Matter of 140 Metro. Ave. Owner LLC v City of New York

2024 NY Slip Op 32337(U)

July 2, 2024

Supreme Court, Kings County

Docket Number: Index No. 514908/2023

Judge: Ingrid Joseph

At an IAS Term, Part 83, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 2nd day of July, 2024.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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In the Matter of the Application of

140 METROPOLITAN AVENUE OWNER LLC,

Petitioner,

Index No. 514908/2023

-against-

CITY OF NEW YORK, NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS, THE CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD and NYC DEPARTMENT OF BUILDINGS

DECISION & ORDER

Defendant(s)

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The following e-filed papers read herein:	NYSCEF Doc. Nos.:
Notice of Petition/Petition/Exhibits Annexed.....	1 – 7
Answering Affirmation/Exhibits Annexed.....	10 – 25
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In this action, 140 Metropolitan Avenue Owner LLC ("Petitioner") commenced an Article 78 proceeding against Respondent New York City Office of Administrative Trials and Hearings ("OATH"). OATH denied Petitioner's motion to vacate a default judgment on violations issued by the Environmental Control Board ("ECB") and the NYC Department of Buildings ("DOB") against Petitioner's property located at 140 Metropolitan Avenue, Brooklyn, NY (the "Property"). Petitioner seeks (1) to vacate OATH's denial of Petitioner's motion to vacate the default judgment of violations issued by the ECB and DOB and (2) to direct OATH to grant a hearing on the merits of Petitioner's violation (Mot. Seq. No. 1). In opposition, OATH, DOB, ECB, and City of New York (the "City") (collectively "Respondents") request that the Court deny Petitioner relief, uphold OATH's determination, and dismiss the Petition in its entirety.

This action arises out of DOB's issuance of Summons Number #35548117P ("Summons 17P") on February 18, 2021, against Petitioner for failing to provide an unobstructed exit passageway.[1] Summons

[1] Respondents' Exhibit A; DOB Summons #35548117P.

17P contained an Affidavit of Service, noting that the issuing officer posted the summons to the front door. The City mailed Summons 17P and notice of hearing addressed to Petitioner at the Property and Petitioner's mailing address at 1123 Broadway Front 2, New York, NY 10010. OATH scheduled a hearing on Summons 17P for June 30, 2021, and then administratively adjourned the hearing to July 28, 2021.

On July 28, 2021, both Petitioner and DOB appeared. At the request of the inspecting DOB officer, OATH adjourned the hearing to November 18, 2021, however the Petitioner failed to appear (the "first default"). On November 19, 2021, Petitioner submitted a Motion to Vacate the first default. On January 4, 2022, OATH mailed Petitioner a letter granting a new hearing scheduled for September 8, 2022, again the Petitioner failed to appear. On September 15, 2022, OATH issued a Second Default Decision and mailed notice to both of Petitioner's addresses. On March 20, 2023, Petitioner submitted a request to vacate the second issued default, alleging fatal defects regarding service of process of Summons 17P. By final determination dated March 24, 2023, OATH denied Petitioner's second request to vacate a default judgment for Summons 17P.

Petitioner then commenced this petition, arguing that OATH's denial of its request was arbitrary and capricious because it "fails to conform to prior administrative precedent." Petitioner further contends that 48 RCNY § 6-21[2] does not define the "exceptional circumstances" which would allow a request for a new hearing to be granted and therefore Petitioner's excuse of deficient notice qualifies as an exceptional circumstance. Additionally, Petitioner argues that the generic denial issued by OATH did not offer a specific explanation to Petitioner as to the reason for the denial.

In response, Respondents contend that service was proper and that because this was Petitioner's second default judgment issued on Summons 17P, Petitioner's request to vacate the second default is left to the discretion of the Administrative Chief Judge to evaluate whether Petitioner had an "exceptional circumstance" that prevented its appearance for the September 8, 2022, hearing. Respondents conclude that Petitioner never provided an exceptional circumstance to excuse its failure to appear at the hearing, thus its request must be denied. Respondents also assert that Petitioner had notice of Summons 17P because Petitioner appeared at the July 28, 2021, administrative hearing and Petitioner later filed a request to vacate the first default judgment.

Pursuant to City Charter §1049-a and the rules set forth in Title 48 of the Rules of the City of New York ("RCNY"), adjudication of summonses based on alleged violations of laws and regulations overseen by DOB is conducted by OATH. New York City Charter § 1049-a(d)(2)(a)(ii) provides that "service of a notice of violation of any provision of the charter or administrative code, the enforcement of which is the

[2] This provision provides, in part, as follows: "[T]he Chief Administrative Law Judge or his or her designee may grant a new hearing after default upon a showing of exceptional circumstances and in order to avoid injustice" (48 RCNY § 6-21[e][2]).

responsibility of the commissioner of buildings and over which the environmental control board has jurisdiction may be made by affixing such notice in a conspicuous place to the premises where the violation occurred" (NY Charter § 1049-a[d][2][a][ii]). A party that fails to appear on the designated hearing date may be held in default by OATH and thereafter be subject to the fine prescribed for the given violation (NY City Charter § 1049-a[d][1][d]). After a default decision is issued, "[t]he Tribunal will notify the Respondent of the issuance of a default decision by mailing a copy of the decision or by providing a copy to the Respondent or the Respondent's representative who appears personally at the Tribunal and requests a copy" (48 RCNY §6-20[d]). A party who has received a default determination may request a new hearing (48 RCNY §6-21[a]), and a first request submitted within seventy-five days of the default would be granted (48 RCNY §6-21[b]).

"If, after a request for a new hearing has been previously granted, a Respondent defaults on the same summons, the second default shall not be eligible for a new request for hearing" (48 RCNY § 6-21[e]). Such default constitutes a final determination and is not subject to further review by or appeal to OATH unless a respondent makes a showing of exceptional circumstances (*id*; *see* 48 RCNY §6-21[j]).

In determining an Article 78 proceeding, the Court must consider whether the challenged determination "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion" (CPLR 7803 [3]). Under this standard, courts will review the record to find whether the challenged determination had a rational basis (i.e., whether there was some objective factual basis) (*see Matter of Gorecki v New York State Dep't of Motor Vehicles*, 201 AD3d 802, 803 [2d Dept 2022]).

Here, the Court finds OATH's decision was rational, supported by evidence, and consistent with applicable law. Under 48 RCNY § 12-61[e], after a respondent defaults twice on the same summons, OATH may grant a new hearing upon a showing of exceptional circumstances in order to avoid injustice. Excuses such as "a death in the family, a hospitalization or even a computer problem which caused the default at the hearing" has potential, but is not guaranteed, to constitute an exceptional circumstance (*1930 Homecrest Realty LLC v City of NY*, 2024 NY Slip Op 30015[U], *13 [Sup Ct, NY County 2024]). Such excuses remain more substantial than what Petitioner has offered. Accordingly, Petitioner has failed to proffer an exceptional circumstance to explain why it failed to appear at the September 8, 2023, hearing. Although Petitioner claims that it never received the Summons, or notices of hearing, Respondents have provided the summonses and affidavits of service that demonstrate Respondents complied with City Charter Section 1049-a(d)(2). It is well established that, "[a] properly executed affidavit of service raise[s] a presumption that a proper mailing occurred, and a mere denial of receipt is not enough to rebut this presumption" (*Kihl v Pfeffer*, 94 NY2d 118, 122 [1999]). Absent additional evidence, Petitioner's denial of notice is insufficient to constitute an exceptional circumstance to overcome the presumption of proper service presented by the

affidavit. Furthermore, Petitioner appeared at the July 28, 2021, administrative hearing and Petitioner later filed a request to vacate the first default judgment, demonstrating that Petitioner was aware of Summons 17P. Thus, Petitioner's claim is without merit.

Accordingly, it is hereby,

ORDERED, that Petitioner's motion to vacate OATH's default judgment of violations issued by the Environmental Control Board and the Department of Buildings on March 24, 2023, is denied, and it is further,

ORDERED, that the Petition is dismissed in its entirety.

This constitutes the decision and order of the court.

Hon. Ingrid Joseph J.S.C.

Hon. Ingrid Joseph
Supreme Court Justice