

**White v Deutsch**

2021 NY Slip Op 31785(U)

May 26, 2021

Supreme Court, New York County

Docket Number: 160022/2020

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

SHAUN WHITE,

Plaintiff,

- v -

JEREMY DEUTSCH, NEW YORK CITY DEPARTMENT OF  
FINANCE

Defendant.

-----X

INDEX NO. 160022/2020  
MOTION DATE 11/19/2020  
MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

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

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 Shaun Gregory White (motion sequence number 001) is denied, and this proceeding is dismissed; and it is further

ORDERED that counsel for respondent New York City Department of Finance shall serve a copy of this order along with notice of entry on all parties within ten (10) days.

In this special proceeding, petitioner Shaun Gregory White (White) seeks a judgment to overturn an order of the respondent New York City Department of Finance (DOF) as arbitrary and capricious, as well as ancillary declaratory relief (motion sequence number 001). For the following reasons, this petition is denied and this proceeding is dismissed.

#### FACTS

On December 24, 2019, a New York Police Department (NYPD) traffic agent issued parking violation summons number 876121771-2 to White as the owner of a black, 2014 Mercedes Benz sedan bearing New York State license plate “PLAINTIF,” which was parked in front on the north side of Abby Place twenty-five feet West of Walbrooke Avenue in the County of Richmond, City and State of New York (the summons). *See* verified petition, ¶ 6; exhibit A.

The summons stated as follows:

“THE OPERATOR AND OWNER OF THE VEHICLE ARE CHARGED AS FOLLOWS:

“In Violation of NYC Traffic Rules, and Section: 4-08 (j) (3) - Improper Display of Registration Sticker.”  
*Id.*, exhibit A. The traffic agent noted on the summons that the subject registration “sticker [was] on [the] dash,” and specified a fine amount of \$65.00. *See* verified answer, ¶ 39; exhibit 1. On December 24, 2020, White submitted a request to the DOF’s Parking Violations Bureau (PVB) via email for a hearing on the grounds that the summons was facially insufficient. *See* verified petition, ¶ 9; exhibit B. On December 31, 2019, co-respondent PVB administrative law judge Jeremy Deustch (ALJ Deustch) issued a decision that upheld the summons (the ALJ’s decision), and found, in pertinent part, as follows:

“It is a violation to display the sticker on the dash. Implicit in the requirement that the vehicle display a current registration sticker is the requirement that the sticker be properly displayed in the vehicle. The sticker must be properly affixed to the windshield in a timely manner.”

See verified answer, ¶ 41; exhibit 4. On January 2, 2020, White filed an administrative appeal of the ALJ's decision. *Id.*, ¶ 42; exhibit 5. On January 22, 2020, the PVB Appeals Board issued a decision that affirmed the ALJ's decision, and stated that "we find no reversible error in the decision below" (the Appeals Board order). *Id.*, ¶ 43; exhibit 6. White states that he paid the \$65.00 fine on September 9, 2020. See verified petition, ¶ 15; exhibit E.

Nevertheless, still aggrieved, White commenced this Article 78 proceeding on November 23, 2020. See verified petition. After a number of delays occasioned by the Covid-19 national pandemic, the DOF eventually filed an answer on February 1, 2021. See verified answer. This matter is now fully submitted (motion sequence number 001).

#### DISCUSSION

A trial court's role in an Article 78 proceeding is to determine whether, upon the facts before an administrative agency, a challenged agency 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 (1974); *Matter of E.G.A. Assoc. Inc. v New York State Div. of Hous. & Community Renewal*, 232 AD2d 302 (1<sup>st</sup> Dept 1996). A determination is only deemed 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 administrative 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.

Here, White argues that the Appeals Board order was arbitrary and capricious because it erroneously upheld the finding in the ALJ's order regarding the display of registration stickers in vehicle windshields. *See* verified petition, ¶¶ 18-23. White particularly complains that:

“Deutsch and the DOF's broadened interpretation of NYC Traffic Rules, Section 4-08 (j) (3) includes an unstated, absolute requirement that a registration sticker be ‘properly’ displayed, and thus must be affixed to the windshield without exception, which does not take into consideration the superseding rules, regulations and policies of the Department of Motor Vehicles, which allows for concurrent display of proof during a reasonable time period after renewal.”

*Id.*, ¶ 21. The DOF responds that the ALJ's and Appeals Board's findings were reasonable because they were not based on an “interpretation” of 34 RCNY § 4-08 (j) (3), but on the actual text of the regulation, which provides that:

“No person shall stand or park a vehicle bearing a New York plate or plates *unless it properly displays a current registration sticker.*” (emphasis added)

*See* respondents' mem of law at 9-11. The DOF also asserts that the law affords it a “highly deferential” standard of review in the interpretation of the regulations that it enforces. *Id.*, at 8-9. The court agrees. It is well settled that “[t]he interpretations of [a] respondent agency of statutes which it administers are entitled to deference if not unreasonable or irrational.” *Matter of Metropolitan Assoc. Ltd. Partnership v New York State Div. of Hous. & Community Renewal*, 206 AD2d 251, 252 (1<sup>st</sup> Dept 1994), citing *Matter of Salvati v Eimicke*, 72 NY2d 784, 791 (1988).

Here, since the DOF's PVB is charged with enforcing the regulation that requires the “proper display” of a current vehicle registration sticker, it is evident that the issue of what constitutes “proper display” is a matter committed to the PVB's judgment. Here, too, the Appeals Board found that it was rational for ALJ Deutsch to determine that White had violated 34 RCNY § 4-08 (j) (3) by placing his vehicle's current registration sticker on its dash rather than affixing it to its window. As a result, in the absence of a showing that this was not a

rational interpretation of the regulation, the court cannot interfere with the Appeals Board's determination. *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. White argues that the ALJ's and Appeals Board's interpretation of 34 RCNY § 4-08 (j) (3) was not rational because it conflicts with the New York State Department of Motor Vehicles (DMV) regulation set forth in 15 NYCRR 17.4 (d) which governs the placement of windshield stickers. *See* White reply affirmation, ¶¶ 6-16. The court finds this argument unpersuasive for two reasons. First, VTL § 236 (1) invests the DOF's PVB with only the limited authority to adjudicate "parking violations," which are defined as "the violation of any law, rule or regulation providing for or regulating the parking, stopping or standing of a vehicle." The statute does not appear to authorize the PVB to enforce or adjudicate purported violations of DMV regulations, such as 15 NYCRR 17.4 (d). Thus, White's invocation of 15 NYCRR 17.4 (d) is of no moment. Second, the text of 15 NYCRR 17.4 (d) itself provides that "[w]indshield stickers shall be *placed* on the left-hand side of the inside front windshield," and that "old or expired windshield stickers shall be removed before *placement* of a current validating sticker on the windshield" (emphasis added). This undercut's White's assertion that it is "proper" to instead simply lay a registration sticker on a vehicle's dash. As a result, the court rejects White's arguments herein, and concludes that the Appeals Board's decision was rationally based, and not an arbitrary and capricious ruling.

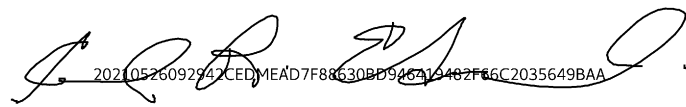
Accordingly, the court finds that this Article 78 petition should be denied as meritless, and that this proceeding should be dismissed.

#### DECISION

ACCORDINGLY, for the foregoing reasons it is hereby

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

ORDERED that counsel for respondent New York City Department of Finance shall serve a copy of this order along with notice of entry on all parties within ten (10) days.



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5/26/2021  
DATE

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CAROL R. EDMED, 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
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			<input type="checkbox"/>	REFERENCE
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