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| Sha Home Improvements Inc v New York City Off. of Admin. Trials & Hearings (OATH) |
| 2026 NY Slip Op 31368(U) |
| April 6, 2026 |
| Supreme Court, New York County |
| Docket Number: Index No. 158853/2025 |
| Judge: Nicholas W. Moyne |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41M

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SHA HOME IMPROVEMENTS INC,

INDEX NO. 158853/2025

Petitioner,

MOTION DATE 07/10/2025

- v -

MOTION SEQ. NO. 001

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS
AND HEARINGS (OATH), DEPARTMENT OF BUILDINGS
OF THE CITY OF NEW YORK (DOB)

**DECISION + ORDER ON
MOTION**

Respondent.

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HON. NICHOLAS W. MOYNE:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

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

Upon the foregoing documents, it is

In this proceeding brought pursuant to Article 78 of the Civil Practice Law and Rules (CPLR), Petitioner Sha Home Improvements Inc seeks a judgment annulling and vacating determinations by respondent New York City Office of Administrative Trials and Hearings (OATH) that denied the petitioner’s motions to vacate default judgments. The petitioner further seeks an order directing OATH to grant new hearings on the merits and reversing the default penalties imposed. Respondents OATH and the Department of Buildings of the City of New York (DOB) oppose the petition.

For the reasons set forth below, the petition is denied, and the proceeding is dismissed.

On June 4, 2024, a DOB Inspector issued two summonses to petitioner for conditions observed at a worksite located at 35 Hamilton Place, New York, NY. Summons No. 039529269X cited a violation of Building Code (BC) 3307.1, alleging that a sidewalk shed left approximately 9 feet of pedestrian walkway unprotected, creating a falling debris hazard. Summons No. 039529270N cited a

violation of BC 3301.9, alleging the site lacked an information panel providing owner contact information, creating an unsafe situation for first responders.

The DOB inspector served the summonses utilizing the "affix and mail" alternative method of service permitted by New York City Charter § 1049-a(d)(2). In his affidavits of service, the inspector affirmed that he made a reasonable attempt to effectuate service by ringing the superintendent's bell twice, and, finding no one onsite, posted the summonses conspicuously on the entrance door near the building permits. On June 5, 2024, DOB followed up by mailing notices of the summonses and the scheduled August 8, 2024 hearing dates via first-class mail to four different addresses: the subject property, an attention address in the Bronx, the property owner's registered address, and the petitioner's business address registered with the Department of State (114-04 Liberty Avenue, Richmond Hill, NY).

The petitioner failed to appear at the OATH hearings on August 8, 2024. Consequently, OATH issued default judgments against the petitioner on August 15, 2024, imposing the maximum default penalties of \$10,000 and \$6,250 for the respective violations. More than five months later, on January 21, 2025, and again on March 6, 2025, the petitioner submitted requests for new hearings. The petitioner's stated reason for failing to appear was that it did not receive the summonses, claiming it first learned of them through a collection agency. OATH denied these motions on March 13, 2025, and April 4, 2025, finding that because the requests were submitted more than 75 days after the default decisions, the petitioner was required to establish a reasonable excuse for failing to appear. OATH concluded that no reasonable excuse was provided because agency records demonstrated the summonses were properly served. The petitioner subsequently commenced this Article 78 proceeding to challenge OATH's denials.

In an Article 78 proceeding reviewing an administrative agency's determination, the Court's role is limited to ascertaining whether the 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." (CPLR § 7803(3)). An action is arbitrary and capricious if it is made without a sound basis in reason and without regard to the facts (*see Matter of Pell v Board of Educ.*, 34 NY2d 222, 231 [1974]). The reviewing court may not substitute its own judgment for that of the agency; if

the agency's determination has a rational basis supported by the administrative record, the decision must be upheld (*see Purdy v Kreisberg*, 47 NY2d 354, 358 [1979]).

Under OATH's rules, a defaulting respondent may request a new hearing as of right if the request is submitted within 75 days of the default decision (48 RCNY § 6-21(b)). Because Petitioner did not file its requests until well after the 75-day period expired, the requests fell under 48 RCNY § 6-21(c), which grants the Hearing Officer discretion to allow a new hearing only if the respondent provides a statement setting forth a "reasonable excuse" for the failure to appear.

Petitioner's sole proffered excuse was that it did not receive the summonses prior to the hearings. OATH's determination that this did not constitute a reasonable excuse was entirely rational because the administrative record confirms DOB effected proper service. New York City Charter § 1049-a(d)(2) permits "affix and mail" service after a reasonable attempt is made to deliver the notice to a person at the premises. The Court of Appeals has clarified that this standard permits affix and mail service "after a single reasonable attempt by an inspector to personally deliver" the summons (*see Matter of Mestecky v. City of New York*, 30 NY3d 239, 244-246 [2017]). Here, the inspector satisfied this standard by ringing the superintendent's bell twice and looking inside the premises before posting the summonses.

Furthermore, DOB significantly exceeded its mailing obligations. In addition to affixing the summonses, DOB mailed notices to four separate addresses associated with the petitioner. Notably, one of the addresses to which DOB mailed the notices was the petitioner's registered business address on Liberty Avenue, the exact same address the petitioner provided when filing its late motions to vacate the defaults. Based on the documented affix-and-mail service and the extensive supplemental mailings, OATH rationally concluded that the petitioner should have received notice and that the conclusory claim of non-receipt was an unreasonable excuse.

The petitioner further contends that the default penalties—totaling \$16,250—should be annulled because they are disproportionate and "shock one's sense of fairness." This argument is without merit. The penalties imposed are the maximum "Aggravated II" default penalties expressly prescribed by the DOB

Penalty Schedule (1 RCNY § 102-01). The regulations authorize OATH to impose these maximum penalties when a respondent defaults on a hearing regarding violations that pose a substantial risk of fatality or injury, or that affect a significant number of people (1 RCNY § 102-01(f)(2)). The conditions cited by the inspector—leaving 9 feet of public sidewalk unprotected from falling debris and failing to provide contact information for first responders—meet this standard. Moreover, the petitioner was explicitly advised of these maximum penalties on the face of the original summonses. OATH's imposition of these predetermined statutory penalties upon the petitioner's default was therefore lawful, rational, and within its discretion.

The Court finds that OATH's determinations denying the petitioner's motions to vacate the default judgments were rationally based on the administrative record, consistent with applicable laws and rules, and were neither arbitrary, capricious, nor an abuse of discretion.

Accordingly, it is hereby

ORDERED and ADJUDGED that the petition is denied, and the proceeding is dismissed.



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| <u>4/6/2026</u> DATE | | | | | <u>NICHOLAS W. MOYNE, J.S.C.</u> |
| CHECK ONE: | <input checked="" type="checkbox"/> | CASE DISPOSED | <input type="checkbox"/> | NON-FINAL DISPOSITION | |
| | <input type="checkbox"/> | GRANTED | <input checked="" type="checkbox"/> | GRANTED IN PART | <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 |