

Campisi v Shea

2020 NY Slip Op 34025(U)

December 8, 2020

Supreme Court, New York County

Docket Number: 153703/2020

Judge: Carol R. Edmead

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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. CAROL R. EDMEAD PART IAS MOTION 35EFM

Justice

-----X

JOSEPH CAMPISI

Plaintiff,

- v -

DERMOT SHEA,

Defendant.

-----X

INDEX NO. 153703/2020

MOTION DATE 12/29/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 6, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

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

Upon the foregoing documents, it is

ADJUDGED that the petition for relief, pursuant to CPLR Article 78, of petitioner Joseph Campisi (motion sequence number 001) is denied, and this proceeding is dismissed; and it is further

ORDERED that counsel for Respondent Police Commissioner of the City of New York shall serve a copy of this order along with notice of entry on all parties within twenty (20) days.

In this Article 78 proceeding, petitioner Joseph Campisi (Campisi) seeks an order to vacate a determination of the respondent Police Commissioner of the City of New York (the Commissioner) as arbitrary and capricious (motion sequence number 001). For the following reasons, the petition is denied, and the cross motion is granted.

FACTS

On February 28, 2019, Campisi submitted an application to renew his “Special Carry Business” (SCB) handgun license to the License Division of the co-respondent New York City Police Department (NYPD). *See* verified answer, ¶ 43; exhibit A. Campisi was originally issued a “Business Carry” license - which permits the holder to carry a handgun in all New York State counties except the five boroughs of New York City - in 2001. *See* verified petition, ¶ 9. He was subsequently issued an SCB license - which extends the holder’s handgun carry privileges to the five boroughs of New York City - in 2013, and later renewed it in 2016. *See* verified answer, ¶ 43, n 2. The instant application is thus his second SCB renewal application. *Id.*

The NYPD’s Licensing Division conducted a thorough background investigation during which it requested a quantity of documentation from Campisi, all of which he provided. *See* verified answer, ¶¶ 43-60; exhibits B-P. Nevertheless, on September 4, 2019, the License Division issued Campisi a “Notice of Disapproval” that denied his application to renew his SCB license. *Id.*, ¶¶ 61-63; exhibit Q. Campisi filed an administrative appeal of that disapproval on December 4, 2019; however, on January 13, 2020 the director of the NYPD’s License Division issued a “Notice of Disapproval after Appeal” that denied Campisi’s administrative appeal and upheld the disapproval of his SCB renewal application (the NYPD’s final order). *Id.* ¶¶ 64-68; exhibits R, S. The NYPD’s final order found, in pertinent part, as follows:

“In his letter of necessity, Mr. Campisi stated that he is the Treasurer and Secretary of his family’s company- Salvatore Campisi & Sons, a large electrical

contracting company. He stated that he travels to all five boroughs and that his company is on call 24 hours a day, seven days a week. He further stated that he transports valuable tools, equipment and high valued materials and as such, is a target for criminals.

Additionally, Mr. Campisi stated that he carries cash on his person during work hours.

“Title 38, Section 5-03 of the Rules of the City of New York requires documentary proof that his business actually requires him to routinely engage in cash or other transactions that expose him to extraordinary personal danger. However, Mr. Campisi failed to submit documentation to establish that he engages in substantial cash transactions. His banking activity does not reflect substantial cash deposits but rather checks. His withdrawal history indicated that he withdraws \$1000 to \$3000 weekly in dollars and coins. When the License Division inquired into these withdrawals, Mr. Campisi confirmed that he withdraws this cash for distribution to his employees for various expenses, mainly for parking meters as he has several trucks in his fleet.

“If extraordinary danger resulting from one’s profession is unavoidable, then it may be appropriate for a carry license to be issued. However, where such danger could easily be avoided, the issuing of a gun license is inappropriate. Here, Mr. Campisi can pay each employee with checks for these expenses rather than providing cash. It is his choice to distribute the coins and/or cash as a convenience for his employees. As such, the avoidable risk of withdrawing \$1000 to \$3000 weekly is not enough to establish that he is in extraordinary danger and as such, has not established ‘proper cause.’

“Additionally, as noted in 38 RCNY §5-03(b), the mere fact that an applicant has been the victim of a crime or resides in or is employed in a ‘high crime area’ does not establish “proper cause” for issuance of a carry or special handgun license. Here, Mr. Campisi stated that since some of the properties which his company services are in undesirable areas, he is vulnerable to be a victim of a crime. However, he failed to provide any documentation of any threats to his safety. His claim that he is in danger is, therefore, highly speculative and unsupported by any actual event (fn 1). As such, he has failed to demonstrate proper cause.

“In sum, Mr. Campisi failed to show documentation that he routinely engages in substantial cash transactions or other transactions that would put you in extraordinary personal danger. He further failed to demonstrate a special need for self-protection that distinguishes his need from that of the general community or other individuals engaged in the same profession. He failed to provide any documentation indicating that threats were made against him due to his business. Therefore, your appeal of the disapproval of Mr. Campisi's Special Carry handgun renewal application is denied.

“fn 1. In your appeal, you stated that Mr. Campisi's business was targeted for a burglary some years ago. In Exhibit ‘B’ of your appeal, you submitted two letters of two separate incidents. The License Division has looked into these two incidents. The 2009 incident involved a burglary of an apartment where Mr. Campisi was a witness, not the victim. The 2007 incident involved a burglary in a pizza place where Mr. Campisi was working at the time. One isolated incident of this nature 13 years ago is not a valid basis for a carry license.”

Id.; exhibit S.

MEMORANDUM DECISION

Campisi thereafter commenced this Article 78 proceeding on June 1, 2020. *See* verified petition. The Commissioner's office subsequently filed an answer on September 30, 2020. *See* verified answer. This matter is now fully submitted (motion sequence number 001).

DISCUSSION

The court's role in an Article 78 proceeding is to determine, upon the facts before an administrative agency, whether the agency's determination had a rational basis in the record or was arbitrary and capricious. *See Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 230-231 (1974); *Matter of E.G.A. Assoc. Inc. v New York State Div. of Hous. & Community Renewal*, 232 AD2d 302, 302 (1st Dept 1996). A reviewing court will only find an agency's determination to be arbitrary and capricious if it is "without sound basis in reason, and in disregard of the [facts]." *See Matter of Century Operating Corp. v Popolizio*, 60 NY2d 483, 488 (1983), citing *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231. However, if there is a rational basis for the agency's determination, there can be no judicial interference. *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231-232. Of further relevance, appellate precedent recognizes that an NYPD "[pistol] licensing officer has broad discretion in determining whether proper cause exists for the issuance of a carry concealed license." *Matter of Goldstein v Schwartz*, 185 AD3d 929, 930 (2d Dept 2020), quoting *Matter of McCarthy v Sini*, 172 AD3d 1069, 1070 (2d Dept 2019). Here, Campisi's petition asserts four arguments (which he denominates as "points") that the NYPD's final

determination was an arbitrary and capricious ruling; however, the court finds none of them compelling.

First, Campisi avers that he “currently holds a valid statewide unrestricted carry license for 57 of the 62 counties of New York State,” and that “the application being denied . . . seeks a renewal of a highly restrictive license which will allow for business carry of a registered and legal handgun ONLY when petitioner is actually working at his job within the five boroughs.” *See* verified petition, ¶¶ 13-19 (emphasis in original). A cursory reading discloses that this is merely a factual recitation rather than a legal argument, despite Campisi’s designation of it as “Point One.” *Id.* In any case, it makes no legal assertions and cites no case holdings. Therefore, the court discounts “Point One” as irrelevant.

In “Point Two,” Campisi argues that the NYPD “Provides NO RATIONAL BASIS for” its final determination, and that “as one of two main components of gun licensing . . . involves an examination of ‘fitness and character,’ it is clear that the petitioner continues to be statutorily eligible for this handgun license, including maintaining the requisite ‘good moral character.’” *See* verified petition, ¶¶ 20-22 (emphasis in original). At first glance, this argument appears to be directed to the “arbitrary and capricious” standard that applies to Article 78 review. However, it is not. Instead, Campisi merely quotes selectively from the portion of Penal Law § 400.00 (1) that lists the fourteen eligibility criteria for holders of handgun licenses, the second of which is that applicants possess “good moral character.” *Id.* He then asserts that he still possesses “good moral character” today, as he did when he applied for his “Business Carry” license in 2001. *Id.* However, that assertion is irrelevant in this proceeding, since the NYPD’s final order was not based on the issue of “good moral character,” and did not even discuss the matter. *See* verified answer, exhibit A. Therefore, the court also discounts “Point Two” as irrelevant.

In “Point Three,” Campisi argues that “instead of providing a reason why [it] modified its position when it both ISSUED AND RENEWED petitioner's validation over the last 7 years, the [NYPD] arrogantly makes a 180 degree turn on petitioner's ‘proper cause’ leaving behind any semblance of continuity of determinations, and violating this critical tenet of administrative agency action.” *See* verified petition, ¶¶ 23-38 (emphasis in original). A close reading shows that this argument actually does address the “arbitrary and capricious” standard applicable to Article 78 review. It particularly challenges the portion of the NYPD’s final determination that dealt with the issue of “proper cause,” and was based on the findings that Campisi had failed to produce documentation demonstrating that: 1) “he routinely engages in substantial cash transactions or other transactions that would put [him] in extraordinary personal danger”; 2) he had “a special need for self-protection that distinguishes his need from that of the general community or other individuals engaged in the same profession”; or 3) “threats were made against him due to his business.” *See* verified answer, exhibit A. Campisi points out that the NYPD’s Licensing Division formerly found that there was “proper cause” to support his CBL license, and argues that the NYPD’s contrary findings regarding his renewal application are arbitrary and capricious, since “no facts have changed over this course of time.” *See* verified petition, ¶ 33. The court disagrees.

Penal Law Section 400.00 (2) (f) provides that “[a] license for a pistol or revolver, other than an assault weapon or a disguised gun, shall be issued to . . . have and carry concealed, without regard to employment or place of possession, by any person when proper cause exists for the issuance thereof.” “A [pistol] licensing officer has broad discretion in determining whether ‘proper cause’ exists for the issuance of a ‘carry concealed’ license,” and “[a] licensing officer's determination will not be disturbed unless it is arbitrary and capricious.” *Matter of McCarthy v*

Sini, 172 AD3d 1069, 1070 (2d Dept 2019) (internal citations omitted). Here, the NYPD's final determination states that the Licensing Division's review of the documentation that Campisi provided showed that: 1) he routinely carried several thousand dollars in coins only for convenience, and not for business necessity; 2) he had not substantiated any threats to his personal safety; and 3) he had not substantiated any threats to his business. *See* verified answer, exhibit A. Instead, the Commissioner noted that the "threats to safety" which Campisi referred to arose in situations that were unrelated to either business or personal activity. *Id.* The court concludes that the Licensing Division's subsequent determination of "no proper cause" was rationally based on the material in the administrative record. *Matter of Pell*, 34 NY2d at 230-231. Campisi fails to explain how the Licensing Division's conclusion was not rational, or to identify any evidence that would contradict it. His self serving assertion that "nothing has changed" is insufficient. Consequently, the court declines to disturb the Licensing Division's findings, and rejects Campisi's argument that they were arbitrary and capricious.

Finally, Campisi argues that "the [NYPD] cannot now ignore its own prior determinations simply because new supervisors run the pistol License Division." *See* verified petition, ¶¶ 39-57. This argument appears to be derived from the settled appellate precedent that holds that "an administrative agency's determination is arbitrary and capricious when it 'neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts,'" and that "an agency that deviates from its established rule must provide an explanation for the modification so that a reviewing court can determine whether the agency has changed its prior interpretation of the law for valid reasons, or has simply overlooked or ignored its prior decision." *Matter of 20 Fifth Ave., LLC v New York State Div. of Hous. & Community Renewal*, 109 AD3d 159, 163 (1st Dept 2013), citing *Matter of Lantry v State of New*

York, 6 NY3d 49, 58 (2005), and citing *Matter of Terrace Ct., LLC v New York State Div. of Hous. & Community Renewal*, 18 NY3d 446, 453 (2012) (other internal citations omitted). Of the reviewing court's role, the Appellate Division, First Department, has observed that "[w]hen a party mounts an attack upon a decision by [an agency] as inconsistent with prior determinations, our task is to examine [the agency's] precedent in similar situations." *Matter of 20 Fifth Ave., LLC v New York State Div. of Hous. & Community Renewal*, 109 AD3d 159, 164 (1st Dept 2013). Here, however, Campisi's petition does not annex copies of any prior determinations by the NYPD Licensing Division that might be inconsistent with the January 13, 2020 final determination. Instead, he seeks to base his "inconsistency argument" on the fact that the NYPD previously issued and renewed his own SCB license application, and later decided not to renew it. However, Campisi's assertion does not constitute evidence that the NYPD's Licensing Division had improperly departed from any prior precedent in an arbitrary and capricious manner. It simply underscores that the Licensing Division opted not to renew one individual SCB application based on its reassessment of the supporting documentation. It was well within its discretion to do so. *See e.g., Matter of County of Nassau v Nassau County Interim Fin. Auth.*, 33 Misc 3d 227, 254 (Sup Ct, Nassau County 2011) ("An agency 'may refuse to duplicate previous error; it may change its views as to what is the best interests of [its governed]; it may give weight to slight differences which are not easily discernible [internal citation omitted].'"). Therefore, the court rejects Campisi's final argument as unsubstantiated.

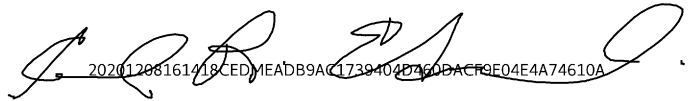
Accordingly, having concluded that the NYPD's final determination was rationally based on the material in the administrative record before it, and that it contained no arbitrary and capricious rulings, the court finds that Campisi's Article 78 petition should be denied as meritless, and that this proceeding should be dismissed.

CONCLUSION

ACCORDINGLY, for the foregoing reasons it is hereby

ADJUDGED that the petition for relief, pursuant to CPLR Article 78, of petitioner Joseph Campisi (motion sequence number 001) is denied, and this proceeding is dismissed; and it is further

ORDERED that counsel for Respondent Police Commissioner of the City of New York shall serve a copy of this order along with notice of entry on all parties within twenty (20) days.


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12/8/2020

DATE

CAROL R. EDMEAD, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE