

<b>Matter of LW Bronx 2019 LLC v New York City Dept. of Hous. Preserv. &amp; Dev.</b>
2025 NY Slip Op 35398(U)
August 14, 2025
Supreme Court, Bronx County
Docket Number: Index No. 806584/2024E
Judge: Bianka Perez
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

C

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX, PART 8**

-----X

In the Matter of the Application of LW BRONX  
2019 LLC,

Index No. 806584/2024E

Petitioner,

For a Judgment Pursuant to Article 78 of the Civil  
Practice Law and Rules,

-against-

**Hon. BIANKA PEREZ**

Justice Supreme Court

NEW YORK CITY DEPARTMENT OF HOUSING  
PRESERVATION & DEVELOPMENT and NEW  
YORK CITY DEPARTMENT OF FINANCE,

Respondent.

-----X

The following papers were read on this motion (Seq No. 1) submitted on **March 12, 2025**.

Petition-Exhibits and Affidavits Annexed	Nyscef No(s). 1-11
Answering Affidavits/Cross-Motion and Exhibits	Nyscef No(s). 17-37
Replying Affidavit and Exhibits	Nyscef No(s). 39

Upon the foregoing papers, petitioner filed this Article 78 proceeding seeking an Order directing respondents to reverse, revoke, remand and/or modify a Determination Notice dated December 20, 2023, in which Housing Preservation & Development (HPD) retroactively revoked petitioner’s Tax Benefit pursuant to RPTL§ 421-a for petitioner’s failure to cure HPD’s Cause for Revocation or to submit written comments to HPD concerning the Cause for Revocation. Respondents oppose.

Petitioner commenced this action via Article 78 petition on April 22, 2024. Petitioner, the owner of the property located at 1984 Marmion Avenue, Bronx, New York 10460 (the subject premises), alleges that it purchased the premises in May of 2019 (NYSCEF Doc. No. 10). In support of the petition, petitioner annexed, among other things, the affidavit of Joseph Safdie<sup>1</sup> (Safdie) where he avers that at the time of purchase, the subject premises received a partial tax exemption pursuant to Section 421 of the Real Property Tax Law (*Id.*). Safdie further alleges that in December 2023, he received a letter from HPD dated December 22, 2023, noting that HPD had previously mailed a Notice of Impending Revocation (NOIR)

<sup>1</sup> Safdie is a member of petitioner LW Bronx 2019 LLC, as well as “the principal of JSAF Management LLC, the owner of and property manager for the building” in question (*Id.*).

on March 11, 2020, and that the tax exemption was being retroactively revoked because HPD did not receive a response to the March 11, 2020, notice (*Id.*). However, Safdie contends that he “thoroughly reviewed my records, as well as those of Petitioner and of JSAF Management LLC, and I have confirmed that I have absolutely no record of ever receiving the March 11, 2020, notice from HPD” (*Id.*). Safdie also contends that “March 11, 2020 was around the same date that the entire State of New York shut down due to the global COVID-19 pandemic” and that “even if HPD did mail a notice. . . on March 11, 2020” he did not “believe that a mailperson could have possibly delivered it, since the entire City was shut down days after the notice was allegedly mailed” (*Id.*).

In an Article 78 proceeding, “the issue is whether the action taken had a rational basis and was not arbitrary and capricious” (*Ward v City of Long Beach*, 20 NY3d 1042, 1043, [2013] [internal quotations and citation omitted]). “An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts” (*Id.*). “If the determination has a rational basis, it will be sustained, even if a different result would not be unreasonable” (*Id.*). “Arbitrary action is without sound basis in reason and is generally taken without regard to the facts” (*Matter of Pell v Board of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]).

Here, the Court denies the petition as the record reflects that HPD mailed petitioner a notice dated March 11, 2020, advising petitioner that it had to comply with the requirement to send an FCE or to submit comments to maintain their tax benefit by June 9, 2020, however, petitioner failed to comply with the requirement (NYSCEF Doc. No. 31, Exhibit N). In addition, contrary to petitioner’s assertions, the record reflects that petitioner received said notice as evidenced by the September 29, 2020, email to Owen Whitsett (Whitsett) at HPD annexed by respondents in opposition to the petition (see, NYSCEF Doc No. 33, Exhibit P).

The email correspondence shows that Amir Barkhodar (Barkhodar), a Managing Director of JSAF Management, emailed HPD to inquire about the notice received, and Joseph Safdie, who is a member of petitioner as well as the principal of JSAF Management LLC, was copied on that email. The email by petitioner’s managing director Barkhodar, clearly stated that “we received a notice of impending revocation on our building located at 1984 Marmion Ave Bronx NY” and “would like to be advised on what steps need to be taken to resolve this and have the benefits reinstated. I have attached the document of impending revocation herein” (NYSCEF Doc. No. 33, Exhibit P). In response, Whitsett advised that HPD “need one owner/managing agent or filing representative who will be submitting all of the materials”

(*Id.*). In response, Barkhordar provided that “Joseph Safdie [was] CC’d” and that they were “the managing agents for the property” (*Id.*).

The Court also rejects petitioner’s argument that the deadline in which to comply was tolled due to the pandemic executive orders. Executive Order 202.8 and Emergency Executive Order No. 107 aimed to toll the “time limit for the commencement, filing or service of any legal action notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state” but did not aim to encompass all possible deadlines (*see*, Executive Order 202.8; Emergency Executive Order No. 107; *see also*, *Oustatcher v. Clark*, 198 A.D.3d 420, 421–22 [1st Dept 2021] (holding that “deadlines for agency responses to requests are not ‘prescribed by the procedural laws,’ such as the CPLR and CPL”); *Yunfei Chen Weng v. NYC Dep’t of Hous. Pres. & Dev.*, 2024 NY Slip Op 30740[U] [Sup. Ct. NY County 2024])(denying Article 78 petition on the grounds that the record was replete with notices sent to petitioners informing them that they had to comply with the requirement to send a Final Certificate of Eligibility, and finding that petitioner’s claim “about a toll due to the pandemic-related executive orders” was without merit); *Ortiz v. Wiles*, No. 810595-2021E, 2022 N.Y. Misc. LEXIS 16410 (Sup. Ct. Bx County, 2022)(finding that filing action for personal injury was not untimely when applying the tolling deadlines pursuant to Governor Cuomo's Executive Order No. 202.8 and Mayor DeBlasio's Emergency Executive Order No. 107); *but see*, *428 Bronx LLC v. N.Y.C. Dep’t of Hous. Pres. & Dev.*, No. 803279/2021E, 2021 N.Y. Misc. LEXIS 40287 (Sup. Ct. Bronx County 2021)(finding that the petitioner’s 421-a application submission was not untimely when applying the tolling of deadlines pursuant to Governor Cuomo's Executive Order No. 202.8 and Mayor De Blasio's Emergency Executive Order No. 107 on the grounds that the date between the completion date and petitioner’s application submission occurred within the tolling period and was as such timely).

To the extent that the executive orders operated as a toll for HPD’s June 9, 2020, deadline, in this instance the toll does not require this Court to grant the instant petition. Here, the NOIR dated March 11, 2020, provided a deadline of June 9, 2020, to submit the FCE (NYSCEF Doc Nos. 33). However, Governor Cuomo’s executive orders implemented a toll from March 20, 2020, through November 3, 2020 (*Murphy v. Harris*, 2022 NY Slip Op 06086, ¶ 2, 210 A.D.3d 410, 411, 177 N.Y.S.3d 559, 561 [1st Dept 2022]). This means that petitioner’s deadline to respond expired by the time that the determination was issued in December of 2023. In this instance, the record does not show that petitioner ever complied with the requirements to maintain the tax benefits even though the revocation notice dated December 22, 2023, shows that the tax benefits were not revoked until the end of 2023.

Therefore, the Court finds that it was neither arbitrary nor capricious for respondents to revoke petitioner’s tax benefits, and as such, the petition is denied in its entirety.

The Court has considered the parties’ remaining arguments and finds them unavailing.

Accordingly, it is hereby,

**ORDERED**, that petitioner’s Article 78 petition is denied in its entirety.

This constitutes the decision and order of the Court.

**Dated: August 14, 2025**

Hon.   
**BIANKA PEREZ, J.S.C.**

- 
- 1. CHECK ONE..... X CASE DISPOSED IN ITS ENTIRETY  CASE STILL ACTIVE
  - 2. MOTION IS.....  GRANTED X DENIED  GRANTED IN PART  OTHER
  - 3. CHECK IF APPROPRIATE.....  SETTLE ORDER  SUBMIT ORDER X SCHEDULE APPEARANCE  
 FIDUCIARY APPOINTMENT  REFEREE APPOINTMENT