

**Hunts Point Term. Produce Coop. Assoc., Inc. v New
York City Economic Dev. Corp.**

2006 NY Slip Op 30690(U)

November 27, 2006

Sup Ct, Bronx County

Docket Number: 6647/2006

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 5

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HUNTS POINT TERMINAL PRODUCE COOPERATIVE
ASSOCIATION, INC.,

Index No. 6647/2006

Petitioner,

- against -

DECISION AND ORDER

NEW YORK CITY ECONOMIC DEVELOPMENT
CORPORATION, ANDREW M. ALPER, as
President, New York City Economic
Development Corporation, NEW YORK CITY
BUSINESS INTEGRITY COMMISSION, THOMAS
McCORMACK, as Chair, New York City
Business Integrity Commission, CITY OF
NEW YORK, and BALDOR SPECIALTY FOODS,
INC.,

Respondents

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LUCY BILLINGS, J.S.C.:

As set forth on the record May 15, 2006, and previously, the court dismisses the amended petition's second, third, fourth, and fifth causes of action with prejudice, and petitioner voluntarily discontinues its sixth cause of action with prejudice and without opposition. C.P.L.R. §§ 409(b), 411, 3217. The court dismisses petitioner's second through fifth causes of action without a further hearing, on the grounds summarized below. C.P.L.R. § 409(b).

I. SECOND CAUSE OF ACTION

The second cause of action challenges the designation of respondent Baldor Specialty Foods, Inc., as the lessee of property owned by respondent City of New York at 155 Food Center Drive, in the Hunts Point Food Distribution Center, because

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Baldor's proposed use of the property will compete with petitioner's business in the public market on adjacent property. This alleged "competitive injury," from adverse competition by another business, is precisely the type of injury that does not confer standing to challenge the determination permitting that competition. Dairyalea Cooperative, Inc. v. Walkley, 38 N.Y.2d 6, 11 (1975); Subway Check Cashing Serv. v. Considine, 158 A.D.2d 406 (1st Dep't 1990). Petitioner has not established its right to protection from competition. Dairyalea Cooperative, Inc. v. Walkley, 38 N.Y.2d at 11-12.

This injury from competition and claim to protection from competition are in direct contrast to the injury and right claimed in petitioner's first cause of action. There, petitioner claims injury from being denied the opportunity to compete for the economic benefits awarded by the challenged determination and entitlement to compete in a process publicized by respondent New York City Economic Development Corporation as open to all competitors. Transactive Corp. v. New York State Dept. of Social Servs., 92 N.Y.2d 579, 587 (1998); Dairyalea Cooperative, Inc. v. Walkley, 38 N.Y.2d at 9. See New York State Assn. of Nurse Anesthetists v. Novello, 2 N.Y.3d 207, 214 (2004).

II. THIRD AND FOURTH CAUSES OF ACTION

Petitioner's third cause of action challenges the lease award because Baldor is not a registered business under New York City Administrative Code §§ 22-251 - 22-269 or otherwise in compliance with these laws. Although Baldor may be subject to

these laws once it assumes occupancy of 155 Food Center Drive, petitioner has offered no evidence that Baldor is subject to them at its current location. See N.Y.C. Admin. Code § 22-251(h); 66 R.C.N.Y. § 1-12.

Petitioner's fourth cause of action challenges the lease award because Baldor was not a qualified lessor, but was a "prohibited person" under the Lease Opportunity published by EDC. Am. V. Pet., Ex. 18 at 5. Petitioner has offered no evidence, at least in admissible form, that Baldor has "been convicted of a felony or crime involving moral turpitude" or is an "organized crime figure," "under indictment or criminal investigation," "in arrears or in default on any tax, debt, contract or obligation to or with the City or State of New York," or otherwise a "prohibited person." Id. Petitioner's showing is equally deficient regarding proposer Baldor's "principal shareholders, principals, officers, partners or members, or any of the members or managers of the proposer's development team." Id.

III. FIFTH CAUSE OF ACTION

Petitioner's fifth cause of action, as clarified on the record May 15, 2006, claims that EDC's ultimate decision to award the lease to Baldor, based on the proposals submitted, in contrast to the proposal solicitation and decisionmaking process, was irrational, on two grounds. First, similarly to petitioner's second cause of action, petitioner claims the decision was irrational because Baldor proposed a use in competition with, rather than consistent with and complementary to, petitioner's

business and the public market business in the Food Distribution Center. The court dismisses this first component of the fifth cause of action without a hearing on the same basis as the second cause of action: because petitioner lacks standing to make this claim.

Second, petitioner claims the decision was irrational because petitioner submitted a proposal superior to Baldor's proposal. Standing involves a threshold determination by the court as to whether it is authorized to adjudicate the merits of a dispute, rather than an actual adjudication of the merits. Society of Plastics Indus. v. County of Suffolk, 77 N.Y.2d 761, 769 (1991); Stark v. Goldberg, 297 A.D.2d 203, 204 (1st Dep't 2002). Insofar as petitioner seeks judicial review of the respective proposals' merits, as long as EDC carries out its chosen proposal solicitation and decisionmaking process rationally, the rational weighing of those proposals is within EDC's discretion. The court is not authorized to usurp that discretion by adjudicating the proposals' merits. Conduit Found. Corp. v. Metropolitan Transp. Auth., 66 N.Y.2d 144, 149 (1985); Grossman v. Rankin, 43 N.Y.2d 493, 503, 505-506 (1977). Standing for this purpose requires petitioner to establish its proposal's superiority to the point that selection of Baldor's proposal was irrational based on the proposals' merits. Petitioner's evidence, in its verified pleadings, affidavits, and exhibits, in admissible form, and insofar as it was supplemented by the evidence adduced at the trial of petitioner's first cause of

action, did not establish injury on this level.

Such a claim again contrasts with petitioner's claim in that first cause of action: that the proposal solicitation and decisionmaking process, which EDC had the discretion to choose, was not carried out rationally. Whether petitioner would have succeeded on the proposals' relative merits in that process is not implicated in adjudication of a dispute over the rationality of the process, because the point of that adjudication is whether the process was rationally based and, if not, that the proposals' relative merits may have been different had it been rationally based.

IV. SANCTIONS

Although the court dismisses petitioner's alternative causes of action for the same relief sought by its first cause of action, those theories were not so frivolous as to warrant the sanctions sought by Baldor. 22 N.Y.C.R.R. § 130-1.1(c). Petitioner's attempt to show injury and a right to protection from unfair competition, based on EDC's and municipal respondents' economic development goals for the public market, was not completely without foundation, for purposes of harassment or malicious injury, or materially false. 22 N.Y.C.R.R. § 130-1.1(c)(1)-(3); Hapworth Med. Servs. v. Kress, 218 A.D.2d 575 (1st Dep't 1995); Bahamonde v. State of New York, 269 A.D.2d 551, 552 (2d Dep't 2000). See Zapco 1500 Inv. v. Wiener, 299 A.D.2d 206, 207 (1st Dep't 2002); Benefield v. New York City Hous. Auth., 260 A.D.2d 167, 168 (1st Dep't 1999). Petitioner's claim that Baldor

was not in compliance with Administrative Code §§ 22-251 - 22-269 was premature, but founded on a sincere belief and argument that Baldor would be subject to these laws once it assumed occupancy under the awarded lease. Noncompliance with these laws alone may have provided a basis for City respondents' determination that Baldor was a prohibited lessee. In addition, petitioner presented evidence, albeit inadmissible, that raised petitioner's suspicion of unlawful conduct by Baldor or associated persons. Finally, petitioner presented evidence and showed a sincere belief that petitioner's proposal was of greatest ultimate public benefit. New York State Ch., Inc., Associated Gen. Contrs. of Am. v. New York State Thruway Auth., 88 N.Y.2d 56, 68 (1996); Conduit Found. Corp. v. Metropolitan Transp. Auth., 66 N.Y.2d at 148-49; Orelli v. Ambro, 41 N.Y.2d 952, 953 (1977); Creole Enters. v. Giuliani, 236 A.D.2d 272 (1st Dep't 1997). See Square Parking Systems, Inc. v. Metropolitan Transp. Auth., 92 A.D.2d 782, 784-85 (1st Dep't 1983).

Sanctions regarding petitioner's seventh cause of action is unavailable to Baldor. Not only would such relief be premature, as the court has not dismissed this cause of action, but this cause of action, by its very terms, is not against Baldor. Am. V. Pet. ¶ 89. Since petitioner prevailed before this court on petitioner's first cause of action, sanctions regarding that cause of action also are unwarranted at this level. 22 N.Y.C.R.R. § 130-1.1.

V. DISPOSITION

Consequently, the court grants Baldor's cross-motion to dismiss or for summary judgment dismissing the amended petition only to the extent of dismissing petitioner's second through fifth causes of action and discontinuing its sixth cause of action and otherwise denies Baldor's cross-motion. C.P.L.R. §§ 409(b), 3211(a), 3212(b), 3217; 22 N.Y.C.R.R. § 130-1.1(c). The court further dismisses and discontinues these causes of action against all other respondents. C.P.L.R. §§ 409(b), 3217. This decision constitutes the court's final order and judgment dismissing petitioner's second through fifth causes of action and discontinuing its sixth cause of action, all with prejudice. Am. V. Pet. ¶¶ 84-88; C.P.L.R. §§ 411, 7806.

In this court's decision dated June 2, 2006, this court already determined petitioner's motion insofar as it sought relief based on petitioner's first cause of action. The court denies petitioner's motion insofar as it seeks relief based on petitioner's second through sixth causes of action.

Since this order finally disposes of the amended petition except for its seventh cause of action, which makes distinct claims directly against only two of the named respondents and may proceed independently, the court severs petitioner's seventh cause of action from the remainder of the proceeding. Am. V. Pet. ¶ 89; C.P.L.R. §§ 407, 603. The parties always may seek any post-judgment relief to which they may be entitled. E.g., C.P.L.R. §§ 6312(b), 6515. A decision on petitioner's remaining

claims in the seventh cause of action and on any motions relating to this cause of action will follow.

DATED: November 27, 2006

Lucy Billings

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