

Wonderama Holdings 3, Inc. v Empire State Dev.

2026 NY Slip Op 31871(U)

April 29, 2026

Supreme Court, New York County

Docket Number: Index No. 164669/2025

Judge: David B. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAVID B. COHEN PART 58

Justice

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WONDERAMA HOLDINGS 3, INC.,
Petitioner,

INDEX NO. 164669/2025

MOTION DATE 11/10/2025

MOTION SEQ. NO. 001

- v -

EMPIRE STATE DEVELOPMENT, HOPE KNIGHT

DECISION + JUDGMENT

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 24, 25, 26, 27, 28, 34

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

In this proceeding pursuant to CPLR Article 78, petitioner seeks to annul a determination of respondent, Empire State Development (ESD), and its President and Chief Executive Officer, Hope Knight, disallowing certain expenses included in petitioner’s application for tax credits under the Empire State Film Production Credit Program. Respondents oppose the petition and maintain that the determination was rational and supported by the administrative record because petitioner failed to adequately substantiate certain claimed expenses and other costs did not qualify as “qualified production costs” under the governing statute and regulations.

I. BACKGROUND FACTS

The following undisputed facts are drawn from the petition and respondents’ answer, as well as the administrative record submitted by the parties (NYSCEF 1, 29, 30).

Petitioner is a television production company that applied to ESD for tax credits under the Empire State Film Production Credit Program pursuant to Tax Law § 24. The program provides refundable tax credits for certain “qualified production costs” incurred in connection with film and television productions conducted in New York State.

To obtain the credit, an applicant must first seek preliminary approval from ESD and, after completion of the production, submit a final application documenting the production expenditures incurred during the approved production period. ESD reviews the final application and supporting documentation to determine whether the claimed expenditures qualify as “qualified production costs” under the governing statute and regulations.

Petitioner submitted applications for tax credits associated with multiple seasons of its television production. Earlier applications submitted for Seasons 1 and 2 of the production were approved by ESD. The present proceeding concerns petitioner’s final application for Season 3.

In connection with the Season 3 application, petitioner submitted a general ledger and supporting documentation identifying various expenses it claimed as qualified production costs. During its review of the application, ESD requested additional documentation in order to verify certain claimed expenses.

Following its review, ESD determined that several categories of expenses included in petitioner’s general ledger did not qualify as “qualified production costs” and therefore disallowed those amounts. The disallowed expenses included costs associated with production and post-production office rent, location scouting activities in Buffalo, New York, and certain labor costs associated with work performed outside New York State.

Petitioner pursued an administrative appeal of ESD’s determination. An Administrative Law Judge issued a recommended order concluding that the agency’s determinations were supported by the record. ESD subsequently adopted the determination disallowing the challenged expenses.

Petitioner thereafter commenced this CPLR Article 78 proceeding seeking to annul ESD's determination and to compel approval of the disputed expenses as qualified production costs.

II. DISCUSSION

Party Contentions

Petitioner contends that the determination disallowing certain expenses from its Season 3 application under the Empire State Film Production Credit Program was arbitrary and capricious. Petitioner argues that the challenged expenses qualify as "qualified production costs" under the governing statute and regulations. Petitioner further contends that the agency previously approved similar categories of expenses in connection with earlier seasons of the same production and therefore asserts that the agency's decision to disallow those expenses here represents an unexplained departure from its prior determinations.

Respondents oppose the petition and argue that the determination was rational and supported by the administrative record. Respondents contend that the agency properly reviewed petitioner's final application and supporting documentation to determine whether the claimed expenditures qualified as "qualified production costs." Respondents maintain that the agency reasonably determined that certain claimed expenses were not adequately substantiated and that other expenses did not satisfy the statutory and regulatory requirements governing eligibility for the tax credit.

In reply, petitioner argues that respondents' submissions do not cure the alleged deficiencies in the determination and reiterates that the agency improperly rejected expenses that had previously been approved in connection with earlier applications for the same production.

Petitioner maintains that the agency's determination represents an irrational departure from prior agency practice and therefore must be annulled.

Standard of Review

In a proceeding pursuant to CPLR article 78, judicial review is limited to the questions set forth in CPLR 7803, including whether a determination was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious (CPLR 7803[3]). A determination is arbitrary and capricious if it is taken without sound basis in reason or without regard to the facts (*Pell v Board of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]). Where a determination has a rational basis, it must be sustained (*Partnership 92 LP & Bldg. Mgt. Co., Inc. v State of N.Y. Div. of Hous. & Community Renewal*, 46 AD3d 425, 429 [1st Dept 2007], *affd* 11 NY3d 859 [2008]).

Courts may not substitute their judgment for that of the agency where the determination is supported by the record, and judicial review is limited to the grounds invoked by the agency (*Wadsworth Assoc. LLC v New York State Div. of Hous. & Community Renewal*, 242 AD3d 539, 540–541 [1st Dept 2025]). Courts also defer to an agency's interpretation of the statutes and regulations it administers so long as that interpretation is not irrational or unreasonable (*see Gilman v New York State Div. of Hous. & Community Renewal*, 99 NY2d 144, 149 [2002]).

However, where an agency departs from its prior determinations or established interpretation of its regulations, it must provide a rational explanation for that departure (*Matter of Charles A. Field Delivery Serv., Inc. v Roberts*, 66 NY2d 516, 519 [1985]).

A. ESD's Determination Had a Rational Basis

Petitioner contends that ESD acted arbitrarily and capriciously by disallowing certain expenses associated with Season 3 of the production while approving similar expenses for prior

seasons. However, petitioner's reliance on those earlier determinations is unavailing. Although an agency must provide a rational explanation when it departs from its own precedent, petitioner has not demonstrated that ESD previously adopted a binding interpretation of the governing regulations that it later abandoned (*Matter of Charles A. Field Delivery Serv., Inc.*, 66 NY2d at 519 [1985]).

Rather, the record reflects that ESD evaluates each tax credit application based on the documentation submitted for the relevant production period and may request additional materials to verify whether the claimed expenditures qualify as "qualified production costs" under the governing statute and regulations. The fact that earlier applications were approved does not compel the same result here, particularly where the agency determined that the documentation submitted for the Season 3 application did not adequately substantiate the claimed expenses. Under these circumstances, petitioner has failed to demonstrate that ESD's determination constituted an unexplained departure from prior agency practice.

Applying these principles, the Court considers whether ESD had a rational basis for disallowing the categories of expenses challenged in the petition.

B. The Disallowed Expense Categories

Petitioner challenges ESD's disqualification of three categories of expenses included in its general ledger: (1) production and post-production office rent; (2) Buffalo scouting expenses; and (3) costs associated with work performed outside New York.

1. Production and Post-Production Rent

Petitioner challenges ESD's disallowance of expenses associated with production and post-production office rent, contending that those costs were previously approved in earlier tax credit applications and therefore should have been accepted here. However, the administrative

record reflects that ESD requested documentation, including executed lease agreements and proof of payment during the applicable credit period, in order to verify that the claimed expenses qualified as “qualified production costs.” The agency determined that the documentation submitted did not sufficiently substantiate that the rent expenses were incurred by petitioner during the relevant production period. Under the governing regulations, ESD is entitled to request documentation to verify whether claimed expenditures qualify for the film production tax credit and may disallow expenses that are not adequately substantiated. The agency determined that petitioner did not provide sufficient documentation during the review process to substantiate the claimed rent expenses. Given that determination, ESD had a rational basis for disallowing the claimed rent expenses.

2. Buffalo Location Scouting

Petitioner also challenges ESD’s disallowance of expenses associated with location scouting in Buffalo, arguing that scouting costs should qualify even where a location ultimately was not used in the production. The administrative record reflects that ESD concluded that the claimed expenses were not sufficiently connected to the production activities ultimately undertaken and therefore did not qualify as “qualified production costs” under the governing statute and regulations. In reviewing petitioner’s final application, ESD was entitled to assess whether the claimed expenditures were attributable to production activities performed in New York and sufficiently related to the production of the project. Because the agency determined that the Buffalo scouting expenses did not satisfy those criteria, and that the supporting documentation did not establish that the locations were used in the production, its determination to disallow those costs had a rational basis in the record.

3. Work Performed Outside New York

Petitioner further challenges ESD’s disallowance of certain labor costs associated with work performed outside New York State. The governing statute and regulations limit the film production tax credit to “qualified production costs,” which are generally those attributable to production activities performed in New York (see Tax Law § 24; 5 NYCRR part 260). In reviewing petitioner’s final application, ESD determined that the claimed costs related to work performed outside the state and therefore did not qualify as eligible production costs. Because the agency reasonably concluded that those expenses fell outside the statutory definition of qualified production costs, its determination to disallow them had a rational basis in the administrative record.

Accordingly, petitioner has failed to demonstrate that ESD’s determination disallowing the challenged expenses was arbitrary, capricious, or affected by an error of law.

III. CONCLUSION

Accordingly, it is hereby

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

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DAVID B. COHEN, J.S.C.

4/29/2026
DATE

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE