

**Matter of Alexandre v New York City Taxi and
Limousine Commission**

2006 NY Slip Op 30429(U)

December 19, 2006

Supreme Court, New York County

Docket Number: 117477/06

Judge: Carol R. Edmead

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

PRESENT: HON. CAROL EDMEAD
Justice

PART 35

Jean Marie Alexandre

INDEX NO. 117477/06

NYC Taxi & Limousine
Commission

MOTION DATE 12/18/06

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

This motion is decided in accordance with the accompanying Memorandum Decision. It is hereby ordered that this motion

FILED
DEC 28 2006
NEW YORK
COUNTY CLERK'S OFFICE

ORDERED that the motion of petitioner Jean Marie Alexandre, for an order, pursuant to CPLR Article 78, reversing the determination of the respondent the New York City Taxi and Limousine Commission (the "TLC"), to deny renewal of the taxi license of the petitioner, is denied. It is further

ORDERED that the motion of respondent New York City Taxi and Limousine Commission, for an order dismissing the Petition in its entirety pursuant to CPLR 3211(a)(7), is granted and the within Petition is dismissed. It is further

ORDERED that counsel for respondent shall serve a copy of this order with notice of entry within twenty days of entry on counsel for petitioner.

Dated: [Signature] 12/19/06
HON. CAROL EDMEAD J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

_____ x
In the Matter of the Application of

JEAN MARIE ALEXANDRE

Index No. 117477/06

Petitioner,

DECISION/ORDER

For a Judgment pursuant to
CPLR Article 78

-against-

THE NEW YORK CITY TAXI AND
LIMOUSINE COMMISSION,

Respondent.

_____ x
EDMEAD, J.S.C.

MEMORANDUM DECISION

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Petitioner Jean Marie Alexandre ("petitioner") moves for an order, pursuant to CPLR Article 78, reversing the determination of the respondent the New York City Taxi and Limousine Commission (the "TLC"), to deny renewal of the taxi license of the petitioner, based on the fact that he took a drug test several days too early.

Respondent New York City Taxi and Limousine Commission cross moves for an order dismissing the Petition in its entirety pursuant to CPLR 3211(a)(7), on the grounds that the petitioner fails to state a cause of action against the TLC.

Petitioner's Contentions

At some time during the past year, the TLC decided to change the requirements regarding renewal of the licensing of taxi drivers. Allegedly, the TLC sent notices so advising taxi drivers. The notice stated in part: "You must be tested no sooner than thirty (30) days prior to, and no

later than, the expiration of your current license....Failure of a licensee to be tested by the expiration date of his...license shall result in denial of a license renewal application, if any, and expiration of the license.”

Petitioner’s taxi license expired on October 29, 2006, and he took the test on September 20, 2006. The TLC sent a letter to petitioner on October 10, 2006 advising him that he took his test too soon. However, petitioner argues that he never received the letter. Petitioner has taken the test approximately the same time every year: 9/12/02, 9/23/03, 9/20/04 and 9/07/05.

Petitioner argues that he was unaware of any rule change regarding when he should take the drug test and was not aware of any letter being mailed to him. And, the drug testing company should have advised petitioner that he was taking the test too soon.

Respondent’s Contentions

According to petitioner, he submitted a urine specimen to LabCorp, TLC’s designated drug testing facility, more than thirty days before the expiration of his TLC license. A license renewal packet was sent to petitioner by TLC on July 18, 2006 at 12 Monticello Avenue, Newark, NJ 07106, which is the mailing address petitioner provided to TLC. Included with the license renewal packet was a notice advising licensees of the changes in 35 RCNY 2-19 regarding drug testing requirements. 35 RCNY 2-19 was promulgated pursuant to the City Administrative Procedure Act (“CAPA”).

By letter dated October 10, 2006, TLC informed petitioner that he took his drug test earlier than the prescribed time period set forth in TLC’s rules and that if he failed to take a drug test within the prescribed time in TLC’s rules, his license would not be renewed.

On or about October 18, 2006, TLC received petitioner’s renewal packet. Petitioner

failed to submit a urine specimen to LabCorp within thirty days of the expiration of his license.

Consequently, TLC did not renew petitioner's license.

*Petitioner's Opposition to Cross Motion
and Reply*

The notice under 2-19(b)(4) fails to advise what happens if a driver takes the test prior to the expiration date. This is a clear case of lack of sufficient notice to reasonably advise petitioner that his license was in jeopardy.

Further, although 35 RCNY Sec. 2-16 may state that any notice "from the Commission shall be deemed sufficient if sent to the mailing address furnished by the driver," there is no guarantee that the driver shall receive such notice. Petitioner did not receive said notice, and was unaware of the change in policy.

Respondent's Reply

Petitioner's argument that having a property right in a taxi license is a clear and absolute right to drive and that gives him entitlement to demand that his license be renewed is incorrect. However, issuance of a taxi license is discretionary in nature and petitioner has no entitlement to renewal.

The relief sought by petitioner would require the court to ignore lawfully established TLC rules, and to oversee TLC's discretionary acts.

Analysis

CPLR 7803 states that the court review of a determination of an agency, such as the TLC, consists of whether the determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including

abuse of discretion as to the measure or mode of penalty imposed. CPLR 7803(3) (*see Windsor Place Corp. v New York State DHCR*, 161 A.D.2d 279 [1st Dept.1990]; *Mazel v DHCR*, 138 A.D.2d 600 [1st Dept.1988]; *Bambeck v DHCR*, 129 A.D.2d 51 [1st Dept.1987], *lv. den.* 70 N.Y.2d 615 [1988]). An action is arbitrary and capricious, or an abuse of discretion, when the action is taken "without sound basis in reason and ... without regard to the facts." *Matter of Pell v Board of Education*, 34 N.Y.2d 222, 231(1974). Rationality is the key in determining whether an action is arbitrary and capricious or an abuse of discretion. *Matter of Pell v Board of Education*, 34 N.Y.2d, at 231. The court's function is completed on finding that a rational basis supports the TLC's determination (*see Howard v Wyman*, 28 N.Y.2d 434 [1971]). Where the agency's interpretation is founded on a rational basis, that interpretation should be affirmed even if the court might have come to a different conclusion (*see Mid-State Management Corp. v New York City Conciliation and Appeals Board*, 112 A.D.2d 72 [1st Dept.], *aff'd* 66 N.Y.2d 1032 [1985]).

Pell v Board of Ed. of Union Free School Dist. No...., 356 N.Y.S.2d 833

N.Y. 1974, is instructive on the basic standard of Article 78 review:

In article 78 proceedings: 'the doctrine is well settled, that neither the Appellate Division nor the Court of Appeals has power to upset the determination of an administrative tribunal on a question of fact; 'the courts have no right to review the facts generally as to weight of evidence, beyond seeing to it that there is 'substantial evidence. "' (Cohen and Karger, Powers of the New York Court of Appeals, s 108, p. 460; 1 N.Y.Jur., Administrative Law, ss 177, 185; see *Matter of Halloran v. Kirwan*, 28 N.Y.2d 689, 690, 320 N.Y.S.2d 742, 743, 269 N.E.2d 403 (dissenting opn. of Breitel, J.)). 'The approach is the same when the issue concerns the exercise of discretion by the administrative tribunals. The courts cannot interfere unless there is no rational basis for the exercise of discretion or the action complained of is 'arbitrary and capricious.'" (Cohen and Karger, Powers of the New York Court of Appeals, pp. 460--461; see, also, 8 Weinstein-Korn-Miller, N.Y.Civ.Prac., par. 7803.04 Et seq.; 1 N.Y.Jur., Administrative Law, ss 177, 184; *Matter of Colton v. Berman*, 21 N.Y.2d 322, 329, 287 N.Y.S.2d 647, 650--651, 234 N.E.2d 679, 681--682).

Pell at 839.

On judicial review of an agency action under CPLR Article 78, the courts must uphold the agency's exercise of discretion unless it has "no rational basis" or the action is "arbitrary and capricious." *Pell v Board of Ed. Union Free School District*, 34 NY2d 222, 230-31, 356 NYS2d 833, 839 (1974) "The arbitrary and 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 the facts." 34 NY2d at 231, 356 NYS2d at 839 *See also Jackson v New York State Urban Dev Corp.*, 67 NY2d 400, 417, 503 NYS2d 298, 305 (1986) (on review of agency action under CPLR Article 78, the courts may not "second guess the agency's choice, which can be annulled only if arbitrary, capricious or unsupported by substantial evidence").

In the instant case, petitioner cannot establish that the TLC had either a legally imposed duty to renew his license nor that he had an absolute right prevent the TLC from enforcing its rules concerning licensing renewals.

Further the TLC properly relied on the mailing address provided by petitioner to mail his renewal documents. And, claiming that mail sent was not received is in and of itself unavailing.

Conclusion

Based on the foregoing, it is hereby

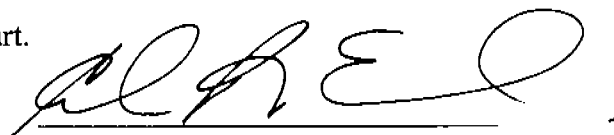
ORDERED that the motion of petitioner Jean Marie Alexandre, for an order, pursuant to CPLR Article 78, reversing the determination of the respondent the New York City Taxi and Limousine Commission (the "TLC"), to deny renewal of the taxi license of the petitioner, is denied. It is further

ORDERED that the motion of respondent New York City Taxi and Limousine Commission, for an order dismissing the Petition in its entirety pursuant to CPLR 3211(a)(7), is granted and the within Petition is dismissed. It is further

ORDERED that counsel for respondent shall serve a copy of this order with notice of entry within twenty days of entry on counsel for petitioner.

This constitutes the decision and order of this court.

Dated: New York, New York
December 19, 2006



Carol Robinson Edmead

HON. CAROL EDMEAD

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