

**Matter of Vintaco Inc. v Metropolitan Transp. Auth.**

2015 NY Slip Op 31459(U)

August 4, 2015

Supreme Court, New York County

Docket Number: 150667/2015

Judge: Debra A. James

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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

In the Matter of the Application of
VINTACO INC. d/b/a GRANDE HARVEST WINES,

Index No.: 150667/2015

Petitioner,

Motion Date: 08/03/15

- v -

Motion Seq. No.: 001 & 002

METROPOLITAN TRANSPORTATION AUTHORITY and
120 Nassau Corp. d/b/a Grande Cellars,
Inc.,

Respondents.

The following papers, numbered 1 to 5 were read on this amended petition for an order that voids
the award and execution of a lease between respondents and compelling the award of the lease
to petitioner and cross motion to dismiss the petition.

Table with 2 columns: PAPERS NUMBERED, and rows listing paper numbers 1, 2; 3, 4; and 5.

Amended Notice of Petition/Amended Petition -Affidavits -Exhibits

Notice of Motion-Answering Affidavits - Exhibits

Replying Affidavits - Exhibits

Cross-Motion: [X] Yes [ ] No

Upon the foregoing papers, it is ordered that the motion of petitioner for a
judgment that voids the award by and execution of the lease between respondent
Metropolitan Transportation Authority and respondent 120 Nassau Corp. d/b/a Grande
Cellars, Inc. shall be denied and the motion of respondent Metropolitan Transportation
Authority to dismiss the petition shall be granted.

By Interim Order dated June 19, 2015, this court directed
petitioner Vintaco, Inc. d/b/a Grande Harvest Wines ("Vintaco")
to join 120 Nassau Corp. d/b/a Grande Cellars, Inc. ("Grande
Cellars, Inc.") as a necessary respondent in this proceeding
pursuant to Article 78, in which Vintaco seeks a judgment that

Check One: [X] FINAL DISPOSITION [ ] NON-FINAL DISPOSITION

Check if appropriate: [ ] DO NOT POST [ ] REFERENCE

[ ] SETTLE/SUBMIT ORDER/JUDG.

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

sets aside the award by respondent Metropolitan Transportation Authority ("MTA") of the lease for certain commercial premises ("space") located in the Grand Central Terminal ("GCT"), and the execution of the lease by respondent MTA with 20 Nassau Corp. and that directs the MTA to award the lease to Vintaco. Vintaco complied with such directive and Grande Cellars, Inc. has served responsive papers and the MTA further papers in support of MTA's cross motion to dismiss.

As stated in a prior order dated June 17, 2015 of this court<sup>1</sup>, Vintaco's application, to the extent it seeks an order directing the award of the lease to it, lacks merit because such relief, in the nature of mandamus, is unavailable under the facts of this case. See Matter of Progressive Dietary Consultants of NY v Wyoming County, 90 AD2d 214, 219 (4<sup>th</sup> Dept 1982) (mandamus relief not available where petitioner has no "clear legal right" to the award of the lease since the determination of the most lucrative responsible bidder necessarily involves the exercise of discretion); see also Square Parking Sys v Metropolitan Transportation Auth, 92 AD2d 782, 784 (1<sup>st</sup> Dept 1983). Vintaco's surmise about, inter alia, the bidders who did not participate in

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<sup>1</sup>Such order denied Vintaco's application for order removing the hold-over summary proceeding by the MTA against Vintaco that is pending in New York City Civil Court, consolidating that proceeding with the proceeding at bar, or staying the New York City Civil Court proceeding pending resolution of the herein matter.

MTA's formal "walk-through" of the space is insufficient to show dishonesty, fraud, collusion, corruption or bad faith on MTA's part, and therefore the court will not usurp the MTA's discretion by substituting its decision mandating that Vintaco is the highest responsible bidder.

The query therefore, is whether the court should set aside the award and nullify the lease that the MTA executed with Grande Cellars, Inc. and direct the MTA to advertise the bid for the lease anew on the grounds that the determination of the MTA that Grande Cellar, Inc. submitted the highest bid was arbitrary and capricious under Article 78. See Matter of Progressive Dietary Consultants of NY, supra, at 219.

As its first argument, Vintaco asserts that the MTA's designation of Grande Cellar, Inc. as the highest bidder is arbitrary and capricious as such determination took place in derogation of Public Officers Law §§ 100-111 ("the Open Meetings Law"), as the approval of the lease to Grande Cellar, Inc. was "shrouded in secret" as it did not take place at an open and public meeting of the MTA Board. Vintaco challenges such process conducted under a MTA's policy in which the authority to lease certain commercial premises was delegated to staff members of the MTA Real Estate Department ("MTA RED"). Such policy was adopted pursuant to a MTA Board resolution dated November 12, 2013 ("the November 2013 Policy"), which authorizes MTA RED to directly

enter into leases without the prior approval of the MTA Finance Committee or the MTA Board where (a) the MTA RED received at least three responsive, responsible proposers, and (b) MTA RED enters into a lease agreement with the proposer who offered the highest guaranteed rent on a present value basis, provided that the MTA Finance Committee is later provided with a chart listing all bidders and their bids. Vintaco argues that such policy constitutes a flagrant violation of the Open Meetings Law, and that on such basis the lease should be declared void and the MTA Board officers and members required to participate in a training session concerning the obligations imposed by [the Open Meetings Law] conducted by the staff of the committee on open government." Public Officers Law § 107(1).

In response, the MTA states that the competitive bid request for proposals ("RFP") documents set out the MTA's responsibility to "maximize the long-term aggregate revenues that MTA derives from the leasing of commercial space at GCT" in order to help finance the cost of public mass transportation for millions of riders in the New York region. It contends that "[i]n an effort to streamline and expedite the process by which MTA [RED] enters into real estate agreements", the MTA Board subjected the RFP process to the November 2013 Policy.

The controlling authority is that just as a legislative body, an administrative agency has the power to sub-delegate its

authority to one of its departments and/or its staff members, so long as the administrative agency "retains sufficient control over the process to ensure that the power delegated is properly exercised" (Matter of Grant v New York State Continuing Education Board, 292 AD2d 193 [1<sup>st</sup> Dept 2002]). Such delegation "is a commonsense proposition" and "an inevitable incident of hierarchical organization" and "the orderly functioning of an administrative body might otherwise be frustrated" (Suffolk County Bldrs. Assn. v County of Suffolk, 46 NY2d 613, 620 [1979]).

On the basis of such authority, the MTA's Board's delegation was rational and proper and its sub-delegation to MTA RED of its powers to let commercial premises did not violate the Open Meetings Law. It is clear that under the November 2013 Policy, the MTA Board retained sufficient control over the process given the proviso that MTA RED submit a chart listing all bidders and their bids to the MTA Finance Committee. Vintaco does not deny that MTA RED provided such report with respect to the lease at bar to the MTA Finance Committee at its January 2015 meeting, which report was entered into the minutes, a full copy of which is publicly available online.

Once the MTA solicits bids, it is required to act fairly toward all bidders. See Matter of Tri-State Aggregates Corp. v Metropolitan Transportation Authority, 198 AD2d 645, 646 (1<sup>st</sup>

Dept 1985). "The purpose of competitive bidding is to give every qualified person an opportunity to bid upon the same material items, and on the same specifications and conditions." S.S.I. Invs. v Korea Tungsten Mining Col, Ltd., 80 AD2d 155, 162 (1<sup>st</sup> Dept 1981).

In the RFP, the MTA reserved "the unilateral right to postpone submission deadlines, reject any and all bids". Certainly the receipt of only the one bid from Vintaco provided a rational basis for the MTA to extend the submission deadline to obtain additional proposals. See Matter of Tri-State, supra, at 646. Moreover, Vintaco's assertion that the MTA revealed its rejected bid to Grande Cellar, Inc. in advance of Grande Cellar's submission of a proposal constitutes, as Grande Cellar, Inc. argues, mere insinuation. Further, Vintaco does not contend that the MTA accepted a non-conforming proposal from Grande Cellar, Inc. (contrast Square Parking Sys., supra, at 784) or in any way contest that Grande Cellar, Inc.'s proposal offers substantially higher guaranteed rent terms than the proposal it submitted.

Contrary to the MTA's claim, the exhaustion of administrative remedies doctrine may not apply to an allegation of unfairness and favoritism in competitive bidding (see We Transport, Inc. v. Board of Edu. of Uniondale Union Free School District, 92 AD2d 1074, 1075 [3d Dept 1983]). In any event, the court need not reach that issue as it finds that there was no unfairness or

favoritism in the MTA's competitive bidding process, and that Vintaco was given multiple opportunities to submit a superior bid, but declined to do so.

Accordingly, it is

ORDERED that the amended petition is denied and the motion of respondent Metropolitan Transportation Authority to dismiss the amended petition is granted, and the proceeding against respondents Metropolitan Transportation Authority and Grande Cellars, Inc. is dismissed, with costs and disbursements to respondent Metropolitan Transportation Authority; and it is further

ADJUDGED that respondent Metropolitan Transportation Authority, having an address at 347 Madison Avenue, New York, New York 10017, do recover from petitioner, having an address at 33 Grand Central Terminal, costs and disbursements in the amount of \$ \_\_\_\_\_, as taxed by the Clerk, and that respondent have execution therefor.

This is the decision and order of the court.

Dated: August 4, 2015

ENTER:

~~Debra A. James~~  
**DEBRA A. JAMES** J.S.C.