

**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*.

OPINION

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, v *Nassau 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