

**Matter of Downtown Auto Ctr., Inc. v State of New
York**

2015 NY Slip Op 32283(U)

November 15, 2015

Supreme Court, New York County

Docket Number: 155433/2015

Judge: Joan B. Lobis

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6**

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In the Matter of the Petitioner of DOWNTOWN AUTO
CENTER, INC.,

Petitioner,

Index No. 155433/2015

-against-

THE STATE OF NEW YORK, DEPARTMENT OF
MOTOR VEHICLES,

**Decision, Order, and
Judgment**

Respondent,

For an Order Pursuant to CPLR Article 78, seeking
judicial review of an administrative decision and, upon
such review, directing the Respondent to Re-instate the
Petitioner's licenses to operate a repair shop and a
safety inspection shop.

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JOAN B. LOBIS, J.S.C.:

Petitioner Downtown Auto Center, Inc. (Downtown) seeks to reverse a decision of the
Respondent Department of Motor Vehicles (DMV) that denied Downtown re-instatement of its
licenses to repair and inspect motor vehicles. For the reasons stated below the petition is
dismissed with prejudice.

In March of 2014 Downtown held valid licenses to repair and inspect motor vehicles at a
shop located at 38-25 21st Street, Long Island City. It has been incorporated since 2005, first
operating out of a location on the Bowery, then moving to a shop at 42-56 21st Street before
moving to the present location in 2013. The Original Facility Application lists Razia Saeed and
Saeed Choudry as each fifty percent owners in the corporation. They are husband and wife.
Saeed Choudry is a certified inspector.

Downtown asserts that a DMV inspector appeared at the shop on March 20, 2014 and took the repair shop business certificate, inspection shop business certificate and safety/emissions certificates and, without explanation, gave Mr. Choudry a receipt marked O.O.B. According to the affidavit submitted by Mr. Choudry, after he made an inquiry with the DMV, Mr. Choudry learned that inspectors cannot seize the licenses and he learned for the first time that O.O.B. meant out of business. He asserts that he was told that he had to request reinstatement to get Downtown's licenses back.

On May 16, 2014, Ms. Saeed submitted Downtown's application for restatement. Without any prior notice, according to Mr. Choudry's affidavit, an inspector appeared at the shop on July 1, 2014 requesting verification documents. When told the materials were in the possession of Downtown's lawyer, Ms. Saeed was advised to appear at the DMV's District Office on July 15, 2014 with the paperwork. Mr. Choudry and Ms. Saeed appeared on July 15 without their attorney, alleging a sudden illness prevented the attorney from being there with the paperwork. According to Mr. Choudry their request for an adjournment was denied and when their attorney Stephen Fein appeared later that day his request to have the documentation reviewed was denied. By letter dated September 9, 2014, Downtown was notified that the application for reinstatement was denied. Downtown appealed the denial. The Administrative Appeals Board sustained the denial. The Board held that not only was the appeal untimely but that the decision to deny reinstatement had a rational basis.

In support of the petitioner, counsel for Downtown argues that the DMV inspector's action on March 20, 2014 was an illegal seizure without benefit of a pre-seizure hearing. He

argues that any purported surrender was not valid as it was not undertaken by anyone authorized to bind the corporation. Counsel argues that action by the Appeals Board on the issue of untimeliness was unreasonable and arbitrary and capricious. He argues that the appeal was taken within the sixty-day window and that the denial of the reinstatement was improper since the DMV was improperly denying the second license based on its previous actions of illegally seizing the licenses in the first place.

In opposition the respondents assert that there was no illegal seizure. In its papers the DMV recites events not mentioned by petitioner. The most significant fact is that sometime after October 1, 2013, the DMV received an original inspection station license application for Hi-Tek Auto Repair & Body, Inc. for a repair shop at Downtown's current location, The application was accompanied by a buy/sell agreement, signed by Saeed and Choudry indicating the date of the sale of the repair shop as October 1, 2013. According to an affidavit of Emil J. Coccaro, an Automotive Facilities Inspector for the DMV, the reason the shop was visited on March 20, 2014 was in furtherance of the DMV's due diligence in connection with the Hi-Tek application. At the time Coccaro claims that no one from Downtown was present and Hi-Tek was operating the shop using petitioner's equipment and inspection stickers. According to Mr. Coccaro, Mr. Choudry arrived at the shop after being called by a Hi-Tek employee. After discussing the possible penalties or fines that could result from allowing an unlicensed operator to use Downtown's equipment and stickers, Mr. Coccaro describes Mr. Choudry voluntarily surrendering the licenses and stickers. Following this Mr. Coccaro describes his involvement in the application for reinstatement and the non-receipt of the required paperwork. He did not allege

any knowledge of any subsequent attempts to submit the paperwork on July 15, 2014 by Mr. Fein or Downtown.

In reply petitioner does not challenge the fact of the sale to Hi-Tek. The attorney argues that the answer fails to state the basis of the attorney general's knowledge in submitting the answer but does not challenge the affidavit of Mr. Coccaro except to assert that Coccaro did not know the identity of the employee of Hi-Tec that was present on March 20, 2014. He restates that O.O.B. was never defined. Finally he argues that there is a clear factual dispute about whether the DMV knew that Fein produced the documents later on July 15, 2014.

In an Article 78 proceeding, the court's review of an administrative action is limited to a determination of whether that administrative decision was made in violation of lawful procedures, whether it is arbitrary or capricious, or whether it was affected by an error of law. In re Pell v. Board of Educ., 34 N.Y.2d 222, 231 (1974). A determination is considered arbitrary when it is made "without sound basis in reason or regard to the facts." In re Peckham v. Calogero, 12 N.Y.3d 424, 431 (2009), citing Pell, 34 N.Y.2d at 231. If the agency's determination is rationally supported, the court must sustain the determination "even if the court concludes that it would have reached a different result than the one reached by the agency. Peckham, 12 N.Y.3d at 431 (citation omitted). The court must "defer to an administrative agency's rational interpretation of its own regulations in its area of expertise." Id. (citation omitted). The court cannot "weigh the evidence, choose between conflicting proof, or substitute its assessment of the evidence or witness credibility for that of the administrative fact finder." In re Porter v. New York City Hous. Auth., 42 A.D.3d 314 (1st Dep't 2007).

The petitioner has not established that the Appeals Board's decision was arbitrary and capricious, violated law or lawful procedures. Although the Appeals Board did rule the appeal was untimely, it ruled on the merits of the appeal in denying the reinstatement application. While I agree with petitioner's arguments on timeliness, the decision on the merits stands. The failure of the petitioner to mention the sale of Hi-Tek or deny the encounter with Mr. Coccaro on March 20, 2014 make the argument that there was an unlawful seizure tainting the denial of the reinstatement meritless. Furthermore there was nothing arbitrary, capricious, or a violation of law or regulation in denying the application for reinstatement without supporting documents. The new issues in the reply are equally without merit. The inclusion of Mr. Coccaro's affidavit as part of the DMV answer is sufficient basis for the factual statements in the answer by the attorney general. The failure to name the employee of Hi-Tek has no bearing on the acts of the DMV. Nothing herein, however, shall prevent petitioner from exercising whatever rights it has to submit a new application for reinstatement.

The petition is denied and the Clerk of Court shall enter.

Dated: *Nov. 15*, 2015

ENTER:



JOAN B. LOBIS, J.S.C.