

**Randel Mold & Die Corp. v City of New York Off. of
Admin. Trials & Hearings**

2023 NY Slip Op 34439(U)

December 18, 2023

Supreme Court, New York County

Docket Number: Index No. 155223/2023

Judge: Nicholas W. Moyne

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NICHOLAS W. MOYNE PART 52

Justice

-----X

RANDEL MOLD & DIE CORP.,
Petitioner,

INDEX NO. 155223/2023

MOTION DATE 08/10/2023

MOTION SEQ. NO. 001

- v -

THE CITY OF NEW YORK OFFICE OF ADMINISTRATIVE
TRIALS AND HEARINGS, THE CITY OF NEW YORK
ENVIRONMENTAL CONTROL BOARD

DECISION + ORDER ON
MOTION

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15,
16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents, it is

Petitioner commenced this Article 78 proceeding to challenge a decision by
respondent, New York City Office of Administrative Trials And Hearings
("OATH"), denying petitioner's motions to vacate default judgments issued against
them by OATH's Environmental Control Board ("ECB") for violations issued by
the NYC Department of Buildings ("DOB"). In January 2018, the DOB issued
three Notices of Violation against the premises, of which petitioner is the owner
and landlord, and the summonses indicated that a hearing would take place at
OATH. Petitioner then received a default decision upon failing to appear at the
adjudicatory hearing in front of OATH. After OATH granted the petitioner's
request for a new hearing date, the petitioner failed to appear for a second time and
received a second default decision. Once again, the petitioner made a request for a
new hearing, which OATH then denied on January 11, 2019.

On February 8, 2023, more than four years later, the petitioner filed another
request for a new hearing. On February 9, 2023, OATH informed petitioner's
counsel that a hearing officer had already denied his request on January 11, 2019.
Additionally, OATH asserted that a denial of a request for a new hearing after
default constitutes the final determination and is not subject to review or appeal at
OATH. OATH indicated that petitioner's only recourse for reconsideration was to
have filed an Article 78 proceeding within four months after the denial of the

request for a new hearing. As the request was denied January 11, 2019, this would mean no later than May 11, 2019.

On June 9, 2023, petitioner commenced this special proceeding, claiming that the decision to deny its' 2023 request for a new hearing was arbitrary and capricious. The petitioner also argues that this decision is contrary to past practice as OATH has routinely granted requests to reopen defaults and schedule new hearings under identical or similar circumstances. Respondents cross-move to dismiss the petition on the grounds that, pursuant to CPLR §217, it is untimely and/or barred by the statute of limitations.

Pursuant to City Charter § 643, the DOB is empowered to enforce the laws, rules, and regulations governing the maintenance and use of buildings and structures in the City of New York. OATH conducts adjudicatory hearings for all of the City's agencies unless otherwise provided (*see* City Charter § 1048[1]). Accordingly, City Charter § 1049-a and the rules set forth in Title 48 of the Rules of the City of New York ("RCNY") designate that adjudication of summonses based on violations of laws and regulations which are enforced by the DOB are conducted by the OATH Hearings Division ("Tribunal"). Therefore, any party that violates or fails to comply with any provision of law enforced by DOB shall be liable for a monetary penalty that may be recovered in a proceeding before OATH (*see* New York City Administrative Code ["Admin. Code"] §§ 28-201.3, 28-204.1; 1 RCNY § 102-01).

When a party that has received a summons fails to appear on the designated hearing date, OATH may issue a default decision and order the maximum penalty prescribed under the law for the violation charged (*see* City Charter § 1049-a[d][1][d]). A party that has received a default decision may request a new hearing (*see* 48 RCNY § 6-21[a]). Importantly, a denial of a request for a new hearing after default is OATH's final determination, which may not be administratively appealed (*see id.* § 6-21[j]). However, judicial review of such denial may be sought pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR").

Here, the petitioner failed to appear at two different scheduled hearings. After OATH granted the petitioner's first motion to vacate, the petitioner failed to appear at the next hearing and once again defaulted. Petitioner then filed a second motion to vacate on November 29, 2018, which was denied on January 11, 2019. As this denial constituted the agency's final determination, it cannot be administratively appealed (*see* 48 RCNY 6-21[j]). Accordingly, as the administrative proceedings had been exhausted, the denial of the petitioner's

motion to vacate his default could only have been reviewed pursuant to a timely commenced Article 78.

Article 78 proceedings must be commenced no later than four months after the determination sought to be reviewed becomes final and binding upon the litigant (*see* CPLR § 217[1]; *Walton v. N.Y. State Dep't of Corr. Servs.*, 8 NY3d 186, 194 [2007]). An administrative action becomes final, thereby triggering the statute of limitations, once it “impose[s] an obligation, den[ies] a right, or fix[es] some legal relationship as a consummation of the administrative process” (*see Essex County v Zagata*, 91 NY2d 447, 453 [1998] quoting *Chi. & S. Air Lines v Waterman Corp.*, 333 U.S. 103, 113 [1948]). Considering, the time to challenge the final determination expired four months after OATH’s denial of petitioner’s second motion to vacate, i.e., on or about May 11, 2019. Petitioner commenced the instant proceeding on June 9, 2023 — more than four years after the statute of limitations had expired. Accordingly, the petition should be dismissed as time-barred.

Furthermore, even under the petitioner’s analysis, the petition is still time-barred due to lack of timely service. CPLR § 306-b provides that a Notice of Petition and Petition must be served “not later than fifteen days after the date on which the applicable statute of limitations expires.” Petitioner did not serve respondents with the Notice of Petition and Petition until August 4, 2023. Therefore, even if OATH’s final determination occurred when it denied the request on February 9, 2023, which it did not, this Petition still would be subject to dismissal as it was not timely served.

Petitioner’s arguments to the contrary are unavailing. The opposition to the cross-motion does not even reference or discuss the lack of timely service. The petitioner claims that its request to reopen its default, made in February 2023, somehow restarted the clock or extended the deadline to file an Article 78 Petition. Notably, petitioner offers no legal support for this argument, which would lead to absurd results. As noted above, OATH’s own regulations clearly state that the denial of a request for a new hearing after default is a final determination, which may not be administratively appealed (*see* 48 RCNY § 6-21[j]). OATH’s determination became final and binding on the day of the denial (i.e., January 11, 2019), and thereby triggered the statute of limitations. To allow a party to start fresh time limitations by repeatedly filing motions to vacate after an application has already been denied, would make judicial review impossible and would directly contradict OATH’s own regulations. The fact that OATH may have allowed the petitioner to renew its request four years later does not mean the

request was valid and it certainly does not constitute a waiver or resetting of the statute of limitations as the petitioner suggests.

Accordingly, it is hereby

ORDERED that the petition is denied and the cross-motion to dismiss the petition as time-barred is granted; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

12/18/2023

DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE