

Gaboton v New York State Dept. of Motor Vehicles

2012 NY Slip Op 30997(U)

April 4, 2012

Supreme Court, Nassau County

Docket Number: 16822/11

Judge: Karen V. Murphy

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Short Form Order

**SUPREME COURT - STATE OF NEW YORK
TRIAL TERM, PART 11 NASSAU COUNTY**

PRESENT:

Honorable Karen V. Murphy
Justice of the Supreme Court

_____ x

JERRY D. GABOTON,

Plaintiff(s),

-against-

**NEW YORK STATE DEPARTMENT OF MOTOR
VEHICLES,**

Defendant(s).

_____ x

Index No. 16822/11

**Motion Submitted: 2/7/12
Motion Sequence: 001**

The following papers read on this motion:

- Notice of Motion/Order to Show Cause.....X
- Answering Papers.....X
- Reply.....X
- Briefs: Plaintiff's/Petitioner's.....
- Defendant's/Respondent's.....

Petitioner moves this court for an Order annulling the determination of the New York State Department of Motor Vehicles ("DMV") directing that petitioner's commercial driver's license be revoked for one year.

Respondent DMV opposes the requested relief, and requests that the petition be dismissed.

Petitioner claims that "the actions of the Department of Motor Vehicles and their employees were arbitrary, capricious and an abuse of discretion."

In an Article 78 proceeding, only certain questions may be raised as provided in CPLR § 7803. One of those questions, such as the one presently before this Court, is whether a

determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed. (*CPLR § 7803[3]*).

The DMV took action against petitioner commencing in April 2011 as the result of petitioner being identified as an individual with multiple identities. As explained in the DMV's opposition papers, the "Facial Recognition Program" is a technology that culls out multiple records of the same person, based upon photographs retained by the DMV, who use different identities to obtain multiple DMV documents such as licenses and motor vehicle registrations.

It is undisputed that Petitioner met with DMV investigators on May 3, 2011 regarding the allegation that he obtained a commercial driver's license in the name of Jimmie Gaboton, in 1996. At the conclusion of the interview, petitioner signed a form entitled "Waiver of Administrative Hearing," admitting that he had made a false statement in connection with the 1996 license. As a result of the interview and execution of the waiver form, petitioner's license was revoked for one year, but the revocation was stayed pending appeal. Petitioner appealed the revocation of his license to the DMV's Administrative Appeals Board. On August 30, 2011, the Board affirmed the one-year revocation of petitioner's license, and notified petitioner of its decision by letter dated September 28, 2011. The revocation became effective on November 5, 2011. Petitioner brought this application on or about January 4, 2012.

A signed copy of the waiver form is included with the DMV's Verified Answer, which indicates that Gaboton admitted making a false statement in connection with a license application, in violation of Vehicle and Traffic Law § 392.

Vehicle and Traffic Law § 392 provides, in pertinent part, that the making of any false statement in connection with an application for any document issued by the Commissioner of Motor Vehicles shall be guilty of a misdemeanor.

In his sworn petition dated November 17, 2011, Gaboton states that he "was guilty of nothing," and that he "never made any false statements on any license application so there would be nothing to which I should plead guilty."

The DMV's Verified Answer and Objections in Point of Law sets forth the details of the investigation conducted relative to Gaboton, including the affidavit of the investigator, Judi Dougherty, who states that Gaboton admitted to her that he obtained a commercial driver's license under a false name in 1996. When confronted with his picture from the 1996 license, Gaboton admitted to the investigator that it was a picture of himself, and that he had

applied for and received a New York license under the false name of Jimmie Gaboton because he did not have legal immigration status in the United States at that time. Gaboton then signed the waiver form and admitted to violating the Vehicle and Traffic Law, and accepted a one-year revocation of his license. The form advises that the signatory has a right to attend a hearing, to show the form to an attorney before making a decision, and that he or she may appear at a hearing with an attorney.

In reply to the DMV's Verified Answer, and in direct contrast to his earlier sworn petition, Gaboton admits that he applied for a driver's license in 1996, under a false name, because he was not legally in the United States at that time.¹ Gaboton further admits that he did not disclose this prior violation on his 2001 application for his presently revoked license. Gaboton claims, however, that he was not told by the DMV investigators that he was facing a one-year revocation of his license. He does admit having signed the waiver form, although under alleged duress. Gaboton then requests that "this Court make the punishment fit the crime," requesting that the revocation of his license be reduced to ninety (90) days so that he can continue to earn a living for his family. According to Gaboton, he is "being singled out for selective harsh treatment" because of his prior false license application. Gaboton further claims that other individuals similarly situated, who attend the DMV hearing with an attorney, receive a 90-day revocation for the same offense. Gaboton has not provided any proof of the foregoing, nor does he claim that the one-year revocation is unlawful, or in contravention of the Vehicle and Traffic Law.²

The question is whether the DMV's determination to revoke Gaboton's driver's license has a rational basis (see *Pell v. Board of Education of Union Free School District No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 N.Y.2d 222, 313 N.E.2d 321, 356 N.Y.S.2d 833 (1974); see also *Matter of Terrace Ct., LLC v. New York State Division of Housing and Community Renewal*, 2012 N.Y. Slip Op. 1100, 2012 N.Y. LEXIS 218 [2012]).

It is the determination of this Court that Gaboton's admission to DMV investigators that he submitted a false license application to the Commissioner in 1996 constitutes a rational basis for the DMV's revocation of his license, and serves to establish that the DMV's revocation of his license was not arbitrary and capricious.

¹Gaboton acknowledges that his false license was suspended in 2004 because it was "based on an incorrect name and social security number."

²Counsel's affirmation makes an obscure reference to "case # 1511V2522, Dezhan Nan decided on 1-19-12" in an apparent effort to demonstrate that similarly situated individuals receive a lesser penalty.

The fact that Gaboton admits to this Court through his reply papers that he did, indeed, submit a false license application to the DMV in 1996 only serves to confirm the rational basis for the DMV's decision to revoke his license.

As to the length of the revocation imposed by the DMV, the Court must determine whether there was an abuse of discretion as to the measure or mode of penalty or discipline imposed. "[T]he sanction must be upheld unless it shocks the judicial conscience and, therefore, constitutes an abuse of discretion as a matter of law" (*Featherstone v. Franco*, 95 N.Y.2d 550, 554, 742 N.E.2d 607, 720 N.Y.S.2d 93 [2000]). "This calculus involves consideration of whether the impact of the penalty on the individual is so severe that it is disproportionate to the misconduct, or to the harm to the agency or the public in general" (*Kelly v. Safir*, 96 N.Y.2d 32, 38, 747 N.E.2d 1280, 724 N.Y.S.2d 680 [2001]).

The "shock-the-conscience" standard applies to this Court's review of the administrative punishment imposed in this case (*Zuntag v. City of New York*, 18 Misc.3d 210, 853 N.Y.S.2d [Sup. Ct. Richmond County, 2007]), such that this Court "lacks any discretionary authority or interest of justice jurisdiction in reviewing the penalty imposed by the [DMV]" (*Featherstone, supra* at 554).

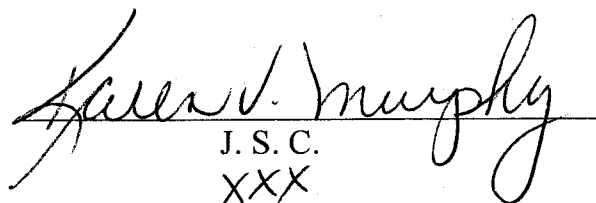
In this case, the Court does not find that the one-year revocation shocks the conscience, given the fact that Gaboton admittedly submitted a false license application to the DMV at a time in his life when he was also illegally in the United States. Petitioner Gaboton proceeded according to his own set of rules in order to obtain something to which he was apparently not entitled, and without regard to the duly enacted laws of this State.

Furthermore, Gaboton's request, made in his reply, that the revocation be reduced because he needs to "earn a living to support [his] family," would require this Court to engage in an interests of justice analysis, which is not permissible in this context.

Accordingly, the petition is denied, and the proceeding is dismissed on the merits.

The foregoing constitutes the Order of this Court.

Dated: April 4, 2012
Mineola, N.Y.


J. S. C.
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