

Matter of Singh v Commissioner of Labor
2018 NY Slip Op 32477(U)
October 1, 2018
Supreme Court, New York County
Docket Number: 154463/2018
Judge: Eileen A. Rakower
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 6

-----X

In the Matter of the Application of

Jagtar Singh,

Petitioner,

Index No.

154463/2018

For a Judgment Pursuant to Article 78
of the Civil Practice Laws and Rules,

**DECISION and
ORDER**

- against -

Mot. Seq. 1

The Commissioner of Labor and The State
of New York Industrial Board of Appeals,

Respondents.

-----X

HON. EILEEN A. RAKOWER, J.S.C.

Petitioner Jagtar Singh (“Petitioner”) brings this action, pursuant to Article 78 of the New York Civil Practice Laws and Rules (“Article 78”), to challenge certain determinations by the New York State Department of Labor (“DOL”) and the New York State Industrial Board of Appeals (“IBA”) after a hearing was held by on April 30, 2015. Respondents have interposed an Answer and Objections.

Factual Background

On October 14, 2014, Petitioner filed a petition with the IBA pursuant to Labor Law § 101 seeking review of a wage order and penalty order issued against him and The Wine Shoppe of Oakland Gardens, Inc., by the Commissioner of Labor on August 14, 2014. The underlying orders had determined that Petitioner was the employer of an individual named Rolando Santos (“Santos”), and that Petitioner had failed to pay Santos for the hours that Santos had worked. The IBA held a hearing on April 30, 2015. On May 3, 2017, the IBA issued a Resolution of Decision which modified the wage order issued against Petitioner and affirmed the

penalty order. The decision was served on the parties on May 9, 2017. On July 19, 2017, Petitioner filed an application for reconsideration to the Board pursuant to 12 NYCRR 65.41. Pursuant to 12 NYCRR 65.41, a party may seek reconsideration after a determination is made by the IBA and “[t]he board, at any time, *may* reopen a proceeding or require a rehearing.” (emphasis added). On March 7, 2018, the IBA denied Petitioner’s application for reconsideration.

Legal Standard

CPLR §7804(g) provides:

(g) Hearing and determination; transfer to appellate division. Where the substantial evidence issue specified in question four of section 7803 is not raised, the court in which the proceeding is commenced shall itself dispose of the issues in the proceeding. Where such an issue is raised, the court shall first dispose of such other objections as could terminate the proceeding, including but not limited to lack of jurisdiction, statute of limitations and res judicata, without reaching the substantial evidence issue. If the determination of the other objections does not terminate the proceeding, the court shall make an order directing that it be transferred for disposition to a term of the appellate division held within the judicial department embracing the county in which the proceeding was commenced. When the proceeding comes before it, whether by appeal or transfer, the appellate division shall dispose of all issues in the proceeding, or, if the papers are insufficient, it may remit the proceeding.

The instant Article 78 proceeding involves an issue as to whether a determination made as a result of a hearing, and at which evidence was taken, pursuant to direction of law, is, on the entire record, supported by substantial evidence. It therefore would be properly before the Appellate Division, not this Court, if Respondents’ other objections based on timeliness and lack of jurisdiction lacked merit.

Turning to the issue of timeliness, an Article 78 proceeding must be brought “within four months after the determination to be reviewed becomes final and binding upon the petitioner” except if “a shorter time is provided in the law authorizing the proceeding.” CPLR 217[1]. Labor Law § 102(1) states, “The decision of the board... shall be final except that such decision shall be subject to appeal by an aggrieved party in a proceeding under article seventy-eight of the civil practice law and rules for judicial review, *if such proceeding is commenced within sixty days after the decision is issued.*” (emphasis added). “For a determination to be final it must be clear that the petitioner seeking review has been aggrieved by it.” *Lubin v. Bd. of Educ. of City of New York*, 60 N.Y.2d 974, 976 [1983]. It has been held that “a request for reconsideration in the absence of a statutory right to further proceedings does not toll the ... statute of limitations, even when an agency takes it under review or negotiates with a petitioner over modification of the administrative determination.” *Kosciuszko Plaza LLC v. New York City Dept. of Housing Preservation and Development*, 2016 WL 1666773, at *2 [citing *Goonewardena v. Hunter Coll.*, 40 A.D.3d 443, 444 [1st Dept 2007]]. “[T]he discretionary power to rehear or reopen matters which exists in nearly all administrative agencies, is not sufficient to render an otherwise final order nonfinal.” *Matter of Seidner v Town of Colonie*, 79 A.D.2d 751, 752 [3d Dept 1980], *affd* 55 N.Y.2d 613 [1981].

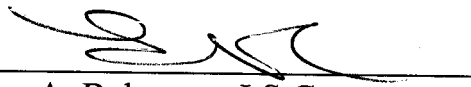
The Petition in this action, which is dated May 11, 2018, is time-barred because it was not commenced within 60 days after the IBA issued the Resolution of Decision that Petitioner seeks to challenge on May 3, 2017. Furthermore, Petitioner’s application for reconsideration of the May 3, 2017 decision, which was denied by the IBA on March 7, 2018, does not serve to extend the statute of limitations. Respondent reached a final decision on Petitioner’s application on May 3, 2017, when the IBA, after a hearing, modified the wage order and affirmed the penalty order issued by the DOL. Additionally, that the IBA is vested with discretionary authority to grant a rehearing does not render the May 3, 2017 determination nonfinal. *See Kosciuszko Plaza LLC*, 2016 WL 1666773, at *2; *Matter of Seidner*, 79 A.D.2d at 752.

Wherefore, it is hereby

ADJUDGED that the Petition is denied and the proceeding is dismissed.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: OCTOBER , 2018



Eileen A. Rakower, J.S.C.