

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Matter of Rising Tide Fuel, LLC v Nassau County Fire Commn.

2019 NY Slip Op 06499 (App. Div. 2d Dep't 2019) (Supreme Court of the State of New York Appellate Division
Second Judicial Department 2019) · No. 2017-09336 · Decided September 11, 2019

SUMMARY

The Appellate Division, Second Department, affirmed a judgment denying Rising Tide Fuel, LLC's CPLR article 78 petition and dismissing its proceeding challenging a determination by the Nassau County Fire Commission and Fire Marshal. The court upheld the determination that the company's mobile marine fueling operations violated section 2210.4 of the New York State Fire Code and relied on its contemporaneous decision in Matter of Rising Tide Fuel, LLC v Bambino.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Cheryl E. Chambers, J.P.; Robert J. Miller, J.; Hector D. LaSalle, J.; Linda Christopher, J.
JURISDICTION	New York
DECIDED	September 11, 2019
DOCKET	2017-09336
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of the Supreme Court, Nassau County, in a hybrid CPLR article 78 proceeding and action for declaratory and injunctive relief.
STANDARD OF REVIEW	Whether the agency determination was arbitrary and capricious and whether it was supported by the governing provisions of the New York State Fire Code.
PRECEDENTIAL VALUE	Published Appellate Division opinion
PARTIES	Rising Tide Fuel, LLC v. Nassau County Fire Commission, Nassau County Fire Marshal

TOPICS

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administrative law

statutory interpretation

municipal law

appellate procedure

PRACTICE AREAS

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statutory interpretation

QUESTIONS PRESENTED

1. Whether the county fire authorities properly determined that Rising Tide Fuel's mobile marine-fueling operations violated New York State Fire Code § 2210.4.
2. Whether the county fire authorities' conclusion that Rising Tide Fuel could not satisfy the requirements of New York State Fire Code § 3406.5.4.1 was arbitrary and capricious.

HOLDINGS

1. The judgment denying review of the county fire authorities' determination and dismissing the CPLR article 78 proceeding was properly affirmed because the mobile marine-fueling operations violated New York State Fire Code § 2210.4.
2. The county fire authorities' conclusion that Rising Tide Fuel could not meet the requirements of NYSFC § 3406.5.4.1 was not arbitrary and capricious.

FACTUAL BACKGROUND

Rising Tide Fuel operated a mobile gasoline and diesel fueling business serving boats and other watercraft at private homes and marinas. On August 6, 2015, the Nassau County Fire Marshal and Fire Commission directed the company to cease operations, concluding that dispensing fuel to floating watercraft violated New York State Fire Code § 2210.4. The New York State Department of State later issued advisory opinions stating that § 2210.4 prohibited dispensing gasoline to floating watercraft. The Supreme Court also rejected the company's argument that § 3406.5.4.1 created an applicable exception.

PROCEDURAL HISTORY

The Nassau County Fire Marshal and Nassau County Fire Commission directed Rising Tide Fuel to cease its mobile marine-fueling operations after determining that the operations violated New York State Fire Code § 2210.4. After an evidentiary hearing, the Supreme Court, Nassau County, denied the petition insofar as it sought review of that determination and dismissed the CPLR article 78 proceeding. Rising Tide appealed, and the Appellate Division affirmed insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Matter of Rising Tide Fuel, LLC v Bambino (decided herewith)

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