Ladenheim v City of New York
2017 NY Slip Op 31288(U)
June 14, 2017
Supreme Court, New York County
Docket Number: 451710/2016
Judge: Carol R. Edmead

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL R. EDMEAD J.S.C. *Justice* PART 35

Index Number : 451710/2016
LADENHEIM, DAVID
vs.
CITY OF NEW YORK
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE 6/2/17
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

Petitioner's request, pursuant to Article 78, for an order annulling the February 1, 2016 decision of respondents, City of New York and New York City Taxi and Limousine Commission ("TLC") (collectively, the "City") which denied petitioner application for a TLC license, is resolved as follows:

Factual Background

In October 12, 2015, petitioner applied for a new TLC operator's license (after his previous license became invalid in 1994). After completing the necessary classes and training, including defensive driving (four hours), sex trafficking video tapes, medical certificates, wheel chair accessible vehicles, 40-hour class, and drug tests, petitioner passed the necessary exams. Thereafter, on January 13, 2016 petitioner was interviewed before the Fitness Review Unit ("FRU").

By letter dated February 1, 2016, the FRU denied petitioner's application for a TLC license based on the interview and review of various records, including Offense Records,[1] Taxi and Limousine Commission (TLC) Records, TLC Suspensions, and TLC Violations.

Taxi and Limousine Commission (TLC) Records reported three events, two of which

[1] As to the single offense dated June 9, 1977 appearing under this category, the City held that such offense "alone [was] insufficient to bar [petitioner's] licensure, because it occurred over twenty-eight (28) years ago and is remote in time." (Page 3).

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

Dated: _____ _____, **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**

were for failing to renew and one in which his license was revoked. TLC Suspensions included five suspensions from 2002 through 2007. TLC Violations included 11 violations from 2001 through 2006. The City's decision was based also on an interview of petitioner, after which the City found the following:

> [As to the June 2003 TLC violation involving the bicyclist] . . . Regardless of who began the physical fight, the undisputed fact is that you got out of your vehicle and engaged in a violent physical altercation with a bicyclist while driving for-hire.
> Your February 2006 TLC violation for threatening a TLC employee occurred when you mailed a letter to a TLC employee containing numerous expletives and profanity, including repeatedly referring to the TLC employee as a "fu-king [a--hole]." When a TLC investigator called you to follow up regarding your letter and an upcoming tribunal hearing, you made threatening comments regarding two (2) other TLC employees and their wives, including a veiled death threat. Specifically, you stated that you "would ejaculate on the employees' wives' faces" and that one of the employees was "lucky [you] don't kill him." Portions of the Administrative Law Judge's report and recommendation regarding your February 2006 TLC violation for threatening a TLC employee, including these quotes, were read to you during your interview. You stated that you do not remember making those threats or using profane language. You denied your TLC violation for "refusing destination," claiming that the TLC retaliated against you for reporting misconduct by dispatchers at LaGuardia Airport. You claimed that you felt that you had to report perceived injustices in the TLC system. After these offenses, you did not complete an anger management class. You further stated that you felt you did not have an anger management problem. You stated that you are rehabilitated from your prior record because you are now wiser, older, and physically unable to fight with a customer. You also stated that you have been a volunteer firefighter since 2005. Your DMV record, as listed in your interview letter, was discussed during your fitness interview. You stated that you drive for personal reasons very frequently, approximately 500 to 600 miles each week.
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> * * * * *
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> . . . your history of TLC violations is concerning to the TLC, because assaults are inherently dangerous and violent activities that bear a direct relationship to your ability to be a safe and responsible driver, interact safely with the public and to follow all the rules and regulations designed to protect the public. These offenses occurred when you held a TLC license and were actively driving for hire. You claim that you acted in self-defense during your 2003 incident, but even on your own account, you exited your vehicle and shouted profanities at a bicyclist while driving a TLC medallion vehicle instead of calling the police or walking away when you had the opportunity to do so. You were fifty (50) and fifty-three (53) years old when you engaged in the concerning conduct of assaulting a bicyclist and threatening a TLC employee, a mature adult, not an adolescent who may not have understood the nature and consequences of their actions. I cannot find that your evidence of rehabilitation outweighs the factors listed above; had you not escalated the situation, you would likely have been able to prevent your 2003 violent incident. Further,

> claiming that you are rehabilitated from you the violent altercation because you are not physically able to fight demonstrates a lack of understanding of the serious and inappropriate nature of your violent conduct. Lastly, it is difficult to find that you have been rehabilitated from your February 2006 TLC violation and that you are not ay risk for future misconduct when you do not remember your conduct and did not fully acknowledge the severity"of your conduct during your fitness interview.
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> * * * * *
>
> .. . .the factors that weigh most heavily against your licensure are: the TLC's interest in protecting the public and the bearing that your TLC violations have on the duties of a TLC licensed driver.

Petitioner argues that FRU's denial was capricious and arbitrary, and supported by false allegations. The reasons provided by the TLC were unsubstantiated by any reasonable interpretation of the evidence and therefore capricious and arbitrary.

The City argues that the denial has a rational basis, and consistent with the law.

In reply, petitioner adds that his denial is a punishment as a whistleblower for speaking out against corruption among TLC staff, TLC abused its power regarding the identity of the bicyclist and the issuer of another summons in June 2006, the police intimidated him in April 2007, purported violation of the double jeopardy clause of the constitution by issuing two fines for the same violation, and fabrication of evidence, warrant an annulment of FRU's decision. Thus, argues petitioner, the Court should order TLC to issue his TLC license and set this matter down for a hearing on damages.

Discussion

As relevant herein, CPLR § 7803(3) provides that the Court's review is limited to the issue of "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." An action is arbitrary and capricious, or an abuse of discretion, when the action is taken "without sound basis in reason and ... without regard to the facts" (*Matter of Pell v Board of Education*, 34 NY2d 222, 231 [1974]). Rationality is the key in determining whether an action is arbitrary and capricious or an abuse of discretion (*Id.* at 231). The court's function is completed on finding that a rational basis supports the agency's determination (*see Howard v Wyman*, 28 NY2d 434 [1971]).

Matter of Pell v Board of Education (34 NY2d 222), is instructive on the basic standard of Article 78 review:

> In article 78 proceedings 'the doctrine is well settled, that neither the Appellate Division nor the Court of Appeals has power to upset the determination of an administrative tribunal on a question of fact; 'the courts have no right to review the facts generally as to weight of evidence, beyond seeing to it that there is 'substantial evidence. '" . . . . 'The approach is the same when the issue concerns the exercise of discretion by the administrative tribunals. The courts cannot interfere unless there is no rational basis for the exercise of discretion or the action

complained of is 'arbitrary and capricious. . . ."
Pell at 231 (Internal citations omitted)

Moreover, where, as here, the agency's determination involves factual evaluation within an area of the agency's expertise and is amply supported by the record, the determination must be accorded great weight and judicial deference (*see Flacke v Onondaga Landfill Sys., Inc.*, 69 NY2d 355, 363, 514 NYS2d 689, 693 [1987]). Courts are required to "resolve [any] reasonable doubts in favor of the administrative findings and decisions" of the responsible agency (*Town of Henrietta v Department of Envtl. Conservation,* 76 AD2d 215, 224, 430 NYS2d 440, 448 [4th Dept 1980]; *see also City of Rome v Department of Health Dept.*, 65 AD2d 220, 225, 441 NYS2d 61, 64 [4th Dept 1978], *lv. to app. denied,* 46 NY2d 713, 416 NYS2d 1027 [1979]).

And the courts may not weigh the evidence or reject the conclusion of the administrative agency where the evidence is conflicting and room for choice exists (*Berenhaus,* 70 NY2d at 444, 522 NYS2d 478; *Matter of Stork Rest. v Boland,* 282 NY 256, 267 [1940]; *Matter of Acosta v Wollett,* 55 NY2d 761, 447 NYS2d 241 [1981]; *Matter of Verdell v Lincoln Amsterdam House, Inc.*, 27 AD3d 388, 390, 813 NYS2d 68 [2006]).

Petitioner's challenge to the three items under "Taxi & Limousine Commission (TLC) Records" are insufficient. Petitioner claims that the first thereunder "stems" from statements he made to TLC's management in response to harassing calls from TLC investigators; the second and third thereunder are irrelevant, because according to petitioner, they reflect "Failed to Review." However, the second and third items pertain to petitioner's failure to "Renew" and the first item arose from petitioner's "profanity-laden letter to a Commission employee" (Report and Recommendation, ALJ Julio Rodriguez, after an inquest). ALJ Rodriguez issued a four-page decision, dated May 14, 2007, which detailed the facts in support of his recommendation that petitioner's license be revoked, "as highly probative" of petitioner's "mental state and total disregard of the commission rules and processes." The City's reliance on this 2007 revocation was not arbitrary or capricious.

As to the items under "TLC Suspensions," (one of which pertained to the 2007 revocation discussed above), petitioner's challenge to the remaining items thereunder are insufficient. Even assuming the truth of petitioner's claims that the bicyclist was the aggressor, the "Executive Summary" of petitioner's appeal regarding the bicycle incident indicates that petitioner "admitted that he intentionally stomped on the bike after the verbal altercation and returned to stomp on the bike again." (Page 6). The Summary also indicates that petitioner followed the bicyclist in a reckless manner, in that the video tape showed that petitioner went through a red light, and entered crosswalks with pedestrians crossing with the light in close proximity to petitioner's cab (Page 6). The City's reliance on petitioner's role in the bicycle incident and revocation therefrom was not arbitrary or capricious.

And, the City's reliance on petitioner's "multiple TLC violations on [petitioner's] record," when petitioner "denied having any issues while driving for-hire during this period of time [1994-2007] was not arbitrary or capricious.

Finally, petitioner's tenuous claims that he was punished because he was a whistleblower in insufficiently supported by the record, and in any event, does not overcome the rational basis that support the City's decision.

Petitioner's remaining arguments lack merit and are insufficient to warrant the relief requested.

Conclusion

Based on the foregoing, it is hereby

ORDERED that petitioner's request, pursuant to Article 78, for an order annulling the February 1, 2016 decision of respondents, City of New York and New York City Taxi and Limousine Commission is denied, and the petition is hereby dismissed. And it is further

ORDERED that petitioner shall serve a copy of this order with notice of entry upon respondents within 20 days of entry.

This constitutes the decision and order of the Court.

Dated 6/14/17 **ENTER:** J.S.C.

HON. CAROL R. EDMEAD
J.S.C.

Check one: ☒ **FINAL DISPOSITION** ☐ **NON-FINAL DISPOSITION**

Check if appropriate: ☐ **DO NOT POST** ☐ **REFERENCE**