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ENTERPRISE ZONES - NEW YORK

Hudson River Valley, LLC v. Empire Zone Designation Bd.

Supreme Court, Appellate Division, Third Department, New York - March 5, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 01490

Real estate holding company brought combined proceeding pursuant to Article 78 and action for declaratory judgment against Empire Zone Designation Board, seeking annulment of the revocation of its certification as empire zone business enterprise. The Supreme Court, Albany County partially granted Board's motion to dismiss, and company appealed.

The Supreme Court, Appellate Division, held that:

- Board's decision was not arbitrary and capricious;
- Question of whether company and related entity were a single enterprise invoked factual, rather than purely legal, questions, and thus company was not excused from exhaustion requirement; and
- Company failed to show administrative challenge would have been futile, so as to excuse exhaustion.

Empire Zone Designation Board's decision upholding revocation of real estate holding company's certification as empire zone business enterprise, based on its failure to meet the statutory requirements, namely, the shirt-changer test and 1:1 benefit-cost test, without considering company's annual business reports in combination with those of its related entity and its claims that they were a single enterprise for purpose of determining whether it met 1:1 benefit-cost test was not arbitrary and capricious or contrary to law, where company did not advance argument to the Board in support of its administrative appeal or present any evidence to substantiate it.

Question of whether real estate holding company and a related entity constituted a single enterprise, for the purpose of determining whether company met the 1:1 benefit-cost test, as required to qualify for Empire Zones Program, invoked resolution of factual, not purely legal, issues, and thus company was not excused from exhaustion requirement for bringing Article 78 proceeding.

Real estate holding company, which sought to develop a traumatic brain injury center with a related entity, failed to show that an administrative challenge to the revocation of its certification as an empire zone business enterprise based on the 1:1 benefit-cost test would have been futile, so as to excuse the exhaustion requirement for bringing an Article 78 proceeding, especially given that the related entity was recertified following an administrative appeal of its own decertification.