

**Harbor Hill Assoc. LLC v New York City Water Bd.**

2025 NY Slip Op 34447(U)

November 21, 2025

Supreme Court, New York County

Docket Number: Index No. 158444/2025

Judge: Jeffrey H. Pearlman

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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. JEFFREY H. PEARLMAN PART 44M

Justice

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INDEX NO. 158444/2025

HARBOR HILL ASSOCIATES LLC,
Petitioner,

MOTION DATE 07/01/2025

MOTION SEQ. NO. 001

- v -

NEW YORK CITY WATER BOARD, NEW YORK CITY
DEPARTMENT OF ENVIRONMENTAL PROTECTION

DECISION + ORDER ON
MOTION

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 17, 18, 19, 20,
21, 39, 41

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

In this action, Petitioner Harbor Hill Associates LLC ("Harbor Hill" or "Petitioner") is
seeking a judgment annulling a final agency determination of the New York City Water Board
("Water Board"), which affirmed a prior determination by the New York City Department of
Environmental Protection ("DEP" and, together with the Water Board, "Respondents") pursuant
to Article 78 of the CPLR. Respondent imposed Denial of Access ("DOA") fees and Attributed
Consumption Charges ("ACC") on Petitioner's property located at 298 Broome Street, New
York, NY 10002 (the "Property").

When a party makes an Article 78 motion, "judicial review is limited to whether the
determination was irrational, arbitrary and capricious or contrary to law." CPLR §7803(3) allows
for judicial review of administrative actions determining "whether a 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." "Administrative action is irrational or arbitrary and capricious if it is
taken without sound basis in reason or regard to the facts." Matter of Madison County Indus.

*Dev. Agency v. State of N. Y Auths. Budget Off*, 33 N.Y.3d 131, 135, quoting *Matter of Wooley v. New York State Dept. of Correctional Servs.*, 15 N.Y.3d 275, 280 (2010). "If a determination is rational, it must be sustained even if...another result would also have been rational." *Matter of Madison County Indus. Dev. Agency v. State of N Y Auths. Budget Off*, 33 N.Y.3d at 135. Further, the determination must be sustained "even if the court concludes that it would have reached a different result than the one reached by the agency." *Matter of Peckham v. Calogero*, 12 N.Y.3d 424, 431 (citing *Matter of Pell v. Board of Educ. of Unionfree School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 24 N.Y.2d 222.) Moreover, when "the judgement of the agency involves factual evaluations in the area of the agency's expertise and is supported by the record, such judgement must be accorded great weight and judicial deference." *Flacke v. Onondaga Landfill Sys.*, 69 N.Y.2d 355, 363 (1987).

In 2017, a DEP authorized contractor, Saks Plumbing & Heating Corp. ("Saks"), observed that the main valve and curb valve at the property were inoperable and the meter could not be replaced. *Final Determination*, Respondent's Exh. O., NYSCEF Doc. 38. As a result, DEP issued letters on June 30, 2017 and April 4, 2018, indicating that Saks visited the property but was unable to replace the meter due to the plumbing condition of the water service line. *Id.* The notice stated that the property owner had 45 days from the date of that letter to replace the meter and to contact DEP after the work was performed. *Id.* The notices were sent to 298 Broome Street and 296 Broome Street, respectively. *Id.* As the meter was not replaced, DEP commenced the DOA process and mailed a Demand for Access Notice on September 28, 2018, which stated that a \$250 DOA fee would be imposed on the account if Harbor Hill failed to provide or facilitate access to Saks by October 12, 2018. *Id.* As there was no response to that notice, the DOA fee was imposed on October 17, 2018. *Id.* On October 22, 2018, a second notice was

mailed by both regular and certified mail; this notice indicated that ACC would be applied to the property's account if access to Saks was not provided or facilitated by November 5, 2018. *Id.* Harbor Hill remained out of compliance. *Id.* ACC were billed to the property's account effective December 25, 2019, which was explained in the third notice mailed on December 30, 2019. *Id.*

Petitioner pursued its options for administrative appeals through the Water Board and was ultimately denied in the Board's final determination dated March 3, 2025. Water Board Regulation Number Three provides that,

DEP must be able to obtain access when deemed necessary or appropriate to ensure for the proper operation and maintenance of the System and the protection of public health, or the exercise by the DEP or the Board of their powers or duties under law... this regulation authorizes DEP to impose an account administration fee and attributed consumption charges and to pursue all available enforcement actions for customers that fail to provide and/or facilitate access to their premises as required by DEP.

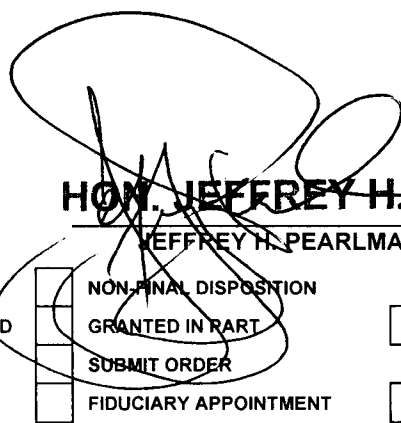
Respondents followed Regulation Three and the New York City Water Board, Water and Wastewater Rate Schedule" ("Rate Schedule") Part V, § 3, and applied an ACC Rate to the account after two written notices. Part V, Section 3, of the Rate Schedule states that "DEP will stop billing based upon Attributed Consumption Charges once Access has been facilitated and/or provided to DEP's satisfaction." Respondents acknowledged that Petitioner provided access in November, 2021, and granted Petitioner's appeal to reflect its compliant status.

Petitioner claims that the actions of DEP's contractor Saks prevented Petitioner complying with DEP orders and that Petitioner made significant good faith efforts to comply, which the Board did not consider in its Final Determination. However, the Board's Final Determination does not rise to the level of arbitrary and capricious, because Petitioner remained out of compliance during the period when the fees were incurred, and therefore did not provide

access to DEP’s satisfaction as is required by Part V, Section 3, of the Rate Schedule. *Final Determination*, Respondent’s Exh. O., NYSCEF Doc. 38. The presence of the required notices, failure to meet deadlines to DEP’s satisfaction, and eventual cessation of ACCs upon verified access support a rational basis under the Rate Schedule and Regulation 3.

Based upon the foregoing documents and on the above reasoning, it is hereby **ORDERED** that Petitioner’s motion is denied; and it is further **ORDERED** that this case is dismissed.

11/21/2025  
DATE

  
**HON. JEFFREY H. PEARLMAN**  
JEFFREY H. PEARLMAN, J.S.C. J.S.C.

CHECK ONE:  CASE DISPOSED  GRANTED  DENIED  NON-FINAL DISPOSITION  OTHER

APPLICATION:  SETTLE ORDER  SUBMIT ORDER

CHECK IF APPROPRIATE:  INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE