

Sysco Metro N.Y., LLC v City of New York

2025 NY Slip Op 33733(U)

October 2, 2025

Supreme Court, New York County

Docket Number: Index No. 155854/2024

Judge: Paul A. Goetz

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

PRESENT: HON. PAUL A. GOETZ PART 47

Justice

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SYSCO METRO NEW YORK, LLC, PARKING SURVIVAL EXPERTS, D/B/A PARKINGTICKET.COM,

Petitioners,

- v -

THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF FINANCE, NEW YORK CITY PARKING VIOLATIONS BUREAU CONSOLIDATED ADJUDICATION UNIT, F/K/A COMMERCIAL ADJUDICATION UNIT, PRESTON NIBLACK, CARL P. KANEV

Respondents.

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INDEX NO. 155854/2024
MOTION DATE 06/04/2024, 12/06/2024, 03/31/2025
MOTION SEQ. NO. 001 003 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 104, 108, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 199

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

The following e-filed documents, listed by NYSCEF document number (Motion 003) 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 191, 193, 200, 201

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 188, 189, 190, 192, 194, 195, 196, 197, 198

were read on this motion to/for DISCOVERY.

In this “plenary hybrid Article 78 proceeding,” petitioners seek “injunctive, and declaratory relief challenging [respondents’] specific, ongoing policies, practices, and procedures” (MS #1, NYSCEF Doc No 21 ¶ 1 [amended petition]). Petitioners also move for additional injunctive relief (MS #3); and to conduct discovery (MS #4).

BACKGROUND

Pursuant to its authority under New York State Vehicle and Traffic Law (VTL) § 235(1), The City of New York (the City), through its Department of Finance (DOF), established the Parking Violations Bureau (PVB), an administrative tribunal that adjudicates challenges to parking violations. Within the PVB is the Consolidated Adjudication Unit (CAU), a special purpose hearing part that adjudicates a high volume of summonses received by commercial vehicle owners. Petitioner Parking Survival Experts (PSE) is a broker company that represents entities in hearings before the CAU; all other petitioners are owners and operators of commercial trucking fleets operating in New York City which have received parking violation summonses.

On April 12, 2024—pursuant to its rule-making authority under VTL § 237(3), New York City Admin Code § 19-203(c), and New York City Charter § 1043—the DOF adopted several amendments to Chapter 39, Title 19 of the Rules of the City of New York (RCNY) (NYSCEF Doc No 12 [the amended rules]). The following amendments are at issue:

- (a) RCNY § 39-09(a)(4) (the fleet program rule): “A broker shall not represent a Business Entity unless such Business Entity is registered in the Fleet Program¹ or the Car Rental Program”;
- (b) RCNY § 39-09(d)(2) (the minimum summonses rule): “[R]epresentatives who appear before CAU must consolidate at least the minimum number of summonses authorized by the Director² into one ECF³ for hearing or appeal”;
- (c) RCNY § 39-03(f)(1) (the evidence submission rule): “If the company wishes to contest a summons at an in-person or a virtual contemporaneous videographic hearing, within 60

¹ The “Fleet Program” is defined as “a voluntary enrollment program whereby Commercial Organizations receive computer-generated hearing logs and can schedule hearings” in the CAU (*id.*).

² The director set the minimum of summonses at 50 (NYSCEF Doc No 1 ¶ 79), however, “[w]here the total number of outstanding summonses pending hearing or appeal against a respondent is less than [50], such minimum number will be deemed to be the total number of summonses pending hearing or appeal, as applicable” (RCNY § 39-09[d][2]).

³ “ECF” refers to “electronic case folder,” which is “an electronic file folder generated for the adjudication of parking summonses, which may include any summons, evidence, a written defense, the decision and order, and the hearing audio” (*id.*).

days [from the issuance of the summons], the company must . . . request a hearing [and] submit evidence”; otherwise, “such hearing may be conducted without the presence of the company or its representative.”

Additionally, petitioners challenge: respondents’ stipulated fine program, promulgated in 2002, which permits commercial organizations enrolled in the fleet program to waive their rights to challenge summonses in exchange for a reduced fine schedule; the replacement of audiocassette tape recorders with MP3 electronic recorders in CAU hearing rooms, and respondents’ “refus[al] to provide the complete analog cassette tape recording of such hearings even for those in their possession prior to” such replacement; and respondents’ failure to implement virtual hearings at the CAU.

Finally, petitioners allege that Administrative Law Judge (ALJ) Carl Kanev “is the most egregious offender” in upholding summonses for parking tickets that misdescribed the vehicle’s body type; “has, on a number of occasions, prohibited [Parking Survival Experts (PSE)]’s Court Representatives from making arguments at administrative hearings”; and “has improperly converted in-person hearings to hearings by mail” (NYSCEF Doc No 21 ¶¶ 64, 69).

Petitioners seek an order: (i) enjoining and restraining respondents from enforcing the amended rules; (ii) enjoining and restraining respondents from enforcing the stipulated fine program; (iii) compelling respondents to restore audiocassette tape recorders in addition to the MP3 recorder, record continuously throughout hearings, and dismiss a rolling list of adverse determinations made after analog tapes were removed; (iv) enjoining and restraining Judge Kanev from presiding over administrative hearings of petitioners’ tickets; (v) compelling respondents to implement virtual hearings in the CAU and disclose licenses for video meeting software they have; and (vi) compelling respondents to refund a rolling list of tickets (*id.*).

Petitioners also move for the following injunctive relief: compelling respondents to provide list of not guilty pleas filed by PSE which respondents deleted from the non-fleet ECF system; compelling respondents to restore those pleas, without penalty to petitioners, and to schedule live hearing dates for the entities' brokers to appear and challenge those tickets pending a determination on the fleet program rule; enjoining respondents from preventing an authorized broker from filing not guilty pleas for non-fleet members in live hearings at the CAU or by mail pending a determination on the fleet program rule; permitting an authorized broker to refile or transfer ECFs filed in the non-fleet ECF system to the fleet ECF system; and enjoining and restraining respondents from placing any restrictions on the ability of licensed attorneys to represent non-fleet program members before the PVB, regardless of whether they are classified as attorneys or brokers (MS #3, NYSCEF Doc No 152).

Additionally, petitioners move pursuant to CPLR § 408 to conduct discovery regarding the evidentiary support for the fleet program rule (particularly, evidence of what efficiencies the rule promotes) and the process by which the rule was drafted, debated, and promulgated (MS #4, NYSCEF Doc No 189).

DISCUSSION

The Amended Rules

Petitioners challenge the rule amendments adopted on April 12, 2024 on the grounds that they are arbitrary and capricious and violate petitioners' due process rights. Such rules are subject to a high degree of deference:

“The standard for judicial review of an administrative regulation is whether the regulation has a rational basis and is not unreasonable, arbitrary or capricious. An administrative agency's exercise of its rule-making powers is accorded a high degree of judicial deference, especially when the agency acts in the area of its particular expertise. Accordingly, the party seeking to nullify such

a regulation has the heavy burden of showing that the regulation is unreasonable and unsupported by any evidence.”

(*Consolation Nursing Home v Commissioner of N.Y. State Dep’t of Health*, 85 NY2d 326, 331-32 [1995] [internal citations omitted]).

Petitioners argue that respondents offer no evidence demonstrating that the fleet program will promote efficiency; it impedes “compliant companies from having access to a live hearing”; it requires applicants to pay all outstanding tickets before enrolling; not all applicants are accepted, meaning they cannot have a broker represent them in hearings; and “PSE has smoothly and without difficulty represented non-Fleet Program clients at CAU hearings for decades, [so] there is no pressing reason why the City would need [] such participation” (NYSCEF Doc No 21 ¶¶ 93, 95). Respondents argue that the rule will improve efficiency by requiring members to upload evidence prior to hearings, resulting in a centralized and standardized record; utilizing ECFs, which contain all materials for any given case, conserving City resources; providing standardized deadlines for submissions; and allowing the DOF to permit a hearing to be conducted without the vehicle owner or their representative if they have not requested a hearing and submitted evidence on time (NYSCEF Doc No 139). Respondents also assert that petitioners misstate the requirements for enrollment in the program; applicants must resolve all outstanding tickets before enrolling, but this can be done either by paying the tickets *or contesting them* and only paying the tickets for which they are found guilty.

Petitioners argue that the minimum summonses rule prevents them from making individualized arguments as to each summons “and thus effectively deprive[s] [] Petitioners of a hearing on all the summons other than the one at the top of the pile” (NYSCEF Doc No 21 ¶¶ 136-38). Respondents assert that “contrary to petitioners’ assertions, nothing will prevent petitioners from presenting arguments unique to specific summonses if they are grouped in one

ECF”; rather, “the ECF is a purely administrative tool to facilitate more efficiently scheduling and collecting evidence for summonses” (NYSCEF Doc No 139).

Petitioners argue that “[t]here is no rational basis for” the evidence submission rule because “hearing examiners are prohibited from reviewing the prior record,” and therefore petitioners should be able to make “submissions [] up to the day before or even the very morning of the hearing” (NYSCEF Doc No 21 ¶¶ 143-45). Petitioners assert that “this policy is highly prejudicial to [] Petitioners['] due process rights [] because it gives them a very short window of time to obtain essential business records” (*id.* ¶ 146). Respondents argue that “[t]he rule ensures that hearings in the Fleet Program are conducted without undue delay, and that all evidence is uploaded electronically and is easily viewable by ALJs and DOF staff” and “will hasten DOF’s implementation of virtual hearings” (NYSCEF Doc No 139).

Petitioners attempt to place the burden on respondents to “offer [] exhibits, documents, papers, charts, profit and loss statements, accounts, or efficiency studies to show that any of the newly adopted rules will create efficiencies” (NYSCEF Doc No 21 ¶ 93). However, it is petitioners that must “meet their heavy burden of establishing that [the] rule[s] [are] so lacking in reason that [they are] essentially arbitrary” (*Matter of Tri-City, LLC v New York City Taxi & Limousine Commn.*, 189 AD3d 652, 652 [1st Dept 2020]), and they failed to meet that heavy burden here. As indicated in the notice of adoption of the new rules, submitted by petitioners, “[a] proposed version of these rules was published on July 3, 2023 [and a] hearing for public comment was held on August 3, 2023” (NYSCEF Doc No 12). “DOF received oral and written comments”—some of which overlap with petitioners’ arguments—which were addressed in the statement of basis and purpose (*id.* [e.g., noting that, like petitioners, “[s]everal [commenters] alleged—without further explanation—that [the fleet program] rule would constitute ‘tortious

interference’ or speculated regarding DOF’s motives in promulgating this rule provision” but that “this amendment will improve the efficiency of the [CAU] by standardizing applicable procedures and rules,” and contrary to “[c]omments alleging that the Fleet Program has been rendered obsolete[,] . . . [it] has no functional equivalent elsewhere in the City”). While petitioners may be unsatisfied with the completeness of respondents’ justifications for the rule amendments, that does not necessarily mean the amendments are “so lacking in reasoning that [they are] essentially arbitrary” (*Matter of Tri-City, LLC*, 189 AD3d at 652).

Rather, the amendments reflect the PVB’s efforts to streamline and expedited the parking ticket adjudication process, which falls within its authority “[t]o adopt rules and regulations not inconsistent with any applicable provision of law to carry out [its] purposes[,] including . . . prescribing the internal procedures and organization of the bureau, the manner and time of entering pleas, the conduct of hearings, and the amount and manner of payment of penalties” (VTL § 237[3]). As respondents note: “[t]he purpose of [the CAU] is to enable commercial vehicle owners to schedule hearings and appear before ALJs to adjudicate a large volume of summonses expeditiously”; “[i]n fiscal year 2022, 9.5 million parking summonses were issued to vehicles in New York City [and] [o]ver 900,000 parking summonses were adjudicated in the CAU in fiscal year 2023”; and where a commercial organization has “numerous summonses issued to its commercial vehicles are presented at one time, these summonses are normally adjudicated in the CAU, but are not required to be adjudicated in the CAU” (NYSCEF Doc No 132 ¶ 142). In adjudicating tickets at such a high volume, the PVB has a rational basis for attempting to further streamline the process by requiring fleet program participation for those vehicle owners represented by brokers, directing owners to consolidate summonses for hearings, and setting a reasonable deadline to submit evidence.

i. *Fleet Program Rule Discovery (MS #4)*

Regarding the fleet program rule in particular, petitioners seek discovery concerning “evidence supporting the fleet program rule, including evidence of specific efficiencies that the rule would promote,” and “the process by which the rule was drafted, debated, and promulgated” (NYSCEF Doc No 189). They argue that this discovery is required “because neither the Notice of Adoption [] nor any of [] Respondents’ subsequent submissions detail(s) or outlines such a basis, and thus, the record is barren or at minimum incomplete about what the [] Respondents’ actual justification of the Fleet rule is” (*id.*). Petitioners anticipate that discovery will reveal that the PVB “is going out of its way to avoid fulfilling its mandatory duties,” “intends to adjudicate [far fewer] tickets by eliminating due process,” “intends to block non-fleet program members from continuing to engage Brokers, . . . tortiously interfering with an existing business relationship,” and will eliminate non-fleet program members’ right to counsel (*id.*).

As respondents note, “[b]ecause discovery tends to prolong a case, and is therefore inconsistent with the summary nature of a special proceeding, discovery is granted only where it is demonstrated that there is need for such relief” (*Town of Pleasant Valley v New York State Bd. of Real Prop. Servs.*, 253 AD2d 8, 15 [2nd Dept 1999]). Here, respondents’ “submissions in opposition to the petition sufficed to credibly support its” adoption of the fleet program rule, and petitioners’ “assertion that they [are] entitled to further inquire into whether [respondents were] justified in [their] position amount[s] to no more than an expression of hope insufficient to warrant deferral of judgment pending discovery” (*Price v New York City Bd. Of Educ.*, 51 AD3d 277, 293 [1st Dept 2008]).

Furthermore, petitioners’ argument that the fleet program rule denies their right to counsel or constitutes an improper regulation of the legal profession fails. As stated in the

petition, “[a] broker is not required to be a licensed attorney” (NYSCEF Doc No 21 ¶ 36) and therefore brokers are not “practicing law” in representing petitioners. Moreover, “[a]side from certain narrow exceptions, the right to counsel does not extend to civil actions or administrative proceedings[;] [d]ue process considerations in such cases require only that a party to an administrative hearing be afforded the opportunity to be represented by counsel” (*Baywood Elec. Corp. v New York State DOL*, 232 AD2d 553, 554 [2nd Dept 1996] [internal citations omitted]). The rule on hearings provides for such an opportunity (RCNY § 39-08[d]).

Accordingly, petitioners’ motion for discovery pursuant to CPLR § 408 (MS #4) will be denied; and the part of the petition seeking to enjoin and restrain respondents from enforcing the amended rules will be denied.

Stipulated Fine Program

Petitioners assert that “as there were no public comments for the 2002 ‘creation’ of the stipulated fine program it was not properly promulgated, and it exists without any rule of law” (NYSCEF Doc No 21 ¶ 52). As respondents note, “[t]he propriety in promulgating any regulation may only be challenged in a [CPLR] article 78 proceeding that is subject to a four-month statute of limitations [which] accrues when the regulation is promulgated” (*Matter of Stevens v N.Y. State Div. of Criminal Justice Servs.*, 206 AD3d 88, 100 [1st Dept 2022]). Therefore, petitioners’ challenge to the stipulated fine program, promulgated in 2002, is time-barred and will not be considered.

Audio Recording Devices

Petitioners challenge respondents’ switch from using audiocassette tapes to using MP3s to record hearings on the grounds that the MP3s do not provide a full record (NYSCEF Doc No 21 ¶¶ 76-79 [alleging the tape recorders were “turned on at the beginning of the hearing session

and [did] not stop recording until the tape end[ed],” and “therefore would contain the omissions that are not included in the MP3 electronic record . . . that ALJs [] can turn on and off . . . to speak ‘off the record’” (NYSCEF Doc No 21 ¶¶ 76-79). In opposition, respondents explain the technical reasons for the change in recording devices; argue that petitioners’ challenge amounts to an improper attempt to compel a discretionary action; and note that “cassette recorders are equally capable of being turned off by an ALJ” (NYSCEF Doc Nos 139, 121). Petitioners do not address these issues in their reply (NYSCEF Doc Nos 143, 124). For the reasons stated by respondents, the part of the petition seeking to compel respondents to restore analog cassette recorders in addition to MP3 recorders will be denied.

Virtual Hearings

Petitioners argue that they “are entitled to judgment holding that it is arbitrary and capricious for [] Respondents not to have implemented virtual CAU hearings and requiring them to do so by a date certain,” and directing “Respondents to disclose to [] Petitioners whether they have one or more licenses for virtual meeting software that permit such software to be used in the CAU, and if so, to produce copies of such licenses” (NYSCEF Doc No 21 ¶¶ 209, 212). As with the audiocassette tape recordings, respondents argue that petitioners’ challenge in an improper attempt to compel a discretionary action, as “DOF is under no legal obligation to implement virtual hearings” (NYSCEF Doc No 139). Again, petitioners fail to address this in their reply (NYSCEF Doc No 143). For the reasons stated by respondents, the part of the petition seeking to compel respondents to implement virtual hearings in the CAU will be denied.

ALJ Kanev

Petitioners allege that ALJ Kanev has unfairly upheld parking tickets “on specious grounds,” restricted PSE representatives from reiterating arguments that were already covered in

the written materials, “improperly converted in-person hearings to hearings by mail” by “throw[ing PSE representatives] out of the hearing room” when they failed to follow his directions, and “stopping the computerized, MP3 recording function” during hearings in order to speak off the record (NYSCEF Doc No 21 ¶¶ 64-74). As respondents note, however, “petitioners’ general complaints about ALJ Kanev’s alleged misconduct do not state a cause of action under Article 78,” and “[p]etitioners in effect seek this drastic remedy of essentially judge shopping rather than [] file an administrative appeal [] to address any perceived infirmities in specific decisions rendered by such ALJ” (NYSCEF Doc No 139). Again, petitioners do not address this argument in their reply (NYSCEF Doc No 143). For the reasons stated by respondents, the part of the petition seeking to enjoin and restrain ALJ Kanev from presiding over any administrative hearings on petitioners’ tickets will be denied.

Deleted Not Guilty Pleas (MS #3)

Finally, petitioners allege that they discovered “4745 not guilty pleas on tickets filed under the Non-Fleet ECF system [were] deleted or stripped from Respondents’ systems, with penalties and statutory default judgments accruing as a result” (NYSCEF Doc No 155). Petitioners seek an order (i) compelling respondents to provide a list of the deleted pleas, restore those pleas (and any others since those initial deletions) to the ECF system, and schedule live CAU hearing dates; (ii) enjoining respondents from preventing brokers from filing not guilty pleas for non-fleet program members; (iii) allowing authorized brokers of fleet member petitioners to refile or transfer ECFs filed on the non-fleet system to the fleet system; and (iv) enjoining respondents from placing any restrictions on the ability of attorneys or brokers to represent non-fleet members before the PVB (*id.*).

Respondents assert “DOF’s deletion of non-guilty pleas at issue here was due to petitioners’ continued practice of only including a single summons in each [ECF, though] PSE has known that it is required to include a minimum [of 50] summonses in each ECF” (NYSCEF Doc No 173). Respondents assert that “PSE’s own records should allow it to determine which non-guilty pleas were deleted by DOF,” and “DOF’s deletions of the ECFs are without prejudice,” so “PSE can simply create new ECFs that meet the required minimum number of summonses” (*id.*). Respondents further argue that parts of the motion seek the same ultimate relief sought in the petition.

Petitioners seek “to go back to that process” under which “brokers such as [PSE] were able to file not-guilty pleas and appear at [CAU] . . . without [] distinction[] between Fleet and non-Fleet members” (NYSCEF Doc No 174). This is duplicative of the relief sought in the petition to “enjoin[] and restrain[] Defendants-Respondents from enforcing” the fleet program rule (NYSCEF Doc No 1 ¶ 2) which, as explained *supra*, will be denied. Regarding the remaining injunctive relief sought, petitioners do not challenge respondents’ contentions that their own records would reflect which pleas were deleted, or that they can simply create new ECFs that meet the stated requirements. Therefore, petitioners fail to demonstrate their entitlement to the requested forms of relief.

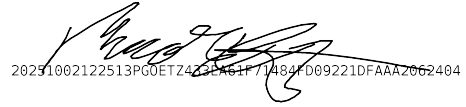
Accordingly, petitioners’ motion for injunctive relief (MS #3) will be denied.

CONCLUSION

Based on the foregoing, it is

ORDERED that the TRO issued on December 17, 2024 and modified and extended on May 1, 2025 pending determination of MS #3 is vacated; and it is further

ORDERED that MS #s 1, 3 and 4 are denied in their entirety and the petition is dismissed, with costs and disbursements to respondents as taxed by the clerk and the clerk is directed to enter judgment accordingly.


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<u>10/2/2025</u> DATE		<u>PAUL A. GOETZ, J.S.C.</u>
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE