

Matter of Robles v Limandri

2012 NY Slip Op 31497(U)

May 30, 2012

Supreme Court, New York County

Docket Number: 111312/2011

Judge: Alice Schlesinger

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

ALICE SCHLESINGER

IA PART 16

DECEENT.

Index Number : 111312/2011
ROBLES, CHRISTOPHER
vs
LIMANDRI, ROBERT D.
Sequence Number : 001
ARTICLE 78

PART _____

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this ~~motion is~~ *Article 78 proceeding* is denied in accordance with the accompanying memorandum decision.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: MAY 30 2012



ALICE SCHLESINGER, J.S.C.

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

In the Matter of the Application of
CHRISTOPHER ROBLES,

Petitioner,

-against-

Index No. 111312/11
Motion Seq No. 001

ROBERT D. LIMANDRI, AS COMMISSIONER OF THE
NEW YORK CITY DEPARTMENT OF BUILDINGS,
AND THE CITY OF NEW YORK,

Respondents.

For An Order and Judgment Pursuant to CPLR Article 78

-----X

SCHLESINGER, J.:

Petitioner commenced this Article 78 proceeding to annul the June 13, 2011 decision by respondent New York City Department of Buildings (DOB) denying his application to renew his Stationary Engineer license (Exh 15 Petition), as well as the September 19, 2011 decision confirming the initial denial following a request for reconsideration (Exh 17). The basis for the denial was a finding of "poor moral character" based on a 2005 criminal conviction. Petitioner claims that the denial was arbitrary and capricious and affected by errors of law, including the law that bars discrimination against license applicants based on a criminal conviction. DOB opposes the petition, arguing that the decision was rationally based on the record as a whole in compliance with all laws.

Background Facts

Petitioner Christopher Robles, now age 44, first obtained his Stationary Engineer license from the DOB in 1995. The DOB renewed the license on an annual basis until the denial at issue herein made in response to the December 30, 2010 renewal application filed by Mr. Robles (Exh 10).

In May of 2005, while working for the New York City Department of Education (DOE) as a custodial engineer, Mr. Robles was arrested and charged in federal court with Theft from an Agency Receiving Federal Funds. In his plea agreement, he stipulated that he had ordered goods from vendors which had not been delivered and that he and the vendors had split the proceeds, resulting in a loss of \$5,917.96 to the DOE. Due in part to his expression of remorse and his position as the father of two children with special needs, Mr. Robles was sentenced in May 2006 to probation for a term of three years, a fine of \$7,500.00, and restitution in the amount of \$5,917.96 (Exh 3). Mr. Robles completed his probation satisfactorily and received a Certificate of Relief of Disabilities from the Board of Parole in June 2008, which removed "all legal bars and disabilities to employment, license and privilege," with certain exceptions not applicable here (Exh 5).

After losing his employment at the DOE based on his conviction, Mr. Robles was hired by Pfizer Global Manufacturing and performed well as a Watch Engineer until December 2008 when the plant closed. In March 2009 he was hired by the Parkchester South Condominium as a Watch Engineer, with full disclosure of his conviction at the time of hire. Because Mr. Robles must maintain a valid Stationary Engineer license to maintain his position, he repeatedly renewed his license, fully disclosing his conviction to the DOB each time. The DOB repeatedly renewed the license through January 31, 2011.

However, when Mr. Robles submitted his renewal application in December 2010, the DOB for the first time requested additional information about the conviction, which Mr. Robles provided. Then, by letter dated June 13, 2011, the DOB denied the renewal. After confirming its review of the eight factors in Correction Law §753(1), which bars discrimination in the employment and licensing of persons with criminal convictions, the DOB denied the renewal application, stating as follows:

As a Stationary Engineer, you are responsible for ensuring that high pressure boilers operate safely by performing routine maintenance, shutting equipment down, making repairs, and regulating machinery as necessary. You must retain truthful and accurate records of boiler pressure, temperature, power output, and fuel consumption. Additionally, you are authorized to submit annual low pressure boiler inspection reports to the Department on behalf of building owners.

Your conviction for Theft from an Agency Receiving Federal Funds bears a direct relationship to your fitness and ability to perform the duties and responsibilities of a Stationary Engineer. As a custodial engineer, you were required to keep certain books and records, and provide documentation of your expenditure of funds. However, you misused this position of trust. As a licensee, you are authorized to submit inspection reports to the Department, and it is imperative that these submissions are reliable in order to protect the safety and welfare of the public. Additionally, the acts that led to this conviction occurred seven years ago and you were thirty-seven years old, presumably a responsible adult who should not have engaged in such conduct. Although you provided a Certificate of Relief from Disabilities, you have not presented sufficient evidence of rehabilitation in light of the above. This conduct also stemmed directly from the position of trust and authority you were given by the City.

Mr. Robles then retained counsel who submitted to the DOB a request for reconsideration dated September 15, 2011 (Exh16). With the request, counsel submitted some additional documentation to supplement the record and "demonstrate that Robles is currently fully qualified and rehabilitated, in all relevant respects, since his plea of guilty on September 28, 2005." Included among the documents were copies of an Asbestos Certificate (Handler) issued on July 4, 2011 by the NYC Department of Environmental Protection and another issued in July 2011 by the NYS Department of Labor.

Most significant, however, was a letter dated September 15, 2011 from Fred Stolle, Chief Engineer at parkchester South Condominium where Mr. Robles had been employed since March 23, 2009. In his letter, Mr. Stolle opined, based on his experience as the

supervisor of Mr. Robles, that "Mr. Robles is fully qualified to perform the duties of a stationary engineer, and I have not found that any of his work at Parkchester poses any danger to the safety of the public." After noting that he had hired Mr. Robles with full knowledge of his conviction, Mr. Stolle added that: "I also do not believe that his [Mr. Robles'] prior conviction bears any direct relationship to his fitness and ability to perform the duties and responsibilities of a stationary engineer, and he has performed his duties in a satisfactory manner." After reviewing the documents, the DOB declined to change its determination (Exh 16).

This Article 78 proceeding ensued.

Discussion

The standard for judicial review of an administrative agency decision such as the one at issue here is quite limited; the court is bound to uphold the decision unless it is arbitrary and capricious and lacking a rational basis in the record, even if the court might have reached a different conclusion if it were determining the matter in the first instance. See, e.g., *Heintz v Brown*, 80 NY2d 998, 1001 (1992), citing *Pell v Board of Educ.*, 34 NY2d 222 (1974). Based on the record presented, this Court finds that the decision by the DOB, which denied the application by Mr. Robles for renewal of his Stationary Engineer license, is entitled to judicial affirmance.

Pursuant to Administrative Code §28-401.12, the DOB may refuse to renew a license based on any ground upon which it could deny, suspend or revoke a license. Included among those grounds are: "Poor moral character that adversely reflects on [the applicant's] fitness to conduct work regulated by this code" and "Conviction of a criminal offense where the underlying act arises out of the individual's professional dealings with the city or any other governmental entity." The DOB here reasonably invoked these

[* 6]

grounds to deny the renewal application filed by Mr. Robles, finding that his conviction for theft in the context of his City employment evidenced a lack of trustworthiness and had a direct relationship to his fitness to perform the duties of a Stationary Engineer.

In contrast to the cases cited by the petitioner such as *Matter of Acosta v New York City Dept. of Educ.*, 16 NY3d 309 (2011), the record here demonstrates that the DOB carefully considered all the evidence submitted by petitioner, including that submitted by his counsel with the request for reconsideration. Further, the DOB applied all eight factors set forth in Correction Law §753 before reaching its determination, including that petitioner was a mature adult when he committed the crime and that the events had occurred only seven years earlier in the context of his public employment. Petitioner's claim that the DOB failed to give appropriate weight to the Certificate finds no support in the record. The DOB directly acknowledged petitioner's receipt of a Certificate of Relief from Disabilities and reviewed the evidence of petitioner's good work history following the conviction, and it reasonably concluded that those facts did not constitute sufficient proof of rehabilitation in light of the nature of the crime and the other relevant facts. The DOB was not bound to accept the opinion of Mr. Robles' supervisor as to petitioner's fitness to perform the duties of a stationary engineer. Nor were the asbestos certificates binding on the DOB or otherwise dispositive of the issues raised.

Wholly without merit is petitioner's claim that the law is unreasonably vague and offers "no concrete standard for evaluating a license applicant" (Memo of Law, p 23). On the contrary, Correction Law §753 sets forth eight specific factors that an agency must consider when evaluating license and employment applications, and those factors have been applied countless times by various agencies, including the DOB, and then affirmed by the courts. *See, e.g., Matter of Duffy v LiMandri*, 93 AD3d 411 (1st Dep't 2012).

Similarly without merit is petitioner's claim that he was entitled to a hearing in connection with his renewal application. The Administrative Code provides for a hearing in the case of license revocation, but not in the case of license renewal applications. Code §28-401.19.1. No evidence exists that the DOB intentionally waited for Mr. Robles to file a renewal application so as to circumvent the hearing requirement applicable to revocations. Nor is it relevant that the agency approved an earlier renewal application filed by Mr. Robles that disclosed his criminal conviction. According to the DOB, disclosure of criminal convictions became a requirement effective July 1, 2008, and the DOB began reviewing those disclosures in applications by Stationary Engineers beginning in July 2010 (Answer, n 3). In any event, "estoppel is unavailable against a public agency." *Granada Bldgs. v City of Kingston*, 58 NY2d 705, 708 (1982).

In sum, a rational basis exists for the DOB's denial of the license renewal application filed by Christopher Robles in December 2010, and the determination is therefore entitled to judicial affirmance. However, as the DOB itself noted in its September 19, 2011 letter (Exh 17), Mr. Robles may apply for a new Stationary Engineer license "at such time as he meets the requirements" of law.

Accordingly, it is hereby

ADJUDGED that the petition is denied and this proceeding is dismissed without costs or disbursements to either party. The Clerk is directed to enter judgment in favor of the respondents accordingly.

Dated: May 30, 2012

MAY 30 2012



 J.S.C.
ALICE SCHLESINGER