

Buono v New York City Dept. of Bldgs.
2021 NY Slip Op 31085(U)
April 6, 2021
Supreme Court, New York County
Docket Number: 154859/2020
Judge: Arthur F. Engoron
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARTHUR F. ENGORON PART IAS MOTION 37EFM

Justice

-----X

VALENTINO BUONO,

Petitioner,

- v -

NEW YORK CITY DEPARTMENT OF BUILDINGS, CITY
OF NEW YORK

Respondent.

-----X

INDEX NO. 154859/2020

MOTION DATE 10/02/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

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

Upon the foregoing documents, it is Upon the foregoing documents and for the reasons stated hereinbelow, the instant CPLR Article 78 petition by Valentino Buono against respondents, New York City Department of Buildings and City of New York, is denied and dismissed.

Background

Prior to March 9, 2020, petitioner, Valentino Buono, a Kings County resident, held the following licenses and registrations that respondent New York City Department of Buildings (“DOB”) issued: (1) Master Plumber License No. 1762; (2) Fire Suppression Contractor License No. 772; (3) General Contractor Registration No. 034931; and (4) Construction Superintendent Registration No. 021376 (collectively, “the Licenses”). Petitioner asserts that, prior to 2018, he had never been charged with DOB violations. (NYSCEF Documents 1 and 5.)

On or about January 31, 2018, petitioner was to appear before the DOB Special Investigations Unit for an interview about his business operations. That investigation resulted in the filing of three Charges and twenty-four Specifications against petitioner, alleging that petitioner violated the following:

(1) New York City Administrative Code (“NYCAC”) 28-401.19(6), for “negligence, incompetence, lack of knowledge or disregard of the code and related laws and rules”;

(2) NYCAC 28-401.19(7), for “failure to comply with this code or any other order, rule, or requirement lawfully made by the Commissioner including failure to cooperate with investigations related to the trade for which the individual is licensed conducted by the Commissioner or other governmental entity”;

(3) NYCAC 28-401.19(2), for “[t]he making of a material false or misleading statement on any form or report filed with the Department or other governmental entity.”

(NYSCEF Documents 1 and 6.)

Between August 6 and September 20, 2018, a trial was held before the New York City Office of Administrative Trials and Hearings (“OATH”). By “Report and Recommendation” dated February 28, 2020, the Administrative Law Judge (“the ALJ”) “found that DOB had proven that petitioner had acted negligently, incompetently or disrespected applicable laws” as to sixteen of the Specifications. The ALJ recommended that DOB revoke the Licenses. The Report and Recommendation stated, in pertinent part, the following:

[Petitioner] offered little by way of mitigation. He was repeatedly careless or incompetent in conducting his duties and often blamed others. Troublingly, he seemed unconcerned about his responsibilities as a licensee, minimizing the importance of submitting required documents and proof of required inspections as part of his efforts to obtain permission for gas authorization and plumbing signoff on his projects. His use of PVC on piping when he knew that the Code expressly forbids its use is particularly egregious. Similarly, [petitioner’s] self-certification of inspections when he observed prohibited materials in use is of grave concern. In addition, [petitioner’s] negligence in performing his duties as a construction superintendent jeopardized members of the public who were left without access to a functioning fire escape.

(NYSCEF Documents 1 and 7.)

By correspondence dated March 9, 2020, DOB revoked all four of the Licenses (“the Revocation”) (NYSCEF Doc. 8).

Petitioner alleges that the Revocation was arbitrary and capricious. He claims that DOB has not revoked licenses from tradesmen similar to petitioner who participated in conduct similar to that which DOB cites as contributing to the Revocation. According to petitioner, there is no further administrative appeal within DOB available to him. (NYSCEF Doc. 1.)

Therefore, by petition dated on or around June 30, 2020, petitioner commenced the instant CPLR Article 78 special proceeding against DOB and respondent City of New York (“the City”), seeking an order (1) mandating that respondents reinstate the Licenses or remanding the matter to DOB for further proceedings; and (2) awarding petitioner costs, disbursements, and attorney’s fees (NYSCEF Documents 1-2).

Respondents jointly answered the instant petition, requesting that this Court deny the petition in its entirety and dismiss the instant proceeding with prejudice. They reiterate the aforementioned Charges and remaining Specifications and assert, inter alia, the following: (1) petitioner had knowingly used material(s) that are prohibited in New York City during the course of his work;

(2) petitioner failed to appear for gas tests; and (3) petitioner submitted an Emergency Work Notification (“EWN”) without then performing the subject work. Additionally, respondents claim that the instant proceeding should be transferred to the Appellate Division, First Department, as, pursuant to CPLR Article 7803(4), a “substantial evidence review is required as the final agency determination challenged herein ... was rendered as a result of an evidentiary trial at OATH held pursuant to direction by law.” (NYSCEF Doc. 12.)

In reply, petitioner clarifies that he does not here seek to challenge (1) DOB’s administrative power to revoke the Licenses and/or (2) the majority of the evidence against him. Petitioner asserts, inter alia, the following: (1) the subject permit request denial rates for plumbing and gas authorization (which, according to respondents, demonstrated petitioner’s negligence) arose from DOB’s requesting additional information, unrelated to petitioner, prior to approving said permits; and (2) despite respondents’ contentions, mandamus is the appropriate remedy in this matter. (NYSCEF Documents 25 and 26.)

Discussion

It is well-settled that in a CPLR Article 78 special proceeding, the scope of judicial review is limited to the issue of whether the administrative action is rational. Pell v Board of Educ., 34 NY2d 222, 230-231 (1974). This Court may not disturb respondents’ determination unless there is no rational basis for the exercise of discretion or it was arbitrary and capricious. Id. at 231. “The arbitrary or capricious test chiefly relates to ... whether the administrative action is without foundation in fact. Arbitrary action is without sound basis in reason and is generally taken without regard to the facts.” Id. This Court may not simply second-guess respondents.

Administrative Code § 28-401.19, “Suspension or revocation of license or certificate of competence,” states, in pertinent part, the following:

The commissioner shall have the power to suspend or revoke a license ... for each finding of violation, and/or to order any holder thereof to repair damage resulting from any act or omission as set forth in this chapter or in rules, for any of the following:

* * *

2. The making of a material false or misleading statement on any form or report filed with the department or other governmental entity;

* * *

6. Negligence, incompetence, lack of knowledge, or disregard of this code and related laws and rules;

* * *

7. Failure to comply with this code or any order, rule, or requirement lawfully made by the commissioner including failure to cooperate with investigations

related to the trade for which the individual is licensed conducted by the commissioner or other government entity;

Administrative Code § 28-401.21, "Cooperation required," states, in pertinent part, the following:

Any person ... issued a license or certificate of competence by the department shall, pursuant to a request or order of the commissioner or any other city agency or office, cooperate fully and completely with respect to any department or city agency or office investigation. Evidence of cooperation shall include, but is not limited to, appearing before the department or other city agency or office, answering questions completely and accurately, and providing any and all requested documents. Failure to comply with such request or order may subject such person to disciplinary measures authorized by law, including but not limited to suspension or revocation of the license or certificate of competence.

This Court finds that the Revocation was neither arbitrary nor capricious. Respondents have submitted "substantial evidence" to support the Revocation (see, inter alia, NYSCEF Documents 12 and 17). See 300 Gramatan Ave. Assocs. v State Div. of Human Rights, 45 NY2d 176, 180 (1978). The Report and Recommendation established that petitioner conducted his work with negligence, among other offenses, that jeopardized the safety of the public. This Court cannot consider the facts de novo. See Heintz v Brown, 80 NY2d 998, 1001 (1992).

This Court has considered petitioner's other arguments and finds them to be unavailing and/or non-dispositive.

Therefore, this Court will deny the instant petition. Given the instant decision, and the reasons therefor, transfer to the Appellate Division, First Department, does not seem warranted.

Conclusion

Thus, upon the foregoing documents and for the reasons stated hereinabove, the instant CPLR Article 78 petition by Valentino Buono against respondents, New York City Department of Buildings and City of New York, is denied and dismissed, and the Clerk is hereby directed to enter judgment accordingly.

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4/6/2021
DATE

ARTHUR F. ENGORON, 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
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
		<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE

