to defendant to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.

#### Defendant's opposition papers

As noted above, defendant did not dispute the City's central arguments with respect to *res judicata*. Instead, defendant argues that the three NOV's were duplicative, as they were written for the same violations, and must therefore be dismissed. Defendant also argues that the City should be denied summary judgment because the City never served defendant with a copy of the default order by OATH that the City now seeks to enforce.

With respect to defendant's argument that the three NOV's were duplicative, the City is correct that defendant had a full and fair opportunity to litigate this issue before OATH, or challenge the merits of OATH's decision in an Article 78 proceeding, which defendant did not do

(*see, e.g., SR PPW, LLC v City of New York*, 216 AD3d 969 [2d Dept 2023] [regarding a proceeding pursuant to CPLR article 78 to review three determinations made by OATH]). At this point, the court has no jurisdiction to review OATH's decisions in this action, and OATH's findings are binding on this court (*see Metro-N. Commuter R.Co. v New York State Exec. Dept. Div. of Human Rights*, 271 AD2d 256 [1st Dept 2000] ["The doctrines of *res judicata* and collateral estoppel are applicable to give conclusive effect to the quasi-judicial determinations of administrative agencies when rendered pursuant to the adjudicatory authority of an agency to decide cases brought before its tribunals"]).


With respect to defendant's argument that the City never served defendant with a copy of the default orders that the City now seeks to enforce, the Affidavit of Supervisor Cervera has attached as an Exhibit, (NYSCEF Doc. No. 13), Affidavits of Service by Mail of the OATH decisions issued in January 2020 and July 2020. Further, as stated above, the burden is now on defendant to produce *evidentiary proof in admissible form* sufficient to establish the existence of material issues of fact which require a trial of the action. Notably, despite the arguments made by defendant's counsel that defendant was not properly served with the OATH decision(s), there is no sworn statement or Affidavit from defendant himself stating that he was not served. Finally, the court notes that it is abundantly clear on this record that defendant was aware that OATH had issued three NOV's against defendant, as the first OATH decisions issued in January 2020 were vacated at defendant's request. Given the totality of these circumstances, the court finds that defendant has failed to defeat the City's *prima facie* case.

Conclusion

For the reasons cited above, it is hereby:

**ORDERED** that the City’s motion is GRANTED; and it is further

**ORDERED** that there being no other pending matters, this action is now closed.

<u>11/15/2023</u> DATE		 _____ J. MACHELLE KEETING, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE