

**Matter of La Cuchara Deli & Grocery Corp. v Village  
of Ossining**

2024 NY Slip Op 35078(U)

October 28, 2024

Supreme Court, Westchester County

Docket Number: Index No. 57539/2024

Judge: Robert J. Prisco

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This opinion is uncorrected and not selected for official publication.

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

-----X  
**In the Matter of the Application of  
LA CUCHARA DELI & GROCERY CORP.**

**Petitioner,**

**For a Judgment Pursuant to Article 78 of  
the Civil Practice Law and Rules,**

**DECISION & ORDER**

**-against-**

**Index No.: 57539/2024**

**VILLAGE OF OSSINING and SUSANNE DONNELLY,**

**Respondents.**

-----X  
**ROBERT J. PRISCO, J.**

The following papers, numbered 1-3, were read and considered in determining Petitioner’s Verified Petition for relief pursuant to Civil Practice Law and Rules (“CPLR”) Article 78:

<u>Papers</u>	<u>Numbered</u>
Verified Petition/Notice of Petition/Affirmation of Jose William Cotto, Esq./Exhibit A	1
Affirmation in Opposition <sup>1</sup> of Paul E. Svensson, Esq./Exhibits C-F	2
Reply Affirmation of Jose William Cotto, Esq.	3

Relevant Background

Franklyn Crespo is the principal of La Cuchara Deli & Grocery Corp. (hereinafter “Petitioner”), which operates a restaurant located at 107 Spring Street, in the Village of Ossining (see Page 1, Paragraph 2, of the Verified Petition).

<sup>1</sup> Pursuant to CPLR §§ 402 and 7804 (d), the Court deems Respondents’ Affirmation in Opposition their answer.

On December 22, 2023, Petitioner submitted a 2024 Renewal Refreshment Permit application to Respondent Susanne Donnelly, the Village Clerk/License Officer of Respondent Village of Ossining (*see* Page 3, Paragraph 9, of the Verified Petition; *see also* Exhibit C attached to Respondents' Affirmation in Opposition).

On January 25, 2024, Respondent Susanne Donnelly denied Petitioner's 2024 application for a refreshment license (*see* Exhibit A attached to the Verified Petition). In Respondent Donnelly's letter, she stated that Petitioner was issued a license by the New York State Liquor Authority (SLA), effective March 27, 2023, which "identified the establishment's method of operation as 'Grocery Store selling beer, wine and cider products'" (*Id.*). However, the SLA "notes that the license was for **off-premises sales only**" (*Id.*). Respondent Donnelly states that "[i]n 2023, two police referral forms were filed with the [SLA] by the Ossining Village Police Department" regarding Petitioner (*Id.*). First, "[o]n May 4, 2023, a plain[ ] clothes Ossining Police officer entered the establishment, [t]wo patrons were observed drinking beer from cups, [t]he officer ordered one empanada along with a Modelo beer, [and] [t]he officer was served the Modelo beer in a paper cup" (*Id.*). The second incident occurred on August 1, 2023, when Ossining Police Officers conducted a check of the premises (*Id.*). During this incident, "[o]ne of the officers observed a patron drinking what appeared to be beer out of a [white] paper cup, [t]wo other patrons also were observed drinking out of the same style cups, [and] [a]nother officer confirmed that the beverages in the cups appeared to be beer" (*Id.*). Consequently, Respondent Donnelly determined that, as Petitioner has "repeatedly failed to comply with [the] laws applicable to it, ... the 2024 refreshment license [is] **denied**" (*Id.*)

#### Procedural History

On February 22, 2024, Petitioner, by way of counsel, filed a petition for Article 78 relief. Specifically, Petitioner is seeking an order: "vacating and annulling the determination of the respondent(s) ... letter dated January 25, 2024, denying the '2024 License Application-Renewal' of the Petitioner's 'Refreshment License;' declaring ... Petitioner ... has been deprived of its property without due process of law and has been denied the equal protection of the laws and Petitioner's rights under the 14<sup>th</sup> Amendment of the Constitution of the United States and Article I, Sections 6 and 11 of the Constitution of the State have been infringed upon and violated;

“declaring that Respondent(s) ‘denial of the renewal of the petitioner’[s] ... ‘Refreshment License’ for 2024, is arbitrary and capricious, contrary to law, without legal authority and without a rational basis,” and for such other and further relief as the Court deems just and proper, including costs and disbursements (*see* the Notice of Petition). Petitioner also filed an Affirmation of Jose William Cotto, Esq., and an exhibit labeled A.

On March 12, 2024, Respondents, by way of counsel, filed an Affirmation in Opposition. Counsel also filed four exhibits labeled C-F.

On March 19, 2024, Petitioner’s counsel, Jose William Cotto, Esq., filed a Reply Affirmation.

### Analysis

#### Arbitrary and Capricious

Petitioner argues that it “submitted a complete application for renewal of the license application to Respondent(s), on the form required by the Respondents, with all required attachments and with appropriate fees” (*see* Page 8, Paragraph 34, of the Verified Petition). Petitioner claims that Respondents’ “denial of the renewal of its ‘Refreshment License’ for 2024, is arbitrary and capricious, contrary to law, without legal authority and without a rational basis” (*Id.* at Paragraph 35). However, Petitioner concedes in its reply papers that there were two incidents, specifically on May 4, 2023, and August 1, 2023, when alcoholic beverages were served to patrons within its establishment, despite having a license for off-premises sales only (*see* Pages 1-2, Paragraph 4, of the Reply Affirmation of Jose William Cotto, Esq.).

“Judicial review of an administrative determination not made after a quasi-judicial hearing is limited to whether the determination was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion” (*Matter of Simon Green, Inc. v New York State Div. of Hous. & Community Renewal*, 228 AD3d 670, 671-672 [2d Dept 2024], quoting *Matter of Bedeau Realty Corp. v State of New York, Div. of Hous. & Community Renewal*, 177 AD3d 872, 873 [2d Dept 2019]; *see Matter of Hack v Town Bd. of Town of Putnam Val.*, 219 AD3d 489, 489 [2d Dept 2023]; *Matter of Lake v New York City Employees’*

*Retirement Sys.*, 202 AD3d 682, 683 [2d Dept 2022]; *Matter of Sha Realty, LLC v New York State Div. of Hous. & Community Renewal*, 193 AD3d 864, 865 [2d Dept 2021]; CPLR § 7803 [3]). “An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts” (*Matter of 88-05 171, LLC v New York State Div. of Hous. & Community Renewal*, 230 AD3d 679, 680 [2d Dept 2024], quoting *Matter of CHT Place, LLC v New York State Div. of Hous. & Community Renewal*, 219 AD3d 486, 487 [2d Dept 2023]; see *Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]; *Matter of Edwards v New York City Dept. of Educ.*, 228 AD3d 935, 936 [2d Dept 2024]; *Matter of Sherr v Everett*, 228 AD3d 872, 874 [2d Dept 2024]; *Matter of Simon Green, Inc. v New York State Div. of Hous. & Community Renewal*, 228 AD3d at 672; *Matter of O’Hagan v City of New York*, 226 AD3d 1026, 1027 [2d Dept 2024]). Consequently, “[i]f the [reviewing] court finds that the determination is supported by a rational basis, [then] it must sustain the determination even if the [reviewing] court concludes that it would have reached a different result than the one reached by the agency” (*Matter of Brookdale Physicians’ Dialysis Assoc., Inc. Department of Fin. Of the City of N.Y.*, 41 NY3d 608, 616 [2024], quoting *Matter of Natasha W. v New York State Off. of Children & Family Servs.*, 32 NY3d 982, 984 [2018]; see *Matter of Peckham v Calogero*, 12 NY3d at 431; *Matter of 88-05 171, LLC v New York State Div. of Hous. & Community Renewal*, 230 AD3d at 680; *Matter of Edwards v New York City Dept. of Educ.*, 228 AD3d at 935; *Matter of CHT Place, LLC v New York State Div. of Hous. & Community Renewal*, 219 AD3d at 487).

Pursuant to Village of Ossining Code § 145-8 (hereinafter “the Village Code”), “[n]o person shall operate a refreshment business without having first obtained a license therefor in accordance with this article and Chapter 171, Licenses.” Under Village Code § 145-10 (c), a refreshment business license may be refused if “[t]he refreshment business sought to be licensed does not comply in any way with regulations, ordinances, and laws applicable thereto” (see Exhibit A attached to the Verified Petition). Further, as set forth under Village Code § 171-10 (B) (1) (b), the grounds for denying a refreshment license include the “license history” of the establishment.

Here, the License Officer based her determination upon a review of the Village Codes which prohibit the consumption of alcoholic beverages on the premises without a proper license (see Exhibit A attached to the Verified Petition, and Village Code §§ 145-7 and 145-10 (c)).

Specifically, Petitioner sold alcoholic beverages on its premises, without a license therefor, on May 4, 2023, and on August 1, 2023.

The License Officer concluded from Petitioner's 2023 history that the facility had failed to comply with the Village Codes by selling alcoholic beverages for on-site consumption without a proper license, which was reasonably related to the Village's interest in maintaining public safety and welfare (*see Melron Amusement Corp. v Town of Mamaroneck*, 104 AD2d 858, 859 [2d Dept 1984] ["Licensing requirements ... have been upheld by the courts on the basis that such restrictions are rationally related to the promotion and preservation of the public welfare and safety"]; *see also* Exhibit A attached to the Verified Petition, and Page 10, Paragraph 58, of Respondents' Affirmation in Opposition).

Further, contrary to Petitioner's claims (*see* Page 5, Paragraphs 21-22, of the Verified Petition), there is no requirement in the Village Code that Petitioner had to be prosecuted for the August 1, 2023 incident or that he had to be charged regarding the May 4, 2023 incident prior to denying his license. Here, it is undisputed that both incidents took place and that such incidents constituted a breach of the Petitioner's obligation to comply with the Village Code.

Accordingly, as the License Officer provided sufficient justification for denial of the renewal, it was not arbitrary and capricious.

#### Due Process Violation

Petitioner further argues that "[t]he denial letter of the refreshment license without a hearing on the issues and incidents alleged was a violation of the Petitioner's 'due process' rights" (*see* Page 4, Paragraph 14, of the Verified Petition).

Village Code § 171-9 (E) authorizes the License Officer to "determine the eligibility of any applicant for a license ..." Pursuant to Village Code § 171-9 (G), the License Officer shall "notify any applicant ... of the acceptance or rejection of his or her application and shall, upon refusal by the license officer of any license or permit, at the applicant's request, state in writing the reasons therefor and deliver them to the applicant." Thus, the Village Code does not require that a hearing take place before an application is denied.

Moreover, because Petitioner has been provided with the benefit of this Court's review of the denial letter through the instant Article 78 proceeding, the lack of a pre-deprivation hearing does not offend the constitutional guarantee of due process (*see Matter of Brown v City of Schenectady*, 209 AD3d 128, 133-134 [3d Dept 2022][“[P]etitioner could file a CPLR article 78 proceeding, which [is] an adequate post-deprivation remedy”]; *Matter of Exclusive Ambulette Serv., Inc. v New York State Dept. of Health*, 170 AD3d 721, 723 [2d Dept 2019], *lv. denied* 34 NY3d 906 [2019] [“The petitioner was provided with ... an adequate post-deprivation remedy through the instant CPLR article proceeding”]; *Matter of Hamil Stratten Props., LLC v New York State Dept. of Envtl. Conservation*, 79 AD3d 747, 749 [2d Dept 2010] [The “CPLR article 78 proceeding provides an adequate post-deprivation process even in the absence of an administrative hearing”]; *Noroian v City of Port Jervis*, 16 AD3d 392, 393 [2d Dept 2005], *appeal dismissed*, 4 NY3d 881 [2005] [The CPLR article 78 proceeding “provided sufficient postdeprivation process”]).

#### Substantive Due Process Violation

Petitioner also claims that it has a “property interest” in the renewal of its “Refreshment License” for 2024 (*see* Page 7, Paragraph 31, of the Verified Petition), and that such interest was violated.

“Drawing on federal precedents, [the Court of Appeals has] set out [a] two-part test for substantive due process violations” (*Bower Assoc. v Town of Pleasant Val.*, 2 NY3d 617, 627 [2004]; *see Matter of Riedman Acquisitions, LLC v Town Bd. of Town of Mendon*, 194 AD3d 1444, 1452 [4th Dept 2021]; *Acquest Wehrle, LLC v Town of Amherst*, 129 AD3d 1644, 1647 [4th Dept 2015], *appeal dismissed* 26 NY3d 1020 [2015]). “First, claimants must establish a cognizable property interest, meaning a vested property interest, or ‘more than a mere expectation or hope to retain the permit and continue [their operations]; they must show that pursuant to State or local law, they had a legitimate claim of entitlement to continue [to operate their business]” (*Bower Assoc. v Town of Pleasant Val.*, 2 NY3d at 627, quoting *Town of Orangetown v Magee*, 88 NY2d 41, 52 [1996]; *see Matter of Raynor v Landmark Chrysler*, 18 NY3d 48, 59 [2011]; *Matter of Henry v Town Bd. of Town of Manlius*, 225 AD3d 1142, 1143 [4th Dept 2024]; *Matter of Riedman Acquisitions, LLC v Town Bd. of Town of Mendon*, 194 AD3d at 1452-1453). “Second, claimants must show that the governmental action was wholly without legal justification” (*Bower Assoc. v*

*Town of Pleasant Val.*, 2 NY3d at 627; see *Matter of Raynor v Landmark Chrysler*, 18 NY3d at 59; *Town of Orangetown v Magee*, 88 NY2d at 52; *Matter of Henry v Town Bd. of Town of Manlius*, 225 AD3d at 1143; *Matter of Riedman Acquisitions, LLC v Town Bd. of Town of Mendon*, 194 AD3d at 1453).

As stated above, pursuant to Village Code § 145-10 (c), a refreshment business license may be refused if “[t]he refreshment business sought to be licensed does not comply in any way with regulations, ordinances, and laws applicable thereto.” Here, it is undisputed that Petitioner received a license to sell alcoholic beverages from the SLA, effective March 27, 2023, which restricted the “[g]rocery [s]tore [to] selling beer, wine and cider products [for off-premises sales only]” (see Exhibit A attached to the Verified Petition, and Exhibit C attached to Respondents’ Affirmation in Opposition).

“In light of [Respondents’] discretion as to whether to grant an initial application for a [refreshment business] license and whether to grant a renewal license application, the denials of such applications do not implicate any protected property interests” (*Matter of Givens v City of New York*, 177 AD3d 532, 533 [1st Dept 2019], *lv. denied* 35 NY3d 903 [2020]).

On May 4, 2023 and August 1, 2023, Petitioner violated the Village Code by serving alcoholic beverages for on premises consumption without a proper license from the SLA or the Village (see Village Code §§ 145-7 and 145-10). Petitioner’s sale of beer on its premises on those two dates without a proper license also violated § 100 (1) of the New York Alcohol and Beverage Law. Accordingly, there was a clear legal justification for the non-renewal of Petitioner’s refreshment license.

Consequently, Petitioner’s substantive due process argument regarding an alleged property interest of its license is likewise denied.

#### Equal Protection Claim

Lastly, Petitioner states in a conclusory manner that its “rights under the 14<sup>th</sup> Amendment of the Constitution of the United States, and Article I, Section[s] 6, and 11 of the Constitution of the State have been infringed upon and violated” (see Page 8, Wherefore Paragraph, of the Verified Petition).

“[A] violation of equal protection arises where first, a person (compared with others similarly situated) is selectively treated and second, such treatment is based on impermissible


considerations such as race, religion, intent to inhibit or punish the exercise of constitutional rights, or malicious or bad faith intent to injure a person” (*Matter of State of New York v Myron P.*, 20 NY3d 206 [2021], quoting *Bower Assoc. v Town of Pleasant Val.*, 2 NY3d at 631; see *Neuman v City of New York*, 186 AD3d 1523, 1526 [2d Dept 2020]; *Sonne v Board of Trustees of Vil. Of Suffern*, 67 AD3d 192, 203 [2d Dept 2009]).

As Petitioner “do[es] not allege ‘differential treatment as a constitutionally protected suspect class, or denial of a fundamental right,’ and [has] failed to show that [Respondents] ‘singled out’ [its] license application[ ] ‘with malevolent intent’” (*Matter of Givens v City of New York*, 177 AD3d at 533, quoting *Bower Assoc. v Town of Pleasant Val.*, 2 NY3d at 630-631), the requested relief based upon an alleged equal protection violation is denied.

For the reasons set forth above, Petitioner’s Verified Petition is denied.

The foregoing constitutes the Decision, Order and Judgment of this Court. To the extent not addressed, the relief is denied.

Dated: White Plains, New York  
October 28, 2024

  
HONORABLE ROBERT J. PRISCO  
Acting Supreme Court Justice

To: *ALL PARTIES VIA NYSCEF*