

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

judicial review of agency action

administrative law

statutory interpretation

municipal law

appellate procedure

PRACTICE AREAS

administrative law

municipal law

fire and safety regulation

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)

OPINION

Matter of Rising Tide Fuel, LLC v. Nassau County Fire Commn. 2019 NY Slip Op 6499
PER CURIAM.

Matter of Rising Tide Fuel, LLC v Nassau County Fire Commn. (2019 NY Slip Op 06499) Matter of Rising Tide Fuel, LLC v Nassau County Fire Commn. 2019 NY Slip Op 06499 Decided on September 11, 2019 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on September 11, 2019

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Second Judicial Department CHERYL E. CHAMBERS, J.P.

ROBERT J. MILLER

HECTOR D. LASALLE

LINDA CHRISTOPHER, JJ. 2017-09336

(Index No. 6017/16) [*1]In the Matter of Rising Tide Fuel, LLC, appellant, vNassau County Fire Commission, et al., respondents. Gerald V. Dandeneau, P.C., Melville, NY, for appellant. Jared A. Kasschau, County Attorney, Mineola, NY (Adam M. Moss and Robert F. Van der Waag of counsel), for respondents. DECISION & ORDER In a hybrid proceeding pursuant to CPLR article 78 and action for declaratory and injunctive relief, the petitioner/plaintiff appeals from a judgment of the Supreme Court, Nassau County (Arthur M. Diamond, J.), entered July 18, 2017. The judgment, insofar as appealed from, after an evidentiary hearing, denied the petition, in effect, to review a determination of the Nassau County Fire Commission and the Nassau County Fire Marshal, issued on August 6, 2015, which determined that the petitioner/plaintiff's mobile marine fueling business violated the New York State Fire Code, and dismissed the proceeding pursuant to CPLR article 78. ORDERED that the judgment is affirmed insofar as appealed from, with costs. The petitioner/plaintiff, Rising Tide Fuel, LLC (hereinafter the petitioner), is a business that provides mobile gasoline and diesel fueling, via tank truck, for boats and other watercraft at private homes and marinas. On August 6, 2015, the Nassau County Fire Marshal and the Nassau County Fire Commission (hereinafter together the county fire marshal) directed the petitioner to cease its operations on the ground that they violated section 2210.4 of the New York State Fire Code (hereinafter NYSFC). In response to the county fire marshal's inquiries regarding the legality of the petitioner's mobile marine fueling operations, the New York State Department of State issued advisory opinions in October 2015 and January 2016, both of which stated that dispensing gasoline to floating watercraft was prohibited by NYSFC § 2210.4. The petitioner commenced this hybrid proceeding and action seeking, among other things, in effect, review of the county fire marshal's determination that its mobile marine fueling operations violated NYSFC § 2210.4. After an evidentiary hearing, the Supreme Court found that the petitioner's operations violated NYSFC § 2210.4 and that even if, as the petitioner contended, NYSFC § 3406.5.4.1 created an exception, the county fire marshal's conclusion that the petitioner could not meet the requirements of the latter

section was not arbitrary and capricious. The petitioner appeals. For the reasons set forth in Matter of Rising Tide Fuel, LLC v Bambino (___ AD3d [*2]___ [decided herewith]), we affirm the judgment insofar as appealed from. CHAMBERS, J.P., MILLER, LASALLE and CHRISTOPHER, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court

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