

**Matter of 295 Madison Prop. Owner LLC v New York
City Off. of Admin. Trials & Hearings**

2025 NY Slip Op 34062(U)

September 30, 2025

Supreme Court, New York County

Docket Number: Index No. 159133/2024

Judge: Verna L. Saunders

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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. VERNA L. SAUNDERS, JSC PART 36

Justice

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INDEX NO. 159133/2024

In the Matter of the Application of
295 MADISON PROPERTY OWNER LLC,

MOTION SEQ. NO. 002

Petitioner,
For a Judgment Under Article 78 of the CPLR to Prohibit the New
York City of Administrative Hearings and New York City
Marshal Gregg E. Bienstock from Attempting to Levy on
Petitioner's Property

DECISION + ORDER ON
MOTION

- v -

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS
AND HEARINGS and NEW YORK CITY MARSHAL GREGG
E. BIENSTOCK,

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 23, 24, 25, 26, 27, 28, 29, 30,
31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44

were read on this motion to/for

DISMISSAL

Petitioner commenced this proceeding seeking a preliminary injunction and temporary
restraining order prohibiting respondents from physically levying upon petitioner's property in
order to satisfy a judgment. According to petitioner, the New York City Marshal's Notice of
Levy and Sale received were titled as if there were civil proceedings pending in a New York City
Civil Court, but said notice did not contain a court index number (NYSCEF Doc. No. 1,
petition).¹

As relevant to the instant motion,² respondent, the New York City Office of
Administrative Trials and Hearings ("OATH") issued six summonses ("subject summonses") to
petitioner for various violations of the New York City Administrative Code ("Admin. Code").
OATH issued determinations upholding five of the subject summonses. According to OATH,
while petitioner did not appeal any of those five OATH determinations, it entered into a pre-
hearing stipulation concerning the sixth summons wherein petitioner admitted to the facts therein
and agreed to pay a fine. OATH asserts that a penalty was imposed but payment of same from
petitioner was not received as required by the terms of the pre-hearing stipulation. OATH
further asserts that all six summonses were docketed as judgments with the New York City Civil
Court pursuant to New York City Charter §1049-a(d)(1)(g) and in accordance with New York
County Law § 918(4). As such, OATH argues that since the judgments were properly docketed

¹ By the Decision and Order dated December 3, 2024, petitioner's prior motion brought by an Order to Show Cause
for a Preliminary Injunction and Temporary Restraining Order was withdrawn without prejudice (NYSCEF Doc.
No. 18).

² The court notes that respondent has labeled their motion-in-chief as a "cross-motion."

and the Marshal's levies based upon those judgments were proper, the petition fails to state a claim and must be dismissed.

Next, OATH posits that insofar as petitioner failed to exhaust its administrative remedies by not appealing to the OATH's Hearing Division Appeals Unit as required by 48 RCNY 6-19, the petition must be dismissed because this court lacks jurisdiction. OATH notes that since petitioner was informed that it could administratively appeal the adverse determinations within thirty (30) days but failed to do so, petitioner is barred from seeking judicial relief as to the same matter. Also, OATH argues that the four-month statute of limitations for the five OATH determinations which petitioner did not dispute has expired because the decisions sustaining the violations were issued between November 2020 and February 2024, and this petition was commenced on October 1, 2024. Regarding the sixth summons at issue, OATH contends that petitioner waived its right to challenge the determination sustaining the violations by entering into a pre-hearing stipulation. In addition, OATH avers that since petitioner failed to pay the stipulated penalty, the penalty amount automatically increased pursuant to 48 RCNY 3-18 (NYSCEF Doc. No. 34, *OATH cross-motion to dismiss the petition*). As such, OATH urges the court to dismiss the petition pursuant to CPLR 217; 3211(a)(1), (2), (5) and (7); and 7804(f). In support of the application, OATH submits, *inter alia*, a copy of the OATH summons, OATH hearing officer's determinations, affidavits of mailing of the OATH officer determinations, and the pre-hearing stipulation (NYSCEF Doc. Nos. 25-33).

In opposition, petitioner cross-moves for an order prohibiting OATH from levying on petitioner's property based on the judgments allegedly filed in the New York City Court and the Marshal's notices. Petitioner argues that even though it received two Marshal Notices in the combined sum of \$28,668.51 claiming a judgment in a New York City Civil Court, petitioner's investigation revealed that no such judgments were entered in said court. Petitioner avers that while OATH relies on New York City Charter §1049-a(d)(1)(g) and New York County Law § 918(4) to enforce the purported judgments, those two provisions require that an OATH judgment must be entered in the New York City Civil Court. According to petitioner, OATH does not submit any proof that the judgments it seeks to enforce were entered in the New York City Civil Court. Petitioner further adds that OATH has separated its claimed judgments into two judgments, one for \$18,007.02 and one for \$10,661.55 in order to avoid running afoul of New York City Charter section 1049-a(d)(1)(a)(g), which does not permit OATH to enter judgments in the New York City Civil Court seeking amounts in excess of \$25,000.00 (NYSCEF Doc. No. 37, *petitioner's cross-motion to dismiss*). Petitioner submits a copy of the Marshal's notices in support of its arguments (NYSCEF Doc. Nos. 38-39).

In reply, OATH contends that petitioner's cross-motion is procedurally inappropriate because petitioner cannot cross-move to dismiss OATH's cross-motion. Also, it contends that petitioner's cross-motion and petition seek almost identical relief. Further, contrary to petitioner's claim that the judgments were not properly docketed, OATH relies on the affirmation of Maria L. Marchiano, Esq., Deputy Commissioner and Chief Clerk at OATH (NYSCEF Doc. No. 43), to assert that she is an agent for the purpose of docketing OATH judgments in the Civil Court and that the judgments were properly docketed. There are not two judgments as alleged but six judgments, claims OATH and therefore, petitioner's contention that

OATH intentional separated the claimed judgements is without merit (NYSCEF Doc. No. 44, *reply*).

In determining a motion to dismiss pursuant to CPLR 3211, “the pleading is to be afforded a liberal construction. [The court must] accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.” (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994] [internal citations omitted].) A pleading may be dismissed, pursuant to CPLR 3211(a)(7) if plaintiff fails to identify a claim cognizable at law or where the plaintiff has identified a cognizable cause of action but has nevertheless failed to plead a material allegation necessary to establish it (see CPLR 3211[a][7]; *Basis Yield Alpha Fund [Master] v Goldman Sachs Group, Inc.*, 115 AD3d 128, 134 [1st Dept 2014].)

CPLR 7804(f) allows a respondent in a proceeding under CPLR article 78 to raise an objection in point of law by setting it forth in a motion to dismiss the petition. “If the motion is denied, the court shall permit the respondent to answer, upon such terms as may be just ...” (*Develop Don't Destroy Brooklyn v Empire State Dev. Corp.*, 31 AD3d 144, 153 [1st Dept 2006]).

New York City Charter §1049-a[d][1][g] provides that:

“[a]ny final order of the board imposing a civil penalty, whether the adjudication was had by hearing or upon default or otherwise, shall constitute a judgment rendered by the board which may be entered in the civil court of the city of New York or any other place provided for the entry of civil judgments within the state, and may be enforced without court proceedings in the same manner as the enforcement of money judgments entered in civil actions; provided, however, that no such judgment shall be entered which exceeds the sum of twenty-five thousand dollars for each respondent.”

48 RCNY 6-19(d) permits an appeal by a respondent in a hearing before OATH provided, inter alia, the respondent has already paid the penalties imposed prior to the appeal or a waiver is granted due to financial hardship.

As a preliminary matter, this court notes that, although respondents have labeled their motion-in-chief a “cross-motion”, the designation is incorrect and, thus, the procedural argument raised in opposition to petitioner’s cross-motion is rejected.

Here, the court agrees with OATH that petitioner failed to exhaust its administrative remedies (*Watergate II Apts. v Buffalo Sewer Auth.*, 46 NY2d 52, 57 [1978]; *Matter of Nayci Contr. Assoc., LLC v New York City Dept. of Consumer Affairs*, 170 AD3d 435, 436 [1st Dept 2019]). The OATH rules explicitly provide that a party seeking to challenge a hearing officer’s determination must first exhaust the OATH appeals process outlined in 48 RCNY 6-19. Among other requirements, the appealing party must show that it has paid in full any “fines, penalties or restitution imposed by the decision” (48 RCNY 6-19[c], as amended 6-19[a][1][iii]) (*Matter of Sahara Constr. Corp. v New York City Off. of Admin. Trials & Hearings*, 185 AD3d 401, 401 [1st Dept 2020]).

Next, OATH's motion to dismiss is granted insofar as it has been demonstrated that the individual judgments were duly docketed pursuant to the New York City Charter §1049-a(d)(1)(g) (see NYSCEF Doc. No. 43). OATH submits sufficient proof illustrating the civil penalties imposed and petitioner does not dispute that it has not paid the amounts owed as a result of the OATH determinations. Further, petitioner's contention that OATH separated its judgments into two, one for \$18,007.02 and one for \$10,661.55, is unavailing since OATH issued separate individual fines for separate violations that, while they may exceed \$25,000.00 in the aggregate, individually they do not run afoul of the statute (see *Matter of JT Tai & Co., Inc. v City of New York*, 85 AD3d 433, 435 [1st Dept 2011]). Based on the foregoing, petitioner's cross-motion is denied as moot. All other arguments have been considered and are either without merit or need not be addressed given the above. Accordingly, it is hereby

ORDERED that OATH's motion is granted, and the action is dismissed; and it is further

ORDERED that petitioner's cross-motion is dismissed; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for respondents shall serve a copy of this decision and order, with notice of entry, upon petitioner.

This constitutes the decision and order of this court.

September 30, 2025



HON. VERNA L. SAUNDERS, JSC

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	