

**Matter of Cambridge v Commissioner of New York  
City Department of Buildings**

2003 NY Slip Op 30124(U)

December 12, 2003

Supreme Court, New York County

Docket Number: 0123640/2002

Judge: Michael D. Stallman

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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: HON. MICHAEL D. STALLMAN  
Justice

PART 5

Cambridge, Michael

INDEX NO. 123640/02

MOTION DATE 5/7/03

MOTION SEQ. NO. 002

MOTION CAL. I Art 78

Commsr of the NYC Dept

The following papers, numbered 1 to 3 were read on this motion to/for

Notice of Motion/ Order to Show Cause - Affidavits - Exhibits ...

, Answering Affidavits - Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

SCANNED	
PAPERS NUMBERED	DATE
<u>1</u>	<u>DEC 17 2003</u>
<u>2</u>	_____
<u>3</u>	_____

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

*"is determined in accordance with the annexed memorandum decision and order."* judgment

Dated: 12/12/03

[Signature]  
J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION  
MICHAEL D. STALLMAN

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: I.A.S. PART 5**

..... X  
In the Matter of the Application of MICHAEL CAMBRIDGE

Index No. 123640/02

Petitioner,

**Decision. Order and  
Judgment**

For a Judgment Under Article 78 of the Civil Practice  
Law and Rules

- against -

Commissioner of the New York City Department of Buildings  
and New York City Department of Buildings,

Respondents.

..... X  
**HON. MICHAEL D. STALLMAN, J:**

Petitioner brings this Article 78 proceeding to annul and vacate the determination of the respondent New York City Department of Buildings, dated July 1, 2002, which denied Cambridge a master electrician’s license on the ground that he lacked good moral character.

The Electrical Code of the City of New York (§§ 27-3001 to 27-3308) provides that an applicant for a master electrician’s license must be over the age of 18 years, of good moral character, and at the time of applying for the written and practical examination, have at least seven and one-half years of experience in the installation, alteration, and repair, of wiring and appliances, for electric light, heat, and power, in or on buildings (Administrative Code § 27-3010).

Pursuant to Administrative Code § 27-3009, the Commissioner of the Department of Buildings is empowered to appoint an Electrical License Board, whose functions include investigating the character and fitness of each applicant for a master electrician’s license. That section also provides that “[the board] shall keep minutes of its proceedings and hearings and records of its investigations and examinations of applicants for licenses \* \* \* .”

Petitioner alleges that, in 1990, at the age of 21, he began to work as a “helper/apprentice” for George Green, a licensed electrician, who was also petitioner’s godfather. Petitioner alleges that he continued working for Green, learning and performing the electrician’s trade on behalf of Green; in 1997, when Green incorporated his business, petitioner became an employee of Green’s corporation, Green’s Electric Service, Inc. Petitioner alleges that, during the years he worked for Green, he was paid wages based on the hours that he worked, and his sole source of income consisted of these wages. Green’s accountant issued Cambridge a 1099 tax form, which is ordinarily used for a subcontractor, rather than a **W-2** form, ordinarily issued to an employee. Petitioner did not question or challenge the accountant’s decision, which had been made for the benefit of Green, and petitioner thereafter filed his taxes as if he had been working on his own. However, Cambridge alleges that he never held himself out as a subcontractor, licensee, or licensed electrician. He was always an apprentice, or a journeyman, and always worked under the direction of Green. After 1997, when Green incorporated, petitioner filed his taxes as an employee.

By application dated March 17, 2000, petitioner applied to the Department of Citywide Administrative Services (DCAS) to sit for the exam required for a license to perform electrical work in New York City. Petitioner passed both the written and practical portions of the examination. Thereafter, petitioner received notification from the City of New York that he had passed the examination. Petitioner then applied to the Department of Buildings, Bureau of Electrical Control for a master electrician’s license.

On June 3, 2002, petitioner appeared before members of the Electrical License Board of the City of New York for a hearing on his application. The transcript of that hearing indicates that the Electrical License Board questioned petitioner as to why he had filed “Schedule C” tax forms with

the Internal Revenue Service, from 1991 through 1996, which indicated that he was the sole proprietor of a business. On those forms, petitioner listed his principal business or profession as “Electrician.”

