Petitioner v. N.Y.C. Dep't of Fin. (In re Geffner)

Supreme Court of New York, Queens County

June 13, 2024, Decided; June 14, 2024, Filed

Index No. 717593/23

Reporter
2024 N.Y. Misc. LEXIS 21028 *

IN THE MATTER OF THE APPLICATION OF REBECCA GEFFNER, Petitioner, v. THE NEW YORK CITY DEPARTMENT OF FINANCE, ET AL., Respondents.

Judges: [*1] HONORABLE CARMEN R. VELASQUEZ, Justice.

Opinion by: CARMEN R. VELASQUEZ

Opinion

SHORT FORM ORDER AND JUDGMENT

Upon the foregoing papers it is ordered and adjudged that the petition is determined as follows:

On August 23, 2023, petitioner commenced this proceeding against NYCDOF and its commissioner Preston Niblack pursuant to CPLR article 78 to vacate NYCDOF Administrative Law Judge (ALJ) determinations and NYCDOF appeals board affirmances of those determinations regarding four NOLs arising from petitioner's operation of a rental vehicle owned by nonparty Hertz in excess of a school speed limit. Respondents filed an answer to the petition on November 10, 2023.

At the outset, the court rejects respondents' contention that the matter should be transferred to the Appellate Division, Second Department pursuant to CPLR 7804 [g]. Although petitioner challenges respondents' determination after a hearing at which evidence was taken, she only contends that the determination was arbitrary and capricious and contrary to applicable law (*see* *Matter of Astoria Landing, Inc. v Del Valle*, 188 AD3d 1189, 1191 [2d Dept 2020]; *Matter of Small v City of N.Y. Dept. of Sanitation*, 74 AD3d 828, 829 [2d Dept 2010]; *cf.* *Matter of Abramovitz v Zoning Bd. of Appeals of Inc. Vil. of Bellport*, 194 AD3d 810, 811 [2d Dept 2021]; *Matter of FCFC Realty LLC v Weiss*, 192 AD3d 683, 684 [2d Dept 2021]).

Where, as here, respondents served an answer, the court may adjudicate the proceeding in the same manner as a summary judgment motion (see CPLR 409 [b]; *Emigrant Bank v Solimano*, 209 AD3d 153, 161 [2d Dept 2022]; *Matter of Lake v Town of Southold*, 189 AD3d 1588, 1591 [2d Dept 2020]). The court's determination will be based on the pleadings, **[*2]** papers and admissions to the extent no triable fact issues are raised (see CPLR 409 [b]; *Lake*, 189 AD3d at 1591). Petitioner, in effect, contends that the determinations in the four adjudications of the NOLs were arbitrary and capricious and an abuse of discretion because they were unsupported by the facts and applicable law.

An agency's determination is arbitrary and capricious if it is made without a basis in reason or facts (*see* *Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]; *Matter of Scott v Village of Nyack Rous. Auth.*, 147 AD3d 957, 958 [2d Dept 2017]; *see also* *Matter of Dobson v New York State Dept. of Motor Vehs.*, 218 AD3d 680, 681 [2d Dept 2023]) or exceeds the agency's authority or violates the Constitution or laws (*see* *Matter of Lozada v Elmont Hook & Ladder Co. No. 1*, 151 AD3d 860, 861 [2d Dept 2017]; *Matter of Lilakos v Environmental Control Bd.*, 148 AD3d 893, 895 [2d Dept 2017]; *Matter of Small*, 74 AD3d at 829).

Petitioner challenges the determinations of the NYCDOF appeals board upholding the determinations of Administrative Law Judges (ALJs) that Hertz was monetarily liable as vehicle owner for petitioner's noncompliance with posted maximum school zone speed limits based on photo speed violation monitoring systems, which New York City was permitted to install (*see* Vehicle and Traffic Law § 1180-b [a] [1]). Petitioner first contends that of the four NOLs, which all occurred in November 2022, three of them were invalid because the speeding violations occurred on either a holiday or Sunday when school was not in session. Petitioner correctly contends that the prohibition against driving in excess of the maximum school speed limit applies during **[*3]** school days (*see* Vehicle and Traffic Law § 1180 [c] [1]). Although respondents maintain that an amendment of Vehicle and Traffic Law § 1180-b effective June 24, 2022, ceased limiting its application to weekdays between 6:00am and 10:00pm (see L 2022, ch 229, as amended), the statute applies "when a school speed limit is in effect as provided in paragraphs one and two of subdivision [c] of section eleven hundred eighty of this article" (Vehicle and Traffic Law § 1180-b [a] [1]). "[W]henever maximum school speed limits have been established on a highway adjacent to a school ... no person shall drive in excess of such maximum school speed limits during . . . school days at times indicated on the school zone speed limit sign, provided, however, that such times shall be between the hours of seven o'clock A.M. and six o'clock P.M. or alternative times within such hours" (Vehicle and Traffic Law § 1180 [c] [1]).

Although the term "school days" is not defined in the Vehicle and Traffic Law (see Vehicle and Traffic Law art 1), the temporal restriction on when a school speed limit is in effect contained in Vehicle and Traffic Law § 1180 [c] [1] is inconsistent with the ALJs' determinations that "[t]he speed zone camera violation is in effect at all times and is not restricted to certain times" (NY Cts Elec Filing [NYSCEF] Doc Nos. 42, 59, 69, 79 at 1). To the extent school days were intended to indicate days when school is in session, considering **[*4]** that the violations under NOLs 48138925898 and 48130894464 occurred on November 20, 2022, which were Sundays, and the violation under NOL 48145043426 occurred on November 24, 2022, which was Thanksgiving, as pointed out by petitioner, and that the violation under NOL 48114243723 occurred on November 11, 2022, which was Veteran's Day, the ALJs' conclusions that petitioner violated a school speed zone restriction could be further undermined. Therefore, the ALJs' determinations are arbitrary and capricious because they violate applicable law (*see generally* *Matter of County of Erie v State of N.Y. Pub. Empl. Relations Bd.*, 12 NY3d 72, 78-79 [2009]; *Matter of Land Master Montg I, LLC v Town of Montgomery*, 54 AD3d 408, 411 [2d Dept 2008]; *Matter of Yeshiva of Spring Val. v Board of Educ. of E. Ramapo Cent. School Dist.*, 132 AD2d 27, 31-32 [2d Dept 1987]). Thus, annulment of the determinations of the ALJs and the Appeals Board is appropriate (see *Matter of County of Erie*, 12 NY3d at 79; *Matter of Land Master Montg 1, LLC*, 54 AD3d at 411; *Matter of Yeshiva of Spring Val.*, 132 AD2d at 32). Under the circumstances, the court need not address the parties' remaining contentions.

Accordingly, it is ordered and adjudged that the petition is granted. The determinations of the NOLs by the NYCDOF ALJs dated March 22, 2023, and the NYCDOF Appeals Board dated May 5, 2023, are vacated and annulled.

Dated: June 13, 2024

/s/ Carmen R. Velasquez

CARMEN R. VELASQUEZ, J.S.C.

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