

**Matter of Furina v Waterfront Comm. of N.Y.
Harbor**

2007 NY Slip Op 31951(U)

June 22, 2007

Supreme Court, New York County

Docket Number: 0104388/2007

Judge: Shirley W. Kornreich

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

HON. SHIRLEY WERNER KORNREICH

Index Number : 104388/2007

PART 54

FURINA, ANTHONY, SR.

vs

WATERFRONT COMMISSION OF NEW

INDEX NO.

104388/2007

MOTION DATE

6/4/07

Sequence Number : 001

MOTION SEQ. NO.

001

ARTICLE 78

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

1

2

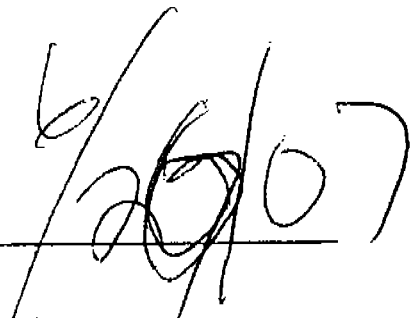
Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

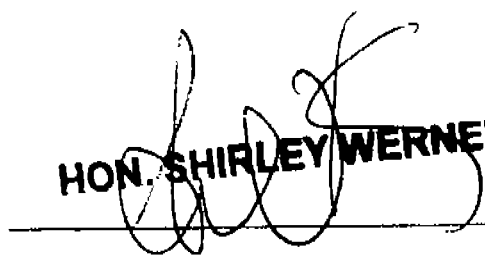
UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Office (Room 141B).

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION AND ORDER.

Dated: _____



HON. SHIRLEY WERNER KORNREICH



J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

-----X
In the Matter of the Application of Anthony Furina, Sr.,

Petitioner,

For a Judgment Pursuant to Article 78 of the Civil
Practice Law and Rules,

-against-

**DECISION
ORDER
and
JUDGMENT**

The Waterfront Commission of New York Harbor,
Michael Axelrod as Commissioner of The Waterfront
Commission of New York Harbor, Michael Madonna
as Commissioner of The Waterfront Commission of
New York Harbor, Jeffrey R. Schoen, as Assistant
Director of Licensing & E.I.C. of The Waterfront
Commission of New York Harbor,

Respondents.

-----X
KORNREICH, SHIRLEY WERNER, J.:

Petitioner brings this Article 78 proceeding challenging the termination of his employment as Processor Foreman in New York Harbor. Since 1979, petitioner, Anthony Furina, was registered by respondent Waterfront Commission of New York Harbor ("WC") as a "Special Craft" longshoreman, and was employed by different companies as the result of successive ownership changes. Furina claims that WC arbitrarily and capriciously revoked his registration to work at the harbor. WC contends that it revoked Furina's registration after discovering that he was no longer working in the capacity for which he was originally registered. Moreover, the WC claims that it had no jurisdiction to maintain Furina's registration, since Furina's employer, P&O Ports ("P&O"), withdrew its sponsorship of Furina.

I. Facts

Petitioner worked for almost thirty years as a mechanic, or “Processor Foreman,” under a “Special Craft” longshoreman’s registration with the Waterfront Commission of New York Harbor. According to an “Employer Certification Concerning Need for Persons Having Specialized Skills,” submitted to the Commission on March 27, 1984, a Processor Foreman

“instructs men assigned to him in processing and placing all military vehicles in their assigned areas. In general, the processing consists of draining the fuel tanks, disconnecting batteries and performing specialized preservative procedures to safeguard the individual units. The reverse procedures are followed in processing vehicles from vessels including fueling, starting & effecting minor mechanical repairs as required.” (Respondent’s Exhibit 3).

On November 17, 2006, Jeffrey Schoen, Assistant Director of Licensing & EIC with WC, notified P&O Ports that “[b]ased upon information received ..., including [P&O’s] letter dated August 22, 2006, and an interview with Mr. Furina on October 5, 2006, it is apparent that Mr. Furina is **no longer working in the capacity for which he was registered.**” (emphasis in original). The letter explained that P&O did not handle military vehicles and that Furina’s responsibilities consisted primarily of “lashing and processing” and “deciding which cars are to be towed onto ships and which ones are driven on.” (Respondent’s Exhibit 3). According to Furina, P&O notified him verbally sometime in late November that WC had revoked his license to work on the waterfront.

According to Furina’s petition, Furina’s tasks and responsibilities never changed throughout his thirty-year tenure as Processor Foreman. If anything, he assumed greater responsibilities in his capacity as a mechanic. Further, he claims that neither his employer nor WC ever notified him that his duties, tasks, or responsibilities had changed. He also contends that the October 5, 2006 “interview,” in which WC officials questioned him about his

employment, concerned an unrelated matter and that he was unaware such information could potentially affect his registration status.

On December 28, 2006, Robert Scavone, General Counsel for P&O Ports, notified WC that it was withdrawing its December 21, 2006 attempt to “reactivate” Furina’s registration. P&O had apparently “decided instead to seek the approval of the Waterfront Commission for the appointment of Mr. Furina as a Port Superintendent.” (Respondent’s Exhibit 2). Attached to the letter was an application for a license to be issued to Furina as Pier Superintendent. On February 5, 2007, Furina was issued a temporary permit as Pier Superintendent.

II. Conclusions of Law

The Waterfront Commission claims that it did not revoke Furina’s registration, but instead had “no jurisdiction ... to maintain” the registration because P&O “withdrew their sponsorship of the Petitioner” via the December 28, 2006 letter. This argument overlooks the fact that WC revoked Furina’s registration on November 17, 2006, over a month *before* P&O withdrew its sponsorship of Farina. At that point, WC still had jurisdiction to maintain Furina’s registration. Thus, WC’s argument that it could not have revoked Furina’s registration because P&O had previously withdrawn its sponsorship is without merit.

The issue then becomes whether WC’s decision to revoke Furina’s registration was arbitrary and capricious as would warrant judicial review under Article 78. It has been stated that “whether it be called due process or not, an individual is to be free from arbitrary and capricious rules and hearing procedures.” *Lindemann v. American Horse Shows Assn.*, 164 Misc2d 937, 949 (1994). “The lack of fundamental fairness in a disciplinary proceeding particularly where such proceeding runs afoul of the organization’s own internal procedures, rules and regulations, may result in a finding by the reviewing court that the resulting decision

was arbitrary and capricious.” *Mobarak v. XYZ Two Way Radio Service, Inc.*, 12 Misc3d 1163(A) (King’s County 2006); *Rapackie v. Board of Fire Commissioners*, 75 AD2d 817, 817 (2d Dept. 1980).

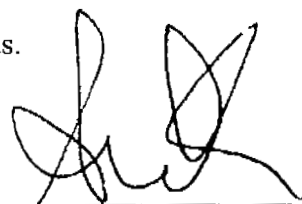
Here, the Waterfront Commission is required by statute to provide hearings before revoking or suspending a worker’s license or registration. “The commission may ... on complaint of any person, including any public official or agency, institute proceedings to revoke, cancel or suspend any license or registration *after a hearing at which the licensee or registrant and any person making such complaint shall be given the opportunity to be heard*[.]”

McKinney’s Uncons Laws of NY § 9847 (Waterfront and Airport Commission Act §1; L 1953, ch 882, as amended) (emphasis added). Having been denied such a hearing, Furina was unfairly stripped of his registration without the opportunity to explain: (i) how his employment with P&O comported with the Processor Foreman description contained in the longshoreman’s registry, or (ii) why any discrepancies may have existed. Given Furina’s thirty-year tenure as a dedicated worker on the harbor, and the failure to provide him with a hearing in violation of the Commission’s own mandate, the court finds the Waterfront’s Commission’s decision to be arbitrary and capricious. Accordingly it is

ORDERED, ADJUDGED, AND DECREED that the November 17, 2006 decision of the Waterfront Commission of New York Harbor to revoke petitioner’s registration is vacated; and it is further

ORDERED, ADJUDGED, AND DECREED that the petition is granted with costs to be taxed by the clerk upon submission of an appropriate bill of costs.

ENTER:



June 22, 2007

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

JEFFREY WERNER KORNEICH