

**Matter of Chata Constr. Co. v New York City Dept. of
Consumer Affairs**

2011 NY Slip Op 32168(U)

July 15, 2011

Sup Ct, NY County

Docket Number: 103546/11

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

CYNTHIA S. KERN

PRESENT: _____ J.S.C.

PART 52

Index Number : 103546/2011
CHATA CONSTRUCTION CO. INC.

INDEX NO. 103546/11

vs
NYC DEPT. OF CONSUMER AFFAIRS

MOTION DATE _____

Sequence Number : 001

MOTION SEQ. NO. 01

ARTICLE 78

Answering Affidavits — Exhibits _____

No(s). _____

Replying Affidavits _____

No(s). _____

No(s). _____

Upon the foregoing papers, It is ordered that this motion is

is decided in accordance with the annexed decision.

FILED

JUL 18 2011

NEW YORK
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 7/15/11

CK
CYNTHIA S. KERN, J.S.C.
J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
 - 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
 - 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 52

-----X
In the Matter of the Application of
CHATA CONSTRUCTION CO. and KAMAL CHATA,

Petitioners,

Index No. 103546/11

Pursuant to Article 78 of the CPLR ,

-against-

FILED

NEW YORK CITY DEPARTMENT OF CONSUMER
AFFAIRS,

JUL 18 2011

Respondent.

NEW YORK
COUNTY CLERK'S OFFICE

-----X

HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Petition and Affidavits Annexed.....	<u>1</u>
Answering Affidavits and Cross Motion.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Petitioners brings this petition seeking to vacate, reverse and annul the determinations of respondent the New York City Department of Consumer Affairs ("DCA") dated December 7, 2009 and November 26, 2010 on the grounds that the determination exceeded the authority of DCA, that the decision was not supported by substantial evidence and that the decision was arbitrary and capricious. For the reasons set forth more fully below, the petition is denied.

The relevant facts are as follows. Petitioner Kamal Chata is the sole owner and president of petitioner Chata Construction Co. Inc. ("Chata Construction"). Kamal Chata was a Home

Improvement Salesman who was operating under HIS license number 866635 which was issued by DCA on October 15, 1991. Chata Construction is a home improvement contracting business which was operating under Home Improvement Contractor license number 888227, also issued by DCA on October 22, 1991.

On September 25, 2007, Charlin Pathirage (“Pathirage”) entered into a contract with petitioners for home improvement work to be performed on Pathirage’s property. Pathirage initially entered into a contract to convert the house into a two family house for \$ 63,867.50. Pathirage gave Kamal Chata a \$20,000 deposit. Sometime after the deposit was given, Kamal Chata and Chata Construction informed Pathirage that the building could not be converted into a two-family home because of zoning issues. Pathirage then asked petitioners to build some steps in front of the house instead of completing the original more extensive job. Chata Construction built the steps in front of the house without a new contract or altering the original contract. It is undisputed that at some point during these negotiations, Kamal Chata returned \$5,000 of the \$20,000 deposit and kept \$15,000.

On or about March 27, 2008, Pathirage filed a complaint against the petitioners with the DCA alleging that petitioners overcharged for the work they performed. Pathirage alleged that while the cost of the job was \$8000, Kamal Chata had charged \$15,000. DCA Administrative Law Judge (“ALJ”) Lee Fawkes held hearings on February 5, 2009 and June 2, 2009 to hear this complaint. Pathirage and Kamal Chata were present at these hearings. On July 30, 2009, ALJ Fawkes issued a decision finding petitioners in violation of several rules of the City of New York for their failure to procure a contract to fix the steps. For these violations, petitioners were each ordered to pay \$2,550 to DCA. The ALJ further found that the steps were defective in that

they were of differing widths resulting in a safety hazard thus of no value to Pathirage and ordered petitioners to pay restitution to Pathirage in the sum of \$19,000. On or around August 26, 2009, petitioners sent a letter to DCA seeking an appeal of the ALJ's decision. On November 27, 2009, Nancy J. Schindler, the DCA Director of Adjudication sent petitioners an email which stated that if petitioners wished to have their appeal considered, they had to submit proof that they sent a copy of the appeal to Charlin Pathirage. On December 7, 2009, DCA issued an Appeal Determination denying petitioners' appeal on the grounds that the petitioners did not submit proof that a copy of the appeal was served on Pathirage, did not pay the fine imposed by the decision and did not deposit with DCA the restitution awarded to Pathirage. Further, this determination stated that "there will be no further agency action in this matter. Should the respondent wish to pursue the matter, it may attempt to do so pursuant to Article 78 of the Civil Practice Law and Rules. If the respondent decides to proceed, it may find it useful to consult with the Clerk of the New York State Supreme Court or its attorney." On December 9, 2009, petitioner Kamal Chata paid the \$2,550 fine and sent a letter to DCA claiming that they were submitting their appeal again. However, petitioners did not file an Article 78 proceeding with regard to this appeal until March 23, 2011.

As of February 10, 2010, petitioner Chata Construction had still not paid the \$2,550 fine imposed against it in DCA's July 30, 2009 decision and order and petitioners still had not paid the \$19,000 in restitution to Pathirage as ordered in that same decision. As a result, Chata Construction's HIC license was suspended. DCA sent Chata Construction a Suspension Notice directing Chata Construction to surrender its license to DCA's licensing center within ten days. However, Chata Construction did not surrender its license to DCA. On July 7, 2010, DCA sent a

Notice of Hearing to petitioners charging them with two violations of the Administrative Code in their failure to surrender the HIC and HIS licenses and their failure to maintain the standards of integrity, honesty, and fair dealings required of licensees. A hearing was held on July 28, 2010 before DCA ALJ David S. Paul. At this hearing, petitioners admitted that they did not pay the restitution of \$19,000 ordered in the July 30, 2009 decision and Kamal Chata further admitted that he only paid the \$2,550 fine imposed on Kamal Chata and did not pay the fine imposed on Chata Construction. After considering the evidence, ALJ Paul found petitioner Kamal Chata guilty of the charge of failing to maintain the standards of integrity, honesty and fair dealing required of licensees. Kamal Chata was found not guilty of failure to surrender his license because his HIS license was not suspended. Petitioner Chata Construction was found guilty of both charges of failing to maintain the standards of integrity, honesty and fair dealing required of licensees and of failing to surrender the HIC license in accordance with the suspension. Accordingly, by a decision dated August 8, 2010, ALJ Paul ordered the revocation of both Kamal Chata's HIS license and Chata Construction's HIC license. Petitioners appealed this determination through DCA's internal appeals procedure. On November 26, 2010, DCA issued a decision affirming the ALJ's determination. On March 23, 2011, petitioners commenced this Article 78 proceeding seeking a judgment annulling both the December 7, 2009 and November 26, 2010 determinations made by DCA.

The court will first address petitioners' appeal of the December 7, 2009 determination. There is a four month statute of limitations to bring an Article 78 proceeding to challenge an administrative determination that is measured from the date the determination becomes final and binding upon the petitioner. NY CPLR § 217. The statute of limitations begins to run when the

petitioner receives notice of the agency determination that he or she seeks to challenge. *See Matter of Biondo v. New York State Bd. of Parole*, 60 N.Y.2d 832, 834 (1993).

Petitioners' appeal of DCA's December 7, 2009 Appeal Determination is time-barred as it has been well over four months since that determination became final and binding upon the petitioner. Accordingly, petitioners's request that this court vacate the December 7, 2009 determination of DCA is denied.

The court will now address petitioners' appeal of the November 26, 2010 decision. The standard of review in an Article 78 proceeding such as this is whether the administrative agency's determination was "arbitrary or capricious." Arbitrary action is without sound basis in reason and is generally taken without regard to the facts." *Pell v Board of Education*, 34 N.Y.2d 222, 231 (1974). The administrative agency has broad discretion in evaluating the evidence and drawing inferences therefrom and "its interpretation will be upheld so long as it is not irrational or unreasonable." *Wembly Mgmt. Co. v NYSDHCR*, 205 A.D.2d 319 (1st Dept 1994).

The court finds that ALJ Paul's determination revoking Chata Construction and Kamal Chata's licenses was not arbitrary or capricious. Petitioners were given a full and fair opportunity to present their case. Based on credible evidence, ALJ Paul found that Chata Construction had not paid the \$2,550 fine for HIC License #0888227 and that neither petitioner had paid the \$19,000 restitution to the consumer complainant Pathirage. ALJ Paul also noted that after Chata Construction's license was suspended on February 10, 2010, it did not surrender the license to DCA as instructed. ALJ Paul considered petitioners' defenses that they had not paid restitution because they believed that they did not owe the money because the work was completed and that the restitution was not fair and found those defenses to be without merit.

Accordingly, the court denies petitioners' request for relief under Article 78 of the CPLR and dismisses the proceeding in its entirety. This constitutes the decision, order and judgment of the court.

Dated: 7/15/11

Enter: CK

J.S.C.

CYNTHIA S. KERN
J.S.C.

FILED

JUL 18 2011

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