

**Dingle v Department of State - Div. of Licensing
Servs.**

2019 NY Slip Op 33304(U)

November 4, 2019

Supreme Court, New York County

Docket Number: 158641/2018

Judge: Debra A. James

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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

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

-----X

JAMEL DINGLE,

Petitioner,

- v -

DEPARTMENT OF STATE - DIVISION OF LICENSING
SERVICES,

Respondent.

-----X

INDEX NO. 158641/2018

MOTION DATE 05/21/2019

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

ORDER

Upon the foregoing documents, it is

ADJUDGED that the petition to vacate and annul the determination of respondent New York State Division of Licensing Services, dated May 21, 2018, finding that a conviction for a serious offense, without a certificate of relief from disabilities or of good conduct, is a statutory impediment that precludes consideration of petitioner's application for registration as security guard and to remand the matter to respondent for a hearing before an impartial hearing officer is DENIED.

DECISION

The court agrees with respondent that Article 23-A of Correction Law is a codification of public policy "to encourage

the licensure and employment of persons previously convicted of one or more criminal offenses", recognizing "[t]he great expense and time involved in successful prosecuting and incarcerating the criminal offender is largely wasted if upon the individual's return to society his willingness to assume a law-abiding and productive role is frustrated by senseless discrimination." New York Correction Law § 753(1)(a), (Governor's Approval Mem., Bill Jacket, L. 1976, c. 931).

However, this court may not apply Correction Law § 753(1)(a) to the petition at bar to the exclusion of the strictures of General Business Law § 89-h(5) that require that an applicant for registration as a security guard, as petitioner here:

not have been convicted of a serious offense, or of a misdemeanor in the state or any offense in any other jurisdiction, which, if committed in this state, would constitute a misdemeanor, and which in the discretion of the secretary, bears such a relationship to the performance of the duties of a security guard, as to constitute a bar to employment.

"It is . . . our well established rule that 'statutory language should be harmonized giving effect to each component and avoiding a construction that treats a word or phrase as superfluous'" (Nadkos, Inc. v Preferred Contractors Insurance Company Risk Retention Group, LLC, 34 NY3d 1, 7 [2019]).

Petitioner's challenge to the determination of respondent that his two prior convictions for serious offenses, concededly

two decades old, categorically disqualified him, without a certificate of relief from disabilities, or a certificate of good conduct or an executive pardon for those convictions, from registration as a security guard fails. His challenge is unpersuasive as his interpretation of GBL § 89-h(5) would render meaningless a component of the statutory language, i.e. petitioner's interpretation would render superfluous both the word "serious" and the phrase "or of a misdemeanor in the state or any offense in any other jurisdiction, which, if committed in this state, would constitute a misdemeanor".

This court likewise agrees with argument of respondent that:

"[t]his provision, through its sentence structure and the use of the disjunctive ',or' to separate the first clause from the remainder of the provision, bifurcates the application process into two tracks. First, where an applicant has been convicted of a 'serious offense,' GBL § 89-h(5) imposes a statutory bar to registration. . . In order to obtain registration as a security guard, such an applicant must present specific documentation to remove the felony conviction as a bar to registration. . . Second, where an applicant has been convicted of a misdemeanor, the Secretary of State must consider whether the offense 'bears such a relationship to the performance of the duties of a security guard, as to constitute a bar to employment.'"

Decisions in Bonaventure v Perales, 106 AD3d 665 (1st Dept. 2013) (past convictions were for assault and larceny, each misdemeanors) and Thomas v New York City Department of Education, 46 Misc3d 308, 312 (Supreme Court, NY Co. 2014)

(petitioner possessed a certificate of relief from disabilities) are not to the contrary.

Finally, petitioner's lament that respondent's having found his application incomplete for not including a certificate of relief from disabilities or certificate of good conduct is tantamount to respondent's denial of such application presupposes, without explanation, that pursuing and obtaining such certification, and thereby completing his application to register as a security guard, is not an option for petitioner.

11/4/2019
DATE

Debra A. James
DEBRA A. JAMES, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				OTHER	<input type="checkbox"/>
				REFERENCE	<input type="checkbox"/>