

Matter of Naz v Limandri
2013 NY Slip Op 30625(U)
April 1, 2013
Sup Ct, New York County
Docket Number: 104193/12
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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In the Matter of the Application of

MOHAMMAD S. NAZ,

Petitioner,

Index No. 104193/12

For an Order Pursuant to Article 78
of the Civil Practice Law and Rules,

DECISION/ORDER

-against-

ROBERT D. LIMANDRI, COMMISSIONER, THE NEW
YORK CITY DEPARTMENT OF BUILDINGS,

Respondents.

FILED

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HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Affirmation in Opposition.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Petitioner Mohammad S. Naz brings the instant petition pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR") seeking to challenge a determination made by respondents Robert D. LiMandri, the Commissioner of the New York City Department of Buildings (the "DOB") and the DOB denying his application for reinstatement of his Special Riggers License ("SRL"). Respondents cross-move to dismiss the petition on the ground that it is time-barred. For the reasons set forth below, the cross-motion to dismiss is granted and the petition is denied.

The relevant facts are as follows. The DOB issued petitioner SRL No. 5437 on July 11, 1991. It was most recently re-issued to petitioner on June 19, 2007 and expired on June 30, 2008. Petitioner failed to renew his SRL within one year of its expiration. By letter dated August 10, 2010, petitioner applied to the DOB for reinstatement of his lapsed SRL (the "Application") and attached a copy of his resume outlining his construction experience. By letter dated August 24, 2010, the DOB notified petitioner that he needed to submit additional documentation to supplement his Application. The letter stated that if during the expiration period, petitioner performed trade work under an active City licensee, he needed to submit a notarized letter from the licensee stating (1) that he or she supervised the petitioner; (2) the petitioner's employment time period; and (3) the work petitioner performed. The letter further stated that the DOB Licensing Unit could not process petitioner's Application without the missing documents.

By letter dated September 28, 2010, the DOB notified petitioner that he had not submitted the additional documents requested and informed petitioner that applicants for reinstatements are required to demonstrate continued competence in the trade pursuant to New York City Administrative Code ("Admin. Code") § 28-401.13. The letter further advised petitioner that he had 60 days from September 28, 2010 to submit the additional documents to complete his Application or the DOB would deem petitioner's Application complete and make a determination based on his current submissions. By letter dated December 2, 2010, the DOB denied petitioner's Application on the ground that petitioner failed to provide adequate documentation to demonstrate that he has been actively involved in the trade since his SRL expired. The letter further stated that petitioner could reapply for an SRL when he meets the

requirements of the Admin. Code.

Over a year later, by letter dated March 30, 2012, petitioner again applied to the DOB for reinstatement of his lapsed SRL (the "Second Application") and attached documentation such as his resume and letters from his supervisors during the time his SRL was expired. By letter dated April 13, 2012, the DOB informed petitioner that pursuant to Admin. Code § 28-401.13, he needed to submit information clearly demonstrating that he was engaged in work in the trade since his SRL expired. The letter further stated that petitioner was missing the following items: a letter from petitioner himself requesting reinstatement of his SRL; a new resume with the correct employment time frame including petitioner's employer(s), the job position(s) he held with each employer, the full dates of his employment and a detailed description of the work he performed; paystubs or W2 statements that support petitioner's work experience under the companies noted in petitioner's Social Security History of Earnings statement for 2008-2011; and a letter from petitioner's supervising licensees regarding the period when petitioner's SRL was expired and the discrepancies in petitioner's resume regarding the periods of his employment. The letter also informed petitioner that he had 60 days from April 13, 2012 to submit the additional requested documentation in order to complete his Second Application or else the DOB would "deem the application for reinstatement complete and make a determination based on [his] current submissions."

In response, petitioner sent the DOB (1) a photocopy of his expired SRL; (2) his resume stating his alleged trade work experience under Professional Enterprises, Mohammad A. Choudary and Naz Reliable Contracting Co, Inc. since the expiration of his SRL; (3) a notarized letter dated May 8, 2012 from Mohammad A. Choudary stating petitioner worked for his

construction company Eagle Construction Co. from approximately September 1, 2010 to August 28, 2011 and listing the same "Suspended Scaffold" work details as the March 22, 2012 letter but claimed that petitioner performed "general construction work," none of which "required any specialized licenses for him"; (4) a notarized letter dated May 5, 2012 from Professional Enterprises Corp., signed by petitioner, indicating petitioner as the owner of the corporation and stating the work petitioner performed for the company from August 29, 2011 to the present; (5) petitioner's Social Security payment history during the 2008-2010 period during which his license was expired but was employed by Naz Reliable Contracting Co, Inc., American Best Travel & Tourism, Inc. and self-employed; (6) petitioner's 2010-2011 1099 Miscellaneous Income forms from Eagle Construction Co.; and (7) petitioner's 2011 W2 statements from Professional Enterprises Corp.

By letter dated July 31, 2012, the DOB denied petitioner's Second Application on the ground that he did not provide adequate documentation to demonstrate that he had been actively involved in the trade since the expiration of his SRL, citing discrepancies in dates and petitioner's lack of seven years of experience. The letter further stated that petitioner may reapply for an SRL at such time as he meets the requirements of the Admin. Code. In response, petitioner submitted a letter to the DOB dated October 2, 2012, requesting reconsideration of his Second Application. By letter dated October 25, 2012, the DOB informed petitioner that it denied his Second Application on July 31, 2012 because of petitioner's failure to demonstrate continued competence in the trade during the period of the expiration of his SRL, which is required under Admin. Code § 28-401.13. The letter again informed petitioner that he could reapply for an SRL at such time as he meets the requirements of the Admin. Code. On December

28, 2012, by Notice of Petition and Verified Petition, petitioner commenced the instant Article 78 proceeding seeking an order reinstating petitioner's SRL.

There is a four month statute of limitations to bring an Article 78 proceeding to challenge an administrative determination that is measured from the date the determination becomes final and binding upon the petitioner. *See* NY CPLR § 217. Agency action is "final and binding upon a petitioner" when the agency has reached a definitive position on the issue that inflicts actual, concrete injury and when the injury inflicted may not be prevented or significantly ameliorated by further administrative action or steps available to the complaining party. *Best Payphones, Inc. v. Department of Information, Technology and Communications of City of New York*, 5 N.Y.3d 30 (2005).

In the instant action, petitioner's petition must be denied on the ground that it is time-barred. The DOB made its final determination denying petitioner's Second Application on July 31, 2012. Allowing five days for mailing, petitioner would have received the letter no later than August 5, 2012. Thus, in order for this Article 78 proceeding to be timely, it must have been commenced no later than December 5, 2012. However, petitioner did not commence the instant proceeding until December 28, 2012, almost a month after the statute of limitations expired. Thus, the petition must be denied.

Petitioner's assertion that its October 2, 2012 letter to the DOB requesting reconsideration of the DOB's denial of petitioner's application for reinstatement and the DOB's October 25, 2012 response to such letter extends the four month statute of limitations is without merit. It is well-settled that neither inquiries regarding a final determination nor requests for reconsideration of a final determination extend the applicable statute of limitations. *See De Milio v. Borghard*, 55 N.Y.2d 216 (1982); *see also Matter of Mazzilli v. New York City Fire Dept.*, 224

A.D.2d 621 (2d Dept 1996)(holding that “[a]n application for reconsideration will not extend or toll the applicable Statute of Limitations.”)

Accordingly, respondent’s cross-motion to dismiss the petition is granted and the petition is denied. The petition is hereby dismissed in its entirety. This constitutes the decision and order of the court.

Dated: 4/1/13

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