Aquilino v New York City Off. of Admin. Trials & Hearings

2025 NY Slip Op 32168(U)

June 4, 2025

Supreme Court, New York County

Docket Number: Index No. 157768/2024

Judge: Alexander M. Tisch

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ALEXANDER M. TISCH **PART** 18

Justice

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ANTHONY AQUILINO,

INDEX NO. 157768/2024

MOTION DATE

MOTION SEQ. NO. 001

Petitioner,

For a Determination Pursuant to Article 78 of the Civil Practice Law and Rules

-against-

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS,

DECISION AND ORDER

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1-27 were read on this motion to/for PETITION TO ANNUL AND VACATE.

Petitioner brings this Article 78 proceeding to annul and vacate an April 4, 2024 determination by respondent Office of Administrative Trials and Hearings ("OATH"), which determined that petitioner violated Section 24-236(e) of the Administrative Code of the City of New York. Respondent opposes and cross-moves to dismiss the petition on the basis that petitioner failed to exhaust his administrative remedies.

Petitioner was issued a summons (No. 000790551N) following an occurrence on November 4, 2023, when his vehicle was observed by a noise camera with a sound level at 92.3db(A) in violation of AC § 24-236(e), which states that "no person shall cause or permit the total sound from a motor vehicle operating on a public right-of-way to exceed the sound level set

forth in section 386 of the vehicle and traffic law and the rules adopted pursuant to such section." Section 386(c) of the VTL sets forth the maximum allowable A- weighted sound level of 76db(A) if the vehicle is traveling 35 miles per hour or less and 82 db(A) if the vehicle is traveling over 35 miles per hour. Petitioner contends that he did not "cause or permit" his vehicle to exceed the sound restrictions because he did not modify his Lamborghini from its original manufactured condition. Petitioner also cites news accounts of the bill's passage to support his position that the legislative intent of the law was to apply only to unreasonable noise disturbances due to motor vehicles being modified to amplify sounds from the vehicle's exhaust or to vehicles operated in an unreasonably noisy manner.

Respondent contends petitioner did not exhaust his administrative remedies, as required by CPLR § 7801(1). Chapter 6 of Title 48 of the Rules of the City of New York ("RCNY") governs OATH, in particular Section 6-19(a)(1), which sets forth the appeals process requiring appeals to be made within thirty days of the date of the decision, or within thirty-five days if the decision was mailed with proof of service of the appeal on the non-appealing party. The appealing party must indicate in writing that payment of any fines, penalties or restitution imposed by the decision has been made in full. A party may request an automatic extension of thirty days to appeal upon request pursuant to Section 6-19(d)(1) but importantly Section 6-19(d)(4) "does not extend the time by which the respondent must pay the penalty pursuant to section 6-18 of this title."

The OATH hearing occurred on April 10, 2024. A decision was rendered on April 24, 2024, and mailed on April 25, 2024. On May 14, 2024, petitioner submitted a request for an extension of time to appeal, which OATH denied in a letter dated May 23, 2024, because petitioner did not pay the $800.00 penalty. Both sides acknowledge the penalty was not paid until May 30, 2024, after the May 29, 2024, deadline, pursuant to RCNY § 6-18. The failure to timely pay a

penalty is fatal to the application because an administrative appeal may only be considered upon payment of penalties or fines in the decision. *Matter of Sahara Const. Corp. v NYC Office of Admin Trials & Hearings*, 185 AD3d 401 (1st Dep't 2020) (NYSCEF Doc Nos 5, 25-27 contain all the relevant documents referenced).

Petitioner contends in reply that he exhausted all administrative remedies because the respondent wrongly did not grant its extension of time to appeal. Petitioner acknowledges that the penalty was paid late – albeit by one day – and contends that there "are just terms and good cause warranting an extension of time to make the payment" pursuant to CPLR § 2004. However, § 2004 is limited to "extensions of time for the doing of acts in actions and proceedings and not for the doing of acts which are substantive in character and provided for in other statutes." *See Matter of Powers v Foley*, 25 AD2d 525 (1966). "Other" statutes would seemingly include the OATH appeal rules. Notably, § 2004 does not apply to extensions of time to take an appeal in court, which is analogous to the present issue. *See* CPLR 5514(c). Even if it was applicable, this Court would decline to grant an extension under this provision, as petitioner has, contrary to his assertion, failed to show "good cause" for doing so. The Court has considered petitioner's remaining arguments and finds them to be without merit.

Therefore, because petitioner did not submit an appeal, the petitioner failed to exhaust every available administrative remedy and is barred from seeking judicial relief. *Plummer v Klepak*, 48 NY2d 486 (1979); *Matter of Gottlieb v City of NY*, 126 AD3d 903 (2nd Dep't 2015); *Matter of Palm v King*, 122 AD3d 1110 (3rd Dep't 2014). In light of the above, the Court need not

address the arguments in the petition about the applicability of AC § 24-236(e) to unmodified vehicles.[1]

Accordingly, the petition is denied and the respondent's cross-motion to dismiss is granted, and it is further

ORDERED that the petition is dismissed.

This constitutes the decision and order of the Court.

June 4, 2025
DATE

ALEXANDER M. TISCH, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE

[1] Petitioner creatively relies on statements in the press by the principal author, Councilmember Keith Powers, of AC § 24-236(e) for his assertion that the statute is designed to solely address modified vehicles. However, such hearsay is insufficient to overcome the plain language of the statute, which is the first and best means of divining a statute's meaning – even if the language was not clear and unambiguous as it is. *See New Amsterdam Casualty Co v Stecker*, 3 NY2d 11 (1957). In fact, Councilmember Powers in a New York Post article submitted as an exhibit by petitioner (NYSCEF Doc No 23) specifically says that the "noise camera program was instituted to address any vehicle disrupting the local community by violating the city and state laws related to noise."