

**219 Ave. A NYC LLC v City of New York**

2024 NY Slip Op 33110(U)

August 29, 2024

Supreme Court, New York County

Docket Number: Index No. 151790/2024

Judge: Lynn R. Kotler

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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. LYNN R. KOTLER PART 08

Justice

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219 AVENUE A NYC LLC,

Petitioner,

- v -

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

Respondent.

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INDEX NO. 151790/2024
MOTION DATE 03/01/2024
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

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Upon the foregoing documents, this motion is decided as follows. This is a CPLR Article 78 proceeding challenging respondent New York City Office of Administrative Trials and Hearings' ("OATH") to denial of petitioner 219 Avenue A NYC LLC's ("Petitioner") three motions to vacate default judgements arising from violations issued by the NYC Department of Buildings ("DOB"). Petitioner seeks an order vacating the denials and directing OATH to grant a hearing on the merits of each alleged violation. OATH cross-moves to dismiss, which is submitted without opposition despite proof of service and an opportunity to respond. Therefore, the cross-motion is considered on default.

The relevant facts, which are based upon the verified petition, are as follows. On September 9, 2019, DOB issued three summonses for various infractions present at Petitioner's building located at 219 Avenue A in Manhattan (the "building"). On November 14, 2019, OATH issued a default judgement against Petitioner on each summons after Petitioner failed to appear.

On June 17, 2021, Petitioner, through counsel, filed a Request to Reschedule, which was denied as the default judgements had already been entered. On September 27, 2022, Petitioner's counsel filed Motions to Vacate Default Judgments for each summons with OATH. On October 3, 2022, these motions were denied as being untimely and mailed decisions to Petitioner on October 4, 2022 (the "initial determinations"). Petitioner did not challenge OATH's initial determinations via an Article 78 proceeding.

Petitioner then filed a second Motion to Vacate Default Judgments with OATH on December 26, 2023, which was denied on December 29, 2023 (the "second determinations"). The second determinations stated that petitioner's "request for reconsideration of OATH's final determination is denied" as a review of OATH's records revealed "that a hearing officer in [OATH's] Special Motion Part already denied [petitioner's] request for a new hearing on 10/03/2022". The second determination further noted that OATH Rules § 6-21(j) provide that

A denial of a request for a new hearing after default is the Tribunal's final determination and is not subject to review or appeal at the Tribunal. Judicial review of the denial may be sought pursuant to Article 78 of the New York Civil Practice Law and Rules.

Petitioner then commenced this CPLR Article 78 proceeding by filing the petition on February 28, 2024. The court agrees with OATH's contention that the Petitioner did not bring this action in a timely fashion pursuant to CPLR § 217(1). Section 217 states in the relevant part "[u]nless a shorter time is provided in the law authorizing the proceeding, a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner..." (*see Yarbough v. Franco*, 95 NY2d 342, 346 [2000]).

The statute of limitations is triggered when the petitioner is "aggrieved by the determination" (*Matter of Carter v State of N.Y., Exec. Dept., Div. of Parole*, 95 NY2d 267,

270 [2000]). Petitioner is aggrieved when the agency has issued a final decision, put the petitioner on notice, and all administrative appeals have been exhausted (*id.*; see also *Matter of Edmead v McGuire*, 67 N.Y.2d 714, 716 [1986] [“the statutory period commences as soon as the aggrieved party is notified”]). This appeal to OATH was the only administrative appeal available, and the mailing of the OATH decision on October 4, 2022, provided notice to the Petitioner, triggering the statute of limitations. Therefore, the latest an Article 78 Proceeding could have commenced was four months after October 4, 2022, or February 4, 2023.

Petitioner does not dispute these facts in his petition, but rather argues that it should be entitled to a new OATH hearing on a basis of “exceptional circumstances” (48 RCNY § 6-21[f]). 48 RCNY § 6-21(f) states that “the Chief Administrative Law Judge or his or her designee will have the discretion, in exceptional circumstances and in order to avoid injustice, to consider a Respondent's first request for a new hearing after default made more than one (1) year from the date of the default decision.” “Exceptional circumstances” is not a defined term, however the statute clearly gives OATH the discretion to decide if reconsideration is appropriate on a case-by-case basis. 48 RCNY § 6-21(d) lists reasonable circumstances for failing to appear, which includes “[w]hether the summons was properly served pursuant to applicable law” and other criterion related to availability of the Respondent for emergency situations or being unable to attend due to circumstances outside of the Respondent’s control.

Petitioner does not argue that the summons was not properly served or provide any other reason as to explain why Petitioner defaulted in the underlying OATH proceeding.


Petitioner’s only argument in support of its exceptional circumstances is that its liability for \$63,500.00 based upon three default judgments is “inequitable.” None of the criterion listed in 48 RCNY § 6-21(d) support this as an acceptable reason for failing to appear. As Petitioner has failed to demonstrate that exceptional circumstances prevented him from appearing and did not file this Article 78 proceeding within the statute of limitations, it is time barred and must be dismissed.

Accordingly, it is hereby

ORDERED that the cross-motion to dismiss this Article 78 proceeding is granted, this petition is denied and this proceeding is dismissed.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

8/29/2024  
DATE

  
LYNN R. KOTLER, J.S.C.

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION

APPLICATION:  GRANTED  GRANTED IN PART  OTHER

CHECK IF APPROPRIATE:  SETTLE ORDER  SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE