

Colossus HVAC LLC v City of New York

2025 NY Slip Op 33404(U)

September 11, 2025

Supreme Court, New York County

Docket Number: Index No. 154437/2025

Judge: Lyle E. Frank

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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. LYLE E. FRANK **PART** **11M**

Justice

-----X

COLOSSUS HVAC LLC

Petitioner,

- v -

THE CITY OF NEW YORK et al

Respondent.

-----X

INDEX NO. 154437/2025

MOTION DATE 04/03/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 70, 71, 72, 73, 74, 75

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

Upon the foregoing documents, the petition is granted in part.

Background

In 2018, petitioner Colossus HVAC LLC was hired to update the central air conditioning system for the NYPD’s 7th and 20th Precincts. On April 27, 2021, Petitioner submitted a final payment request for the amounts outstanding on both projects. The NYPD (collectively with the City of New York, OATH and the CDRB, “Respondents”) responded by issuing an Upgrade Punch List for each precinct, which Petitioner contends contained multiple errors. The parties dispute whether the final work on the Punch Lists was completed. The NYPD has not to date issued the final payments. In August of 2021, Petitioner submitted a Notice of Dispute to the NYPD Commissioner, who issued an Agency Determination that awarded Petitioner a partial payment of \$9,000 for the 7th Precinct and \$4,500 for the 20th Precinct work. The Agency Determination did not state any rationale for the decision, nor identify what work the amounts awarded were for.

Petitioner brought the dispute to the Comptroller, and then to the CDRB for adjudication of its claim. The CDRB initially denied Petitioner's claim as untimely. In response, Petitioner filed an Article 78 proceeding. That proceeding was resolved when this Court issued an order remanding the matter back to the CDRB "for a determination of the merits." On remand, the CDRB in a 2-1 decision noted that the City's response to Petitioner's contentions for why each Punch List item was either wrong or already completed was brief and did not contain evidence outside of an affidavit. It stated however that "it was not clear" whether the disputed work had been completed and ultimately held that Petitioner could not get either full payment for a substantially completed project or partial payment for work actually completed because certain contractual requirements had not been met. Petitioner's position has been that the NYPD is refusing to conduct their contractual requirements and inspect the work completed. In response to the CDRB's Remand Decision, Petitioner brought this present Article 78 Proceeding. Respondents oppose.

Standard of Review

A party may bring an Article 78 petition to challenge the final determination of an administrative agency. CPLR § 7801(1). A court must give great deference to the agency's decision and cannot "interfere unless there is no rational basis for the exercise of discretion or the action complained of is arbitrary and capricious." *Pell v. Board of Education*, 34 N.Y.2d 222, 231 [1974]. Judicial review is also available if the agency's determination was "contrary to law or procedure." *Barrett Japaning, Inc. v. Bialobroda*, 190 A.D.3d 544, 545 [1st Dept. 2021]. An action is irrational or arbitrary and capricious if "it is taken without sound basis in reason or regard to the facts." *Matter of A.Z. v. City Univ. of N.Y., Hunter Coll.*, 197 A.D.3d 1027, 1027 [1st Dept. 2021].

Discussion

Petitioner argues that the Remand Decision was arbitrary and capricious because it refused to make a determination on whether the work that Petitioner claims to have completed was done or not. They also argue that the determination that Petitioner was not entitled to payment was an abuse of the CDRB's discretion. Respondents in opposition argue that the CDRB did not err and applied the contractual provisions between the parties correctly. For the reasons that follow, the petition is granted in part. The \$13,500 award from the Commissioner is confirmed and the matter is remanded back to the CDRB for a determination on the factual record of the issue of partial payment.

Petitioner Has Not Met Their Burden Regarding Entitlement to Final Payment

The CDRB Remand Decision determined that Petitioner has not met their contractual obligations required in order to merit full and final payment on the two precincts. More specifically, the Remand Decision refused to take a position on what work had or had not been completed. It noted, however, that Article 45 of the contract between the parties was clear in stating that Petitioner would only be entitled to final payment upon final approval from the NYPD. Petitioner argues that the NYPD is refusing to conduct the final inspection and issue approval. Respondents' position is that Petitioner has failed to properly request a final inspection, and that the outstanding punch list items must be completed before final approval can be granted. Petitioner has provided affidavits, pictures, and other evidence to support its argument that the punch list items are incorrect and either cannot be completed as written or have already been completed.

Under the heavy burden that Petitioner bears in an Article 78 proceeding, they have not established that the CDRB's decision was arbitrary and capricious. While the CDRB did not

make a factual finding as to whether Petitioner or the NYPD was correct in their characterization of the final punch list items, their decision to refrain from awarding full payment cannot be said to be irrational. The Remand Decision cited to the relevant portions of the contract between the parties and found that certain condition precedents to final payment had not been met. While Petitioner argues that they present overwhelming evidence in their support and the NYPD merely reiterated a baseless argument, the Court will not overturn the weight that the CDRB chose to give to the NYPD's arguments and affidavit. On review, a court "may not weigh the evidence or reject the conclusion of the administrative agency where the evidence is conflicting and room for choice exists." *Matter of Shuman v. New York State Racing & Wagering Bd.*, 40 A.D.3d 385, 386 [1st Dept. 2007]. The same reasoning applies to the CDRB's finding that, for similar reasons, Petitioner did not establish entitlement to substantial completion payment.

Petitioner Has Met Burden Regarding Partial Payment Entitlement

As stated above, in response to Petitioner's request for final payment the NYPD Commissioner awarded them \$13,500. Petitioner disputed this amount at the CDRB, arguing that they had completed extensive work on the two precincts and were entitled to more than the \$13,500. The CDRB Remand Decision refused to make a finding about the extent of work completed on the two projects and instead held that Petitioner had not satisfied certain contractual condition precedents that would entitle them to a partial payment. At the same time, however, the CDRB upheld the Commissioner's award of \$13,500. Here the Court agrees with the dissenting CDRB opinion and finds that this aspect of the Remand Decision was arbitrary and capricious. The Remand Decision in effect held that Petitioner was entitled to partial payment of \$13,500, but that they were simultaneously not entitled to partial payment and

therefore the CDRB had no need to make any findings as to the extent of work actually completed.

This is circular and arbitrary reasoning. An agency's decision is "irrational or arbitrary and capricious if it is taken without sound basis in reason or regard to the facts." *Matter of A.Z. v. City Univ. of N.Y., Hunter Coll.*, 197 A.D.3d 1027, 1028 [1st Dept. 2021]. Either Petitioner is entitled to partial payment, or they are not, and either the Commissioner's partial payment award was an accurate reflection of the work completed, or it was not. The CDRB must examine the facts and come to a conclusion on this matter, instead of simply sidestepping the "not clear" factual record. To the extent that Petitioner did not satisfy any condition precedents required for partial payment, the NYPD clearly and indisputably waived those conditions by issuing a partial payment in response to Petitioner's request for full payment.

All parties seem in agreement that Petitioner is entitled to partial payment, the dispute is over how much Petitioner is entitled to. In order to determine whether the Commissioner's award was valid or not, the CDRB would need to make factual findings on the extent of work that Petitioner had completed and this they refused to do. As all parties agree that Petitioner is entitled to at least \$13,500, and that the NYPD has to date refused to make this payment (for no given reason), it is proper for the Court to issue an order confirming that award. It is also proper to remand the matter back to the CDRB in order for them to make factual findings and determine whether Petitioner has established that the work completed entitles them to further payments. In doing so, the Court is not making factual findings or substituting its judgment for the CDRB, because in this matter the CDRB declined to make factual findings or exercise its judgment. Accordingly, it is hereby

ORDERED that the respondent New York City Police Department pay petitioner Colossus HVAC LLC the sum of \$13,500 within 30 days of the service of this order with notice of entry; and it is further

ADJUDGED that the Petition is granted in part; and it is further

ORDERED that the matter is remanded back to the CDRB in accordance with the provision of this Decision and Order, for a determination of the merits of petitioner’s claim that they are entitled to further payment for work completed.


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9/11/2025
DATE

LYLE E. FRANK, 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