

**All Pro Autobody Inc. v New York City Dept. of
Consumer Affairs**

2021 NY Slip Op 30120(U)

January 14, 2021

Supreme Court, New York County

Docket Number: 151170/2020

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

ALL PRO AUTOBODY INC. and LUIS RIVERA,
Petitioners,

INDEX NO. 151170/2020
MOTION DATE 03/24/2020
MOTION SEQ. NO. 001

- v -

NEW YORK CITY DEPARTMENT OF CONSUMER
AFFAIRS,
Respondent.

DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 13, 14, 15, 16, 17,
18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46
were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

ORDER

Upon the foregoing documents, it is

ORDERED and ADJUDGED that the petition is granted only to the
extent that the penalty of termination of petitioner's tow truck
licenses is vacated, and the matter is remanded to respondent for
imposition of a lesser penalty, and the proceeding brought pursuant
to CPLR article 78 is otherwise disposed by confirming the
remainder of the determination dated November 21, 2019 of
respondent, without costs.

DECISION

In its determination dated November 21, 2019
(determination), respondent found that petitioner

"possessed automobile liability coverage for its tow trucks in the amount of less than the two hundred thousand dollars for injury or death of any one person resulting from any one accident, less than five hundred thousand dollars for injury or death from any one accident, and less than fifty thousand dollars to or (sic) destruction of property of one or more persons resulting from any one accident, for the period covering January 10, 2018 through March 7, 2019, in violation of 6 RCNY § 2-362(d)."

Such finding is neither arbitrary and capricious nor otherwise unlawful, and is, in fact, not disputed by petitioner. This court likewise finds rational, respondent's reasoning that petitioner's alleged ignorance of the purported "new policy requirements"¹ is beside the point. As found by respondent, in each of the three applications, petitioner submitted certificates of insurance that reflected sufficient coverage under the current rule, while, ultimately, upon subpoena, Nationwide General Insurance Company produced the policies of insurance that showed that the actual coverage amounts were less than required under 6 RCNY 6 RCNY § 2-362(d).

However, while respondent states in its determination that "intent is not a requirement under the law", it repeats several times that petitioner submitted "fraudulent and falsified" certificates of insurance. This court finds such reasoning

¹A review of the history notes for 6 RCNY § 2-362 show that the only amendment to subsection d with respect to liability insurance for the past ten years was to delete the word "personal" before the word "injury".

irrational as it fails to consider that each and every certificate states on its face that it was produced by non-party All City Insurance Services, which is documentary evidence that petitioner did not fabricate such documents. Such documentary evidence is also consistent with petitioner's sworn statement that he relied upon such insurance broker for its expertise in securing adequate coverage. Though certainly not an excuse for petitioner's violation of the mandated insurance requirements, such evidence establishes no more than negligence on the part of petitioner for not reading and comparing the certificates of insurance with the actual policies of insurance to confirm that his affirmations in the applications for the towing licenses were true and correct as to insurance coverage. Moreover, in its determination, petitioner finds "DCA concludes that as of March 7, 2019, All Pro Autobody has insurance coverage that satisfies the requirements in the laws and rules."

Therefore, "[i]n the absence of a finding of willfulness or an intent to deceive in connection with the foregoing violations,

the violations do not warrant cancellation of petitioner's license" (Platinum Pleasures of N.Y., Inc. v New York State Liquor Authority, 126 AD3d 587, 588-589 [1st Dept. 2015]).

1/14/2021

DATE

Debra A. James
DEBRA A. JAMES, 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