

**Patel v New York City Dept. of Consumer & Worker
Protection**

2026 NY Slip Op 31075(U)

March 19, 2026

Supreme Court, New York County

Docket Number: Index No. 158143/2025

Judge: Phaedra F. Perry-Bond

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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. PHAEDRA F. PERRY PART 35

Justice

-----X

JYOSTNABEN M PATEL

Plaintiff,

- v -

NEW YORK CITY DEPARTMENT OF CONSUMER AND
WORKER PROTECTION,

Defendant.

-----X

INDEX NO. 158143/2025

MOTION DATE 06/26/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

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

Petitioner, Jyostnaben M. Patel (Petitioner) files this Article 78 seeking to annul and reverse the March 14, 2025, determination of the New York City Department of Consumer and Worker Protection (DCWP) denying her a tobacco and electronic cigarette license. For the reasons discussed, the Petition is denied.

BACKGROUND

On November 13, 2024, Petitioner applied for a Newsstand License and on November 19, 2024, Petitioner applied for and was assigned an Employer Identification Number (EIN) by the Internal Revenue Service. On December 5, 2024, DCWP issued said Newsstand license. On December 26, 2024, The New York State Department of Tax and Finance issued Petitioner a Certificate of Authority, permitting Petitioner to collect sales taxes under New York State Tax Law.

On or about January 3, 2025, Petitioner filed for a New York State Retail Dealer Certificate of Registration for Cigarettes and Tobacco Products as well as the Retail Dealer

Certificate of Registration for Vapor Products. Each Certificate is a prerequisite to obtain the NYC counter license.

On January 24, 2025, the state licenses were issued to Petitioner, who then filed for the NYC DCWP licenses for Electronic Cigarettes and Tobacco on January 27, 2025. Petitioner's manager submitted a letter to DCWP Business Compliance Counsel explaining the delays in the application process which resulted in the application being filed twenty-two days late. DCWP denied the licenses on March 14, 2025, stating that the applications were submitted "outside of 30 days range required by law." The Petitioner's requested consideration by letter dated March 4, 2025, citing medical issues with Petitioner's husband being diagnosed with cancer and undergoing surgery around that time, as well as delays with state documents. That reconsideration was denied by DCWP. By Notice of Petition and Verified Petition dated June 20, 2025, Petitioner brought the instant proceeding seeking reversal of DCWP's denial of the Tobacco Retail Dealer License (TRD License) and Electronic Cigarette Dealer License (ECD License) to the Petitioner.

DISCUSSION

Petitioner argues that denial by DCWP was arbitrary, capricious and contrary to law and not based upon a reasonable basis. Petitioner concedes that the application was past the 30-day requirement but cites her husband's medical issues as well as delays with the state documents as the reasons for the late filing.

DCWP argues that their determination, denying Petitioner's applications for TRD and ECD Licenses, were reasonable and rational and made in accordance with relevant law and agency rules. They contend that Petitioner's application was received after the 30 days of the change or transfer of ownership and therefore the denial was proper.

ANAYLSIS

In the context of Article 78 proceedings, courts have held that "a reviewing court is not entitled to interfere in the exercise of discretion by an administrative agency unless there is no rational basis for the exercise, or the action complained of is arbitrary and capricious." (*Matter of Soho Alliance v New York State Liquor Authority*, 32 AD3d 363, [1st Dept 2006], citing to *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 N.Y.2d 222, (1974)) ("[r]ationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard."). "The arbitrary or capricious test chiefly 'relates to whether a particular action should have been taken or is justified ... and whether the administrative action is without foundation in fact.' Arbitrary action is without sound basis in reason and is generally taken without regard to facts." (*Pell*, 34 N.Y.2d at 231 (internal citations omitted)). Moreover, "[a]n agency's interpretation of its own regulations is entitled to deference if that interpretation is not irrational or unreasonable [internal quotation marks and citations omitted]." (*Matter of IG Second Generation Partners Tr. P. v New York State Div. of Hous. and Community Renewal, Off. of Rent Admin.*, 10 NY3d 474, (2008).

AC §20-202(e)(4)(B) & 20-561(e)(3)(B) provide that when a business whose owner hold a TRD and/or ECD License sells the business, the succeeding owner may apply for a TRD and/or ECD License for the same location under the community district retail dealer exceptions, as long as the selling business owner was in good standing at the time of sale and the succeeding business owner's application(s) is received within 30 days of the sale. In this case, Petitioner's application was not received until 46 days after the License was issued.

While this Court is sympathetic to Petitioner’s husband’s medical issues and any role it contributed to any delay, this Court does not find DCWP’s determination arbitrary, capricious, irrational or unreasonable.

Accordingly, it is

ORDERED that the Petition is denied and dismissed in its entirety, and it is further

ORDERED that within ten days of entry, counsel for Petitioner shall serve a copy of this Decision and Order, with notice of entry, on Respondent, DCWP, via NYSCEF.

This constitutes the Decision and Order of the Court.

3/19/26
DATE


HON. PHAEDRA F. PERRY-BOND, 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
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
		<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input type="checkbox"/>	OTHER
		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: