

Matter of Aranda v New York City Dept. of Bldgs.

2011 NY Slip Op 32678(U)

October 12, 2011

Sup Ct, NY County

Docket Number: 104898/11

Judge: Cynthia S. Kern

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 52

-----X
In the Matter of the Application of

MANUEL ARANDA,

Petitioner,

Index No. 104898/11

For an Order Pursuant to Article 78
of the Civil Practice Law and Rules,

DECISION/ORDER

-against-

THE NEW YORK CITY DEPARTMENT OF
BUILDINGS and THE CITY OF NEW YORK,

Respondents.

FILED

OCT 14 2011

**NEW YORK
COUNTY CLERK'S OFFICE**

-----X
HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Notice of Cross Motion and Answering Affidavits.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>3</u>

Petitioner Manuel Aranda brought this petition pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR") seeking to vacate, reverse and annul a determination made by the New York City Department of Buildings (the "DOB") dated January 6, 2011 (the "Denial Letter"). In the Denial Letter, the DOB denied petitioner's application for reinstatement of his Master Fire Suppression Piping Contractor's License (hereinafter "Suppression License"). For the reasons set forth below, the petition is denied.

The relevant facts are as follows. Petitioner applied to be a Master Fire Suppression

Piping Contractor (“Suppression Contractor”) and was issued a Suppression License on August 23, 2001. Additionally, petitioner applied to be a Master Plumber and was issued a Master Plumber’s License on or about December 24, 2003. On or about August 23, 2007, petitioner failed to timely renew his Suppression License and the license expired. By letter dated June 2, 2010, petitioner submitted a request to the DOB for reinstatement of his Suppression License. In order to renew his Suppression License, petitioner had to demonstrate to the DOB his continued competence in Suppression Contracting trade and completion of any and all necessary continuing education requirements, as required by the Administrative Code of the City of New York (hereinafter “Admin. Code”) § 28-401.13. Continued competence in the Suppression Contracting trade must be demonstrated by the applicant’s active and legal engagement in the Suppression Contracting trade by supplying the DOB with the following:

- (i) A resume detailing employment history and the duties the applicant performed in each position during the time the license was expired;
- (ii) A signed and notarized statement from the applicant’s employer stating the nature of the applicant’s duties and the dates of such employment;
- (iii) For work in the trade requiring the supervision of a licensed person in accordance with Chapter 4 of the Code, a signed and notarized (or sealed) statement from the supervising licensee stating that he or she supervised the applicant, the dates of such supervision and the nature of the applicant’s duties; and
- (iv) Any other documentation the Department deems appropriate.

By letter dated November 30, 2010, petitioner alleges he demonstrated his continued competence in the Suppression Contracting trade by identifying dozens of sprinkler installation jobs he had performed from 2007 to 2010 and included samples of DOB inspection reports identifying that the work was suppression work and accepted by DOB as such. Petitioner also

alleges he submitted a copy of the Certificate of Completion he received from his fire suppression continuing education course required by the DOB to qualify for reinstatement. The DOB then requested additional information in support of petitioner's request. By letter dated December 10, 2010, petitioner alleges he submitted this additional information which included six notarized letters from clients in support of the fire suppression work he performed from 2007 to 2010. However, by letter dated January 6, 2011, the DOB denied petitioner's request for reinstatement of his Suppression License. In its Denial Letter, the DOB stated:

As part of your application, the Department required that you submit a written request to have your license reinstated and a resume detailing your activities since the expiration of your license. Additionally, you were required to demonstrate that you were actively and legally engaged in the field after the expiration of your license. By letter dated June 2, 2010, you stated that since the expiration of you (sic) MFSPC license, you have been performing sprinkler work under you (sic) Master Plumber License. You also provided several client letters confirming sprinkler jobs done during the period of you (sic) license's expiration. However, installing sprinkler piping and similar work under Department plumbing permits is not considered working in the MFSPC trade, and will not satisfy the department's continued competence requirements. Since you have not provided adequate documentation to demonstrate that you have been actively involved in the trade since your license expired, your request for reinstatement of your MFSPC is denied.

Petitioner then commenced this Article 78 proceeding with the filing of the instant petition on May 2, 2011 challenging the DOB's decision.

On review of an Article 78 petition, "[t]he law is well settled that the courts may not overturn the decision of an administrative agency which has a rational basis and was not arbitrary and capricious." *Goldstein v Lewis*, 90 A.D.2d 748, 749 (1st Dep't 1982). "In applying the 'arbitrary and capricious' standard, a court inquires whether the determination under review had

a rational basis.” *Halperin v City of New Rochelle*, 24 A.D.3d 768, 770 (2d Dep’t 2005); see *Pell v Board. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 N.Y.2d, 222, 231 (1974)(“[r]ationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard.”) “The arbitrary or capricious test chiefly ‘relates to whether a particular action should have been taken or is justified ... and whether the administrative action is without foundation in fact.’ Arbitrary action is without sound basis in reason and is generally taken without regard to facts.” *Pell*, 34 N.Y.2d at 231 (internal citations omitted).

In the instant action, the court finds that there was a rational basis for the DOB’s decision to deny petitioner’s request for reinstatement of his Suppression License. As stated above, the DOB made its determination on the ground that petitioner failed to establish the requisite criteria for reinstatement of his Suppression License as laid out in Admin. Code § 28-401.13, which requires that the applicant for reinstatement demonstrate “continued competence in the respective trade and satisfaction of any applicable continuing education requirements.” The DOB found that petitioner’s demonstrated work of installation of sprinkler heads under a plumbing permit cannot be considered work in the design and installation of fire suppression systems because the installation of a sprinkler head under a plumbing permit is limited in nature. The DOB determined that under Admin. Code § 28-401.3, these installations are limited to only thirty sprinkler heads for an entire building and draw from the building’s domestic water line rather than a dedicated water line for the exclusive use of the sprinkler system. Sprinkler system installations under fire suppression permits, however, use dedicated lines and require the licensee to (a) make complex hydraulic calculations; (b) consider the shape and/or the extent of the

planned dedicated system; and (c) determine the fitting friction and the furthest sprinkler head that must be activated from the sprinkler line. The court finds that the DOB had a rational basis for its determination that the work performed by petitioner from 2007-2010 was not work in the Suppression Contracting trade.

Accordingly, petitioner's request for relief under Article 78 of the CPLR vacating, reversing and annulling the DOB's Determination, dated January 6, 2011, is denied. The petition is hereby dismissed in its entirety. This constitutes the decision and order of the court.

Dated: 10/12/11

Enter: _____
CK
J.S.C.
CYNTHIA S. KERN
J.S.C.

FILED

OCT 14 2011

NEW YORK
COUNTY CLERK'S OFFICE