

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1059

TP 08-01804

PRESENT: SMITH, J.P., CENTRA, FAHEY, CARNI, AND PINE, JJ.

IN THE MATTER OF PATRICIA GLANVILLE, PETITIONER,

V

MEMORANDUM AND ORDER

CAYUGA COUNTY BOARD OF HEALTH AND ELANE DALY,
PUBLIC HEALTH DIRECTOR, RESPONDENTS.

ABITBOL & CHERRY, LLP, LIVERPOOL (GILLES R.R. ABITBOL OF COUNSEL), FOR
PETITIONER.

FREDERICK R. WESTPHAL, COUNTY ATTORNEY, AUBURN, FOR RESPONDENTS.

Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Cayuga County [Mark A. Fandrich, A.J.], entered August 25, 2008) seeking, inter alia, to annul a determination of respondents. The determination found after a hearing that petitioner violated the Clean Indoor Air Act and denied her application for a food service permit.

It is hereby ORDERED that the determination is unanimously confirmed without costs and the petition is dismissed.

Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking, inter alia, to annul the determination that she violated the Clean Indoor Air Act (Public Health Law art 13-E) and denying her application for a food service permit. Contrary to the contention of petitioner, her "right to due process . . . was not violated inasmuch as the record establishes that [she] received adequate notice of the allegations against [her] and an opportunity to be heard" (*Matter of Oznor Corp. v County of Monroe*, 60 AD3d 1492, 1493). Also contrary to petitioner's contention, we conclude that the establishment in question is a "food service establishment" within the meaning of the State Sanitary Code (see 10 NYCRR 14-1.20 [a]), and petitioner therefore was required to obtain a food service permit to operate the establishment. Finally, the determination is supported by substantial evidence (see generally *300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 181-182; *Matter of 8-Ball Laundry Lounge, Inc. v Tobe*, 55 AD3d 1300).

Entered: October 2, 2009

Patricia L. Morgan
Clerk of the Court