

Andrias, J.P., Sweeny, DeGrasse, Freedman, Richter, JJ.

9075	In re Rywa Wilner, et al.,	Index 115362/10
	Petitioners-Appellants,	113214/10
		113215/10
	-against-	113726/10

Suzanne A. Beddoe, etc., et al.,  
Respondents-Respondents.

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Cohen, Hochman & Allen, New York (Robert B. Hochman of counsel),  
for appellants.

Michael A. Cardozo, Corporation Counsel, New York (Michael J.  
Pastor of counsel), for respondents.

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Order and Judgment (one paper), Supreme Court, New York  
County (Judith J. Gische, J.), entered on or about September 19,  
2011, which denied Wilner's, Gladys's, and Palazzdo's petitions  
seeking an order vacating their defaults before respondent  
Environmental Control Board (ECB), and granted Plan B  
Engineering's petition to the extent of remanding that matter to  
ECB for a determination of Plan B's application to vacate its  
default, unanimously modified, on the law, to grant Gladys's,  
Palazzdo's, and Plan B's petitions to the extent of vacating the  
default judgments against them, and otherwise affirmed, without  
costs.

Section 1049-a of the New York City Charter, the enabling  
legislation which underlies Section 3-82 of the Rules of the City

of New York (Rule 3-82), governing procedures for vacating defaults before ECB, requires that notices of violation (NOV) of matters overseen by ECB be "served in the same manner as is prescribed for service of process by [CPLR Article 3] or [Business Corporation Law Article 3]" (NYC Charter § 1049-a[d][2][a]). Among four enumerated exceptions to this provision are two relating to service of NOV's of City Charter or Administrative Code provisions enforced by various departments, including, as pertinent here, the New York City Departments of Buildings and Environmental Protection (see NY City Charter §§ 1049-a[d][2][a][i]-[ii]). Such NOV's may be served by delivery to "a person employed by the respondent or in connection with the premises where the violation occurred" (NY City Charter § 1049-a[d][2][a][i]), or "by affixing such notice in a conspicuous place to the premises where the violation occurred" (NY City Charter § 1049-a[d][2][a][ii]), coupled with mailing of a copy of the NOV "to the respondent at the address of such premises" (NYC Charter § 1049-a[d][2][b]). Even with respect to these two exceptions, however, such substituted service may not be effected unless "a reasonable attempt has been made to deliver such notice . . . as provided for by [CPLR Article 3] or [Business Corporation Law Article 3]" (NY City Charter § 1049-a[d][2][b]).

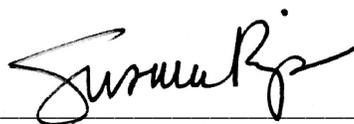
CPLR Article 3, in turn, establishes a regime of service upon, as pertinent here, natural persons, which permits substituted service, such as "nail and mail service," only where service by personal delivery to either the respondent or a person of suitable age and discretion "cannot be made with due diligence" (CPLR 308[4]). BCL Article 3 similarly requires that service of process, as a rule, be made by personal delivery to the corporation's registered agent or to the secretary of state (see Business Corporation Law § 306, § 307).

Of the four petitioners here, the record indicates that efforts were made to personally serve only Wilner. Gladys, Palazzdo, and Plan B were all served by alternative means of affixing copies of the NOV's at the premises, coupled with service by mail, but with no prior attempt at personal service. The failure to make any effort at personal service runs afoul of the New York City Charter's directive that a "reasonable attempt" at personal service be made prior to resort to alternative means of service (see *Matter of Opararaji v City of New York*, 2011 NY Slip Op 33265[U] [Sup Ct, Queens County 2011]).

We have considered petitioners' remaining arguments, including their contention that Rule 3-82 is violative of their rights to due process, and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JANUARY 29, 2013

A handwritten signature in black ink, appearing to read "Susan R. [unclear]", written over a horizontal line.

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