

<b>Alluke LLC v NYC Off. of Admin. Trials &amp; Hearings</b>
2022 NY Slip Op 33074(U)
September 12, 2022
Supreme Court, New York County
Docket Number: Index No. 158804/2021
Judge: Frank P. Nervo
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANK P. NERVO PART 04

Justice

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ALLLUKE LLC,

Plaintiff,

- v -

NYC OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS, NYC DEPARTMENT OF BUILDINGS

Defendant.

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INDEX NO. 158804/2021

MOTION DATE 09/24/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Petitioner, via this Article 78 proceeding, seeks to annual a determination by the NYC Office of Administrative Trials and Hearings ("OATH") finding that petitioner used or occupied an open lot without a valid certificate of occupancy at 4409 Third Avenue in The Bronx.

The standard of review of an agency determination via an Article 78 proceeding is well established. The Court must determine whether there is a rational basis for the agency determination or whether the determination is arbitrary and capricious (Matter of Gilman v. New York State Div. of Housing and Community Renewal, 99 NY2d 144 [2002]). "An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts" (Peckham

*v. Calogero*, 12 NY3d 424 [2009]; see also *Matter of Pell v. Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222 [1974]). When an agency determination is supported by a rational basis, this Court must sustain the determination, notwithstanding that the Court would reach a different result than that of the agency (*Peckham v. Calogero*, 12 NY2d at 431).

Here, petitioner was issued a violation, pursuant to Administrative Code § 28-118.1, by the Department of Buildings upon a Buildings inspector observing construction vehicles stored at the subject property. It is undisputed that a valid certificate of occupancy does not exist for the subject property. At agency hearings related to the violation, Petitioner did not contest that construction vehicles were stored at the subject property. Petitioner now alleges that the Department of Buildings failed to establish a prima facie violation.

The respondents' determination is supported by the record and is not arbitrary nor capricious. 48 RCNY § 6-12 provides that a sworn summons is admitted as prima facie evidence of the facts stated therein. Furthermore, 1 RCNY § 102-01(k) provides that a violation of Administrative Code § 28-118.1 is a Class 1 Immediately Hazardous violation with a \$2,500 penalty. Accordingly,

the inspector's summons stating that "building or open lot occupied without a valid certificate of occupancy. Note at time of inspection a vacant lot occupies with an excavator, dumpster, van and dumptruck inside chainlink fence" sufficiently established the violations. Petitioner offered no evidence to the contrary. Consequently, the respondents' determination was taken with sound basis and regard for the facts.

To the extent that petitioner alleges dismissal of similar violations must be afforded res judicata preclusive effect, petitioner's argument is misplaced. Res judicata provides finality to the resolution of disputes such that parties may not relitigate that which was already decided (*Matter of New York State Labor Relations Bd. v. Holland Laundry*, 294 NY 480 [1945]). The doctrine is applied using a "transactional analysis" (*Matter of Reilly v. Reid*, 45 NY2d 24 [1978]). Under this analysis, the final conclusion of one claim bars all other claims "arising out of the same transaction or series of transactions, even if based upon different theories or if seeking a different remedy" (*O'Brien v. City of Syracuse*, 54 NY2d 353 [1981]; see also *Platon v. Linden-Marshall Contr. Inc.*, 176 AD3d 409 [1st Dept 2019]). Put simply, the dismissal of prior violations issued by the Department of Buildings for prior alleged conduct, by petitioners or others, does not preclude the Department of Buildings from issuing further violations

upon new violating conduct by petitioner. The respondents' denial of petitioner's res judicata claims on administrative appeal was, therefore, proper.

Accordingly, it is

ORDERED that the application is denied in its entirety and the petition is dismissed; and it is further

ORDERED that the matter shall be marked disposed; and it is further

ORDERED that any claims or arguments raised and not expressly addressed herein have nevertheless been considered and are hereby denied.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

09/12/2022  
DATE



CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION

J.S.C.

APPLICATION:

SETTLE ORDER

GRANTED IN PART  OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE