2259 Richmond Ave. LLC v New York City Off. of Admin. Trials & Hearings
2022 NY Slip Op 32800(U)
August 19, 2022
Supreme Court. New York County
Docket Number: Index No. 153173/2022
Judge: Arlene Bluth

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE BLUTH** **PART** **14**

Justice

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2259 RICHMOND AVE LLC,

Petitioner,

- v -

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS, NEW YORK CITY DEPARTMENT OF BUILDINGS

Respondents.

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INDEX NO. 153173/2022

MOTION DATE 08/12/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for ARTICLE 78.

The petition to annul respondents' denial of petitioner's request for a new hearing is granted.

Background

Petitioner owns a property on Staten Island. On March 8, 2021, respondent New York City Department of Buildings ("DOB") sent an inspector to the property owned by petitioner. The inspector issued seven summonses purportedly arising from a construction project undertaken by a commercial tenant. The summonses all related to the fact that 7 workers on the jobsite purportedly did not have their site safety training cards. Petitioner contends that summonses were also issued to the construction company as well.

Petitioner argues that it did not receive a copy of the summonses and did not appear at the scheduled hearing date on May 5, 2021. Respondent OATH then entered a default judgment

against petitioner of $25,000 for each of the 7 summonses. Petitioner contends that OATH later denied its requests to vacate its default.

OATH's determination stated that "Your motion for a new hearing after you failed to appear on your scheduled hearing date is denied because: Your request was submitted more than 60 days after the mailing or hand delivery of the default decision and did not establish a reasonable excuse for your failure to appear. You need to pay the penalty imposed in the default decision, plus interest if any, now. If you have an agency-issued license, it may be suspended or revoked if you fail to pay the penalty" (NYSCEF Doc. No. 7).

Petitioner contends that it established a reasonable excuse for not appearing at the May 2021 hearing because it was not properly served with the summonses and did not know about the summonses at all because they were left at a locked jobsite. It maintains that posting the notices at the property was not reasonably calculated to permit the owner to find them. Petitioner also argues that it is not a proper party for these summonses because it had no control over an active construction stie and would not be allowed to have a representative step foot on the property while construction was ongoing.

In opposition, respondents argue that petitioner was responsible for the individuals working at the subject property and that DOB mailed notices of violation to petitioner at the address on record with the Secretary of State. They insist that the City Charter sets forth the methods of service for summonses and that affixing it to the property itself is appropriate.

Respondents contend that the decision to deny petitioner's motion to vacate its default before OATH was rational. They claim that a non-receipt of a summons is insufficient to vacate of default if OATH's records show that service was done properly.

Petitioner did not submit a reply.

Discussion

In an article 78 proceeding, "the issue is whether the action taken had a rational basis and was not arbitrary and capricious" (*Ward v City of Long Beach*, 20 NY3d 1042, 1043, 962 NYS2d 587 [2013] [internal quotations and citation omitted]). "An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts" (*id.*). "If the determination has a rational basis, it will be sustained, even if a different result would not be unreasonable" (*id.*). "Arbitrary action is without sound basis in reason and is generally taken without regard to the facts" (*Matter of Pell v Board of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231, 356 NYS2d 833 [1974]).

Here, the Court grants the petition. The fact is that the determinations (OATH issued one for each of the 7 summonses) did not express any reasoning whatsoever. As stated above, the denial of petitioner's various appeals stated that petitioner did not show a reasonable excuse and that the request to vacate was not made within 60 days. However, as petitioner points out, 48 RCNY 6-21(c) provides that "A request for a new hearing after default that is submitted after seventy-five (75) days of the date of the mailing or hand delivery date of the default decision must be filed within one (1) year of the date of the default decision and be accompanied by a statement setting forth a reasonable excuse for the Respondent's failure to appear and any documents to support the request. The Hearing Officer will determine whether a new hearing will be granted."

Therefore, petitioner needed to provide a reasonable excuse. OATH's conclusory assertion that petitioner failed to do so is not sufficient. This Court cannot evaluate whether or not OATH rationally rejected petitioner's arguments about a reasonable excuse because OATH did not explain itself at all. To be clear, OATH's rationale need not be an extensive treatise. But

this Court cannot conduct its own analysis of the underlying record or the papers presented here to determine whether a reasonable excuse was offered. Conducting an analysis was OATH's responsibility and there is no indication that OATH ever analyzed anything.

Respondents' attempt to highlight reasons why petitioner failed to show a reasonable excuse only emphasizes the point. That DOB purportedly served petitioner correctly and that notices were also allegedly mailed to petitioner's address on file with the Secretary of State might have been issues cited by OATH in the determinations it issued. But this Court cannot consider these arguments because OATH did not mention them.

The Court emphasizes that it makes no finding about whether petitioner was a proper party to receive these summonses. This decision merely finds that OATH's determinations were irrational because they were completely devoid of reasoning. Therefore, those determinations are annulled, petitioner's default for each of the 7 summonses is vacated, any judgments are vacated and there shall be a hearing on the merits.

Accordingly, it is hereby

ORDERED the petition is granted to the extent that respondents' determinations with respect to the summonses issued by DOB are annulled and vacated and petitioner is entitled to a hearing on the merits of each of the subject summonses, and the Clerk is directed to enter judgment accordingly in favor of petitioner and against respondents along with costs and disbursements upon presentation of proper papers therefor.

8/19/2022
DATE

ARLENE BLUTH, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED		DENIED	X GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE