

Matter of Martin v City of New York

2003 NY Slip Op 30201(U)

December 18, 2003

Supreme Court, New York County

Docket Number: 111402103

Judge: Eileen Bransten

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

DECEMBER. **EILEEN BRANSTEN**
J.S.C.

0111402/2003

PART 6

MARTIN, JOHN
VS
CITY OF NEW YORK

INDEX NO, 111402/03

MOTION DATE 10-7-03

MOTION SEQ. NO, 01

MOTION CAL. NO. 10

SCANNED
JAN 06 2004

SEQ 1
ARTICLE 78

The following papers, numbered 1 to 3 were read on this ^{petition} motion to/for direct issuance of license.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1</u>
Answering Affidavits — Exhibits _____	<u>2</u>
Replying Affidavits _____	<u>3</u>

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ~~motion~~ ^{proceeding}

**IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM**

MOTION/CASE IS RESPECTFULLY REFERRED TO
JUSTICE

Dated: Dec 18, 2003 Eileen Bransten
EILEEN BRANSTEN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART SIX

----- X
In the Matter of the Application of JOHN MARTIN,

Petitioner,

Index No.: 11 1402103

Motion Date: 1017103

For a Judgment under Article 78 of the Civil Practice
Law and Rules directing the Respondent to Issue a
Master Plumber’s License to Petitioner, Under Title 26,
Administrative Code of the City of New York,

Mot. Seq. No.: 01

Mot. Cal. No.: 10

-against-

THE CITY OF NEW YORK,

Respondent.

-----X
P R E S E N T: EILEEN BRANSTEN, J.

In this Article 78 proceeding, petitioner John Martin (“Mr. Martin”) seeks an order directing respondent the City of New York (“City”) to issue him a master plumber’s license.

Background

On June 21, 2001, Mr. Martin completed an “Application for License Examination For: Master Plumber.” Verified Answer, Ex. B. On his application, under the heading “Experience,” Mr. Martin listed that from May 1996 to the present (for a period totaling a little over five years) he was employed at Valley Construction Services, Inc. as “President.” *Id.* For that period of employment there is no indication of his employer’s master plumber’s license number. His application further stated that from January 1998 to the present his employer was Gustave M. Menocal, license number 1633. A description of work performed

with Menocal stated that “under a business arrangement Gustave Menocal and I have performed plumbing repairs, alterations, and installations together for Valley Construction Services, Inc.” *Id.* The application unambiguously required attachment of “a W-2 form for each employer listed.” Mr. Martin only provided W-2’s for his employment with Valley Construction Services, Inc. *Id.*, Ex. C

Mr. Martin also demonstrated in his application that he had a Bachelor’s Degree in Technology. *Id.*

After receiving the application, an investigation was conducted by the Office of Investigations and Discipline. A Senior Investigator found that Mr. Martin was not qualified to become a licensed Master Plumber. Specifically, the investigator found that Mr. Martin “does not have the 7 years experience in the design and installation of plumbing systems * * * because he never worked under the direct employ or supervision of a Licensed Master Plumber” in New York City. *Id.*, at Ex. D. The Senior Investigator’s report stated that:

“On March 24, 2003, I spoke with Mr. Martin and he informed me that he does not have any W-2’s to prove that he worked under the direct employ and supervision of a licensed plumber. Mr. Martin said that he would do plumbing work on jobs he would get and then he would pay Mr. Menocal per job for his services * * *. They have had this relationship for the past 5 years. Although he indicated a Licensed Master Plumber #1633--Gustave Menocal on his license application, Mr. Martin never actually worked for him.” *Id.*

In April 2003, Mr. Martin was informed that the Deputy Commissioner had marked him “not qualified for the * * * license, for failure to meet the experience requirements.” *id.*,

Ex. E. Mr. Martin promptly sought administrative reversal of the determination arguing that he had a bachelor's degree and at least three years of experience working "under the guidance and supervision of Gus Menocal for the past four years." *Id.*, Ex. F.

With regard to Mr. Martin's application for reconsideration, the Assistant Commissioner of the Office of Investigations and Discipline wrote the Deputy Commissioner of the Department of Citywide Administrative Services that "Mr. Martin is not qualified for a Master Plumber's License because he does not have three years paid experience with a licensed plumber. * * * In the future, Mr. Martin may only be considered for a plumbing license providing that he has paid plumbing experience with a licensed master plumber." *Id.*, at Ex. G.

Again, Mr. Martin's application was denied and again he sought reversal. Mr. Martin argued that the executive agency

"arbitrarily and capriciously set the requirements at three years paid experience with a master plumber. While your regulations does [*sic.*]not limit the underlined requirement, you have imposed it as the only method of meeting this requirement on Mr. Martin (or any other applicant). This amounts to involuntary servitude, and has no rational basis for sole qualification. Mr. Martin has worked under the guidance and supervision of Gus Menocal (Master Plumber #1633) for the past four years." *Id.*, **Ex. H.**

For a third time, Mr. Martin was informed that he was not qualified.

Mr. Martin next commenced this Article 78 proceeding, seeking an order directing the City to issue him a Master Plumber License. Mr. Martin urges that he has had at least seven

years of experience in the design and installation of plumbing systems as he has performed maintenance, repairs, work on fixtures, retiling, bowl replacements, and other work since 1982. Pctition, at ¶ 6. That experience, he argues, along with his degree, entitles him to a master plumber license,

Mr. Martin further maintains that he worked with Gus Menocal, a licensed plumber, “under joint venture agreements” since 1998. *Id.*, at ¶ 5. Therefore, he urges that he has “more than met the requirements * * * and respondent should be directed to issue its’ Master Plumber’s License to [him] forthwith.” *Id.*, at ¶ 8; see *also*, Reply, at ¶ 7.

Mr. Martin relies on an affidavit from Gustavc M. Menocal, which had been provided to the City. Mr. Menocal states that:

“Valley Construction Services, Inc. has contracted with my company to do plumbing work on various jobs since 1998. In each instance, John Martin and I have worked along side each other to perform the necessary plumbing work. I find John Martin’s work to be exemplary, safe and professional in all aspects.” Pctition, Exhibit.

The City opposes the petition, arguing that its determination to deny the license has a rational basis. Verified Answer, at ¶ 41. The City contends that its regulations establish a requirement of direct employment with a Master Plumber as a prerequisite for obtaining a license. Because no such employment ever existed, the City asserts that the application was properly denied. *Id.*, at ¶¶ 42-43. Additionally, the City sets forth that its investigation revealed that his arrangement with Menocal did not satisfy its requirements. *Id.*, at ¶ 48. The

City also argues that Mr. Martin's application revealed that he had been operating his own unlicensed plumbing business.

This Court agrees that a rational basis supports the City's determination, and therefore, the petition is denied.

Analysis

It is well-settled that the standard for judicial review of an administrative determination pursuant to CPLR Article 78 is limited to inquiry into whether the agency acted arbitrarily or capriciously—without any sound basis in reason. *Mutter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 231-232 (1974); *see also, Matter of Arrocha v. Board of Educ.*, 93 N.Y.2d 361, 363 (1999). Judicial review is not intended to weigh the merits of competing professional opinions because doing so undermines the function, authority and expertise of administrative agencies. *See, Matter of Arrocha v. Board of Educ.*, *supra*, 93 N.Y.2d, at 363. Provided there is some--indeed, any--rational basis or credible evidence to support an administrative determination, the agency's decision must be upheld. *See, Mutter of Pell v. Board of Educ.*, *supra*, 34 N.Y.2d, at 231; *Matter of Guzman v. Safir*, 293 A.D.2d 281 (1st Dep't 2002) (determination was not arbitrary and capricious "because there was some credible evidence to support the Board's conclusion"), *iv. denied* 98 N.Y.2d 614 (2002); *Rheingold v. Koch*, 111 A.D.2d 688,691 (1st Dep't 1985), *aff'd* 66 N.Y.2d 994 (1985).

It is equally well-settled--indeed beyond cavil--that the construction given to regulations by the agency responsible for their administration “if not irrational or unreasonable, should be upheld.” *Rheingold v. Koch, supra*, 111 A.D.2d, at 690.

New York City Administrative Code § 26-142 prohibits performing plumbing work in New York City unless an individual is either a licensed master plumber or is “under the direct and continuing supervision of a licensed master plumber.” **See**, Administrative Code of City of New York §26-142(a) and (c). Section 26-141 further makes clear that “direct and continuing supervision” means that the person performing the work must be in the “direct employ” of a master plumber and that “employment shall be evidenced by payroll records such as social security payments, income tax withholding or the disbursement of other funds as required by law for the benefit of such employee.” Administrative Code of City of New York § 26-141(c) and (d).

Moreover, to qualify for a master plumber certificate, an applicant must “submit satisfactory proof establishing:”

“at least seven years’ prior experience in the design and installation of plumbing systems in the United States; or * * * a bachelor’s degree in engineering or appropriate engineering technology from a college or university registered by the state department of education and * * * at least three years’ prior experience in the design and installation of plumbing systems in the United States.” Administrative Code of City of New York § 26-146(a).

The City argues that the Administrative Code makes it illegal to perform plumbing work in the City unless one is licensed or employed by someone who is licensed. Verified Answer, at ¶¶ 42-43. Thus, the City requires that the “experience” necessary to obtain a master plumber certificate (be it seven years, or three years accompanied by a bachelor’s degree) must be comprised of work performed in the direct employ of a master plumber. This interpretation of the Administrative Code’s regulations, which are administered by the City, is rational and is entitled to great deference.

In *Rheingold v. Koch, supra*, 111 A.D.2d 688, the Appellate Division, First Department dealt with almost the identical issue. The *Rheingold* Court held that the City’s interpretation of “experience in the design and/or installation of plumbing systems” as requiring “direct supervision” of a master plumber was not irrational. The Court explained that the City regulations mandating supervision by a master plumber and those related to licensure were properly interpreted in conjunction with one another and that a narrow construction of “experience” was preferable because:

“it effectuates the purpose underlying the licensing statute and regulatory requirements in the plumbing trade, public health and safety. Plumbers’ responsibilities have an impact upon public health and safety since they include the installation of gas piping, connections to the potable water supply and connections to the sewers.

“Reading the master plumber supervision requirement * * * into the experience requirement furthermore is consonant with [the City’s] duty to guard against licensure of incompetent and unfit individuals. Considerations

of public policy concerning the use of unlawfully obtained work experience also support [the City's] interpretation." *Id.*, at 690; *cf.*, *Gristina v. Smith*, 177 A.D.2d 388,388 (1st Dep't 1991).

The City's interpretation of the Administrative Code here must be upheld. The City determined based on the evidence before it that Mr. Martin had never been in the direct employ of a master plumber, and therefore, that he did not meet the requirements for certification. Because Mr. Martin failed to establish qualifying experience for purposes of satisfying the requirements of section 26-146(a) of the City Administrative Code the City's decision not to grant him a master plumber certificate was rational

Accordingly, it is ORDERED and ADJUDGED that the petition is denied and the proceeding is dismissed.

This constitutes the Decision, Order and Judgment of the Court.

Dated: New York, New York
December 18, 2003

ENTER:



Hon. Eileen Bransten