One of the board members stated, on the record, as follows:

[The Electrical Code] requires that an applicant work for a licensed electrician for seven and a half years immediately preceding his or her application. This electrical experience must be under the supervision of a licensee. It’s debatable in your case as to whether you have this experience, but leaving that aside for the moment, the Code also requires that an applicant be of good moral character. This means that you must conduct yourself in a way that’s appropriate for a licensee. One of the requirements or one of the touchstones of appropriate conduct for a licensed Master Electrician is that they follow the provisions of the New York City Electrical Code. This requires several things which are relevant here. It requires that no person do electrical work or conduct an electrical business without a license. It requires that no one can operate or conduct an electrical firm unless they have a license. It also requires that no one represent themselves to the world as if they’re an electrician when they’re not. We have some filings before a federal agency in which you identify yourself as owning a sole proprietorship with a business that you identify as an electrical business. \* \* \* **You have paperwork indicating that there’s a sole proprietorship doing electrical work without an electrical license. You’ve stated you’ve been doing this work under the supervision of a licensee, but that’s not clear** (emphasis added).

Thus, because petitioner wrote on his ~~tax~~ form that his “principal business or service” was “electrician,” the board assumed that he had operated an unlicensed electrical contracting business.

Following the hearing, Cambridge submitted three letters to explain the circumstances surrounding his employment through 1996. By letter dated June 5, 2002, Guy J. Sima, Cambridge’s accountant, indicated that Cambridge’s designation of himself as an electrician, on his Schedule C, was not a misrepresentation of his occupation, since the Internal Revenue Service does not distinguish between licensed and unlicensed electricians. By letter dated June 7, 2002, Larry Brown, the accountant for Green Electrical indicated that, during the period 1991-1996, Mr. Green had an average of two to three employees. These employees worked irregular weekly hours and were all

paid at a flat hourly rate. At the convenience of the employer, no taxes were withheld because of the employees' irregular hours. By letter dated June 6, 2002, Vivian Green, Mr. Green's wife, advised the board that her husband had suffered a stroke, but that Green wished to state that he had reported Cambridge's income as 1099 income on the advice of his accountant.

Despite these submissions, by letter dated July 1, 2002, the Department of Buildings denied Cambridge's application for a license. In relevant part, the letter states as follows:

A review of the testimony and documentary evidence demonstrates that for at least six of the years prior to the date of your application, you were a principal of a company that engaged in the installation, alteration or repair of wiring or appliances for electric light, heat or power within the City of New York without a license. Said evidence also indicates you represented yourself to the federal government, in your tax forms, as the sole proprietor for an electrical contracting company. This is all in direct violation of section 27-3017 of the Electrical Code. Thus pursuant to section 27-3010, your application is denied for want of good moral character.

As to the letter submitted by Mr. Sima, the letter continued:

As noted above, Mr. Sima has argued that (i) he was the person who listed "electrician" as your occupation on your Schedule forms; and (ii) the I.R.S. does not distinguish between licensed and unlicensed electricians and, therefore, you did not make any misrepresentations to the federal government. As an initial matter, the claim that Mr. Sima was the person who prepared your tax forms is both unsubstantiated and irrelevant. Neither Mr. Sima's signature nor a statement acknowledging Mr. Sima's preparation of the documents can be found on any of the forms which you have signed and submitted. Thus, his allegation that he prepared your taxes is, at best, suspect.

This Court notes that tax forms submitted by the respondents (Exhibit D) do, in fact, list Guy J. Sima, CPA, as the preparer for the years 1994-1996.

It appears that the sole piece of evidence that the board had, as to whether Cambridge held himself out as a licensed electrician, was his designation of his occupation on his tax forms as "electrician." There was no evidence to support respondents' conclusion that he was the "principal of a company" or that he represented himself to have been "the sole proprietor of an electrical

contracting company.” The board did not address the tax preparer’s assertion that the I.R.S. makes no distinction between an apprentice or journeyman electrician, and a licensed electrician. Further, there was absolutely no evidence presented to the board that petitioner either solicited work, estimated jobs, maintained a place of business, provided materials, or worked in any way inconsistent with that of an employee of Green’s Electrical Service. There was no conflicting evidence indicating that petitioner lacked the requisite seven and one-half years experience necessary for his electrician’s license. Neither was there evidence that petitioner lacked good moral character.

In sum, the Electrical License Board’s and respondents’ determination lacked a sufficient evidentiary foundation, and was therefore arbitrary and capricious (see Sullivan v Miele, 226 AD2d 308 [1<sup>st</sup> Dept. 1996]).

Accordingly, based upon the foregoing, it is

**ORDERED** that the petition is granted, and respondents’ determination, dated July 1, 2002, which denied petitioner’s application for a license as a master electrician is annulled, and the matter remanded to respondents, who are directed to grant petitioner’s application.

This constitutes the decision, order and judgment of the Court.

**Dated: December 12, 2003**

**ENTER**

  
\_\_\_\_\_  
J.S.C.