

**Matter of Gaudioso v New York City Dept. of  
Bldgs.**

2007 NY Slip Op 33928(U)

December 3, 2007

Supreme Court, New York County

Docket Number: 0111372/2007

Judge: Eileen A. Rakower

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

**EILEEN A. RAKOWER**

PRESENT: J.S.C.

PART Part 5

Index Number : 111372/2007

**GAUDIOSO, FRANK**

VS.

**CITY OF NEW YORK**

SEQUENCE NUMBER : # 001

ARTICLE 78

INDEX NO. 111372-07

MOTION DATE #001

MOTION SEQ. NO. #001

MOTION CAL. NO. \_\_\_\_\_

n this motion to/for \_\_\_\_\_

PAPERS NUMBERED

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

Answering Affidavits — Exhibits \_\_\_\_\_

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

Cross-Motion:  Yes  No

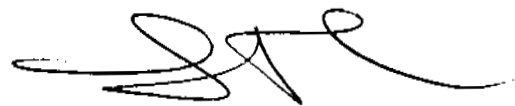
Upon the foregoing papers, it is ordered that this motion

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER**

*This judgment has been entered by the County Clerk and notice of entry cannot be served by mail hereon. To obtain entry, counsel or a qualified representative must appear in person at the Judgment Clerk's Desk (Room 11B).*

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

Dated: December 3, 2007  
December 30, 2007



**EILEEN A. RAKOWER** J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 5

-----X  
In the Matter of  
FRANK GAUDIOSO,

Petitioner,

Index No.  
111372/07

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

- against -

Decision

THE NEW YORK CITY DEPARTMENT OF BUILDINGS and the  
and the CITY OF NEW YORK DEPARTMENT OF  
CITIWIDE ADMINISTRATIVE SERVICES, by, counsel or authorized representative, must  
Respondents. appear in person at the Judgment Clerk's Desk (Room  
11B).

-----X  
HON. EILEEN A. RAKOWER:

To obtain a master plumber's license in New York City an applicant must pass an examination and meet other requirements of the Department of Citiwide Services, which then advises the Department of Buildings (together, City) to issue the license. One of those requirements is enumerated in the New York City Administrative Code § 26-146 which states that the applicant must have either seven years of practical experience in the design and installation of plumbing or a bachelor's degree in engineering and at least three years of experience in the design and installation of plumbing.

Petitioner successfully passed the required examination and provided City with documentation, which he believed demonstrated that he had the required seven years of experience in the design and installation of plumbing. By letter dated June 6, 2007, City informed petitioner that he did not meet the requirements for a master plumber's license because he did not have sufficient practical experience to fulfill the seven year requirement.

Specifically, City stated that it would not recognize petitioner's work at Vanguard (P&F) Heating and Plumbing because the letter he submitted is dated approximately twelve years before his master plumber application, it is addressed to "Dyn Air Corp./JFK Airport" and it does not state specifically what petitioner did for

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Vanguard. City also stated it would not recognize his work with B&F Piping and Heating referred to in a February 25, 2002 letter because the letter is signed by a female relative of petitioner who is not a licensed plumber and B&F was never licensed by City. Lastly, City informed petitioner that a review of his social security history of earnings only reflects unlicensed plumbing companies and other companies that have nothing to do with plumbing work. Thereafter, petitioner instituted this Article 78 proceeding seeking an order from the court annulling, vacating and setting aside City's disapproval of his application and directing and compelling City to issue petitioner a master plumber's license.

Petitioner argues that he has been employed in the plumbing trade, working under various master plumbers since 1974. He states that he has provided letters from master plumbers and all tax records which prove that he has more than the required seven years of experience. Petitioner argues that City has imposed arbitrary conditions regarding his documentation which are unduly burdensome and not supported by the relevant provisions of the Administrative Code. Petitioner avers that the City's investigators should investigate the actual qualifications of applicants rather than concerning themselves with seeking the type of detailed information about prior employment that is difficult for employers to maintain.

City argues that its requirements are not arbitrary but rather are dictated by the Administrative Code and the Rules of the City of New York. It states that the only prior work experience that can satisfy the seven year requirement is work performed under the supervision of a licensed master plumber. City states that the references from individuals and companies that petitioner supplied have proven to be from those who were unlicensed and therefore, they cannot be considered. It argues that the agency charged with issuing master plumber licenses is empowered to interpret its own regulations. It maintains that the purpose of the requirement that plumbers be licensed is to protect the public. Finally, it argues that the burden to prove that an applicant has met all qualifications for a master plumber's license is on the applicant.

A court may only interfere with the determination of an administrative agency if there is no rational basis or foundation in fact for the action complained of, and the exercise of discretion is arbitrary and capricious. Where a reviewing court finds that the administrative body has not acted arbitrarily but within its lawful authority, the court has no alternative but must confirm the determination. (*Matter of Pell v. Board of Educ.*, 34 NY2d 222. (1974)). The determination must be supported by substantial evidence, based on the record on a whole. (*Purdy v. Kreisberg*, 47 NY2d 354, (1979)).

[\* 4 ]

Substantial evidence is “such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact.” (*300 Gramatan Ave. Assoc. v. State Div. Of Human Rights*, 45 NY2d 176, (1978)). Additionally, great deference must be given to an administrative agency in the interpretation of its own rules and regulations. (*Tommy and Tina Inc. v. Dep’t of Consumer Affairs*, 95 AD2d 724 [1<sup>st</sup> Dept. 1983]).

Administrative Code § 26-134, “Examination of Applicant” states, in relevant part:

Every applicant for a licence shall be examined as to his or her fitness and qualifications thereof in accordance with the rules and regulations adopted by the commissioner . . . (who) may require the applicant to submit to an oral, written and practical examination or any or all of said examinations; and such examinations and investigations required to determine the fitness and qualifications of said applicant shall . . . be conducted by the department of citiwide administrative services, which shall certify the results thereof . . .

Administrative Code § 26-142, “Requirement of Licence” states, in relevant part:

a. It shall be unlawful for any person:  
1.(a) to install, maintain, repair, modify, extend or alter plumbing . . . in the City of New York unless such person is a licenced master plumber, partnership corporation or other business association as permitted by this code and unless such work is performed under the direct and continuing supervision of a licenced master plumber.

Administrative Code §26-141( c ), “Definitions,” states, in relevant part:

( c ) “Direct and continuing supervision” means responsible control exercised by a licenced master plumber . . . either personally or through one or more levels of competent supervision, over those persons in the direct employ of the licenced individual, partnership, corporation, or other business association as authorized by the code performing the actual work of installing, maintaining, repairing

modifying, extending or altering plumbing . . . as permitted by the class of licence held by the licensee for which the licensee assumes full responsibility . . .

Title 55 of the Rules of the City of New York, § 11-02(d)(1), "Licence Examinations" states, in relevant part:

- (d) Education, training and experience requirements.  
(1) An applicant must possess the minimum education, training and/or experience requirements at the time of the filing of the application . . . The burden of proving that the applicant meets the required qualifications shall be on the applicant.

Here, petitioner provided City with a letter from his employer at Vanguard (P&F) which, regardless of its age or who it was addressed to, does not state specifically what work he performed while employed there from 1986 through 1992. On his application for the licence, petitioner lists as his supervisor at Vanguard (P&F) a man who, City's investigation revealed, did not become a master plumber himself until June, 1993, after petitioner left the job. Therefore, petