

Davis v Oddo

2025 NY Slip Op 34652(U)

December 7, 2025

Supreme Court, New York County

Docket Number: Index No. 100670/2025

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. 100670/2025

BENJAMIN DAVIS,

MOTION DATE 06/30/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

JAMES S. ODDO, THE NEW YORK CITY DEPARTMENT OF BUILDINGS, DALBERT DALEY, GREGORY DALEY, BATTERSEA GARDENS INC.

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60

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

On August 18, 2025, Petitioner Benjamin Davis ("Petitioner") filed an Order to Show Cause against Respondents James S. Oddo, New York City Department of Buildings ("DOB"), Dalbert Daley, Gregory Daley, and Battersea Gardens, Inc. ("Respondents") to compel enforcement of New York Local Law 152 of 2016 ("LL 152") on Petitioner's landlord and to annul and reverse the DOB's decision pursuant to CPLR §§ 7803 (1) and (3) in relation to periodic inspections of gas piping systems pursuant to Article 78 of the CPLR. NYSCEF Doc. No. 2. On September 11, 2025, Respondents filed a cross-motion requesting an order to dismiss this action on the grounds that the evidence refuting the claims in the petition and the proceeding fails to state a cause of action. NYSCEF Doc. No. 32.

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).

Petitioner alleges that his landlord is not compliant with LL152, as he presumes the landlord has an illegal gas hookup that caused the Petitioner to overpay for gas charges to Con Edison. *NYSCEF Doc. 6*. In February 2025, Commissioner Oddo of DOB announced a new administrative procedure that altered LL152's certification and enforcement schedule, specifically the Notice of Deficiency, providing a grace period for delinquent building owners, effectively making LL152 unenforceable against non-compliant building owners. *Id.* Petitioner asserts that DOB improperly relied upon its internal "Notice of Deficiency" procedure to delay enforcement and that his landlord's purported noncompliance with LL152 has concealed an

alleged illegal gas hookup, causing Petitioner to overpay Con Edison for gas service. *Exh. A-1*, *NYSCEF Doc. 7*. The Court finds that DOB's actions were in full compliance with the law; the DOB acted within its discretion, and its decision not to take further enforcement actions does not warrant judicial intervention.

LL 152 requires periodic gas piping inspections by licensed master plumbers, with reports (GPS1) and certifications (GPS2) filed with DOB at the periods established by the Commissioner. Enforcement of the law is authorized only when an owner fails to submit the required certification by the applicable deadline. LL152, enacted within Article 318 of the New York City Administrative Code, allows the Commissioner of the DOB to exercise discretion to determine inspection periods and enforcement procedures. Pursuant to this authority, DOB established a four-year inspection and certification cycle requiring owners to submit proof of inspection (Form GPS2) by specified deadlines. *LL 152*. Here, Respondents have submitted documentation to show that a GPS2 certification for the subject property was filed on May 24, 2023, before the deadline of December 31, 2023. *Exh. C*, *NYSCEF Doc. 36*. Once such certification was received, DOB was neither required nor authorized to issue a Notice of Deficiency or violation. Accordingly, DOB did not fail to perform a duty required by law.

The Petitioner's allegations of illegal gas hookups and billing irregularities fall outside the scope of DOB's administrative responsibilities under LL152 and are more appropriately addressed through other regulatory channels. Additionally, Petitioner has had an opportunity to be heard in a meaningful manner at a meaningful time, as settled in procedural due process in the context of an agency determination requires that the agency provide an opportunity to be heard in a meaningful manner at a meaningful time. *Matter of Kaur v NY State Urban Dev. Corp.*, 15 NY3d 235, 260 (2010) (*citing Mathews v Eldridge*, 424 US 319, 333, 96 S Ct 893, 47 L Ed 2d 18

(1976). Respondents' reliance on the May 2023 GPS2 certification, as proof of compliance, was rational and supported by documentary evidence. *Exh. C., NYSCEF Doc. 36.* Petitioner's reliance on a later Freedom of Information Law ("FOIL") response indicating no recent filing in the system of a GPS2 does not refute the existence of the prior timely filing. *Exh. 1C., NYSCEF Doc. 44.* Accordingly, DOB's decision not to take enforcement action was not arbitrary, capricious, or in violation of the law.

Based on the above reasoning, it is hereby **ORDERED** that Respondent's Cross-Motion is granted; and it is further

ORDERED that Petitioner's motion is dismissed; and it is further

ORDERED that this case is dismissed.

12/7/2025
DATE

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

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 checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE	<input type="checkbox"/>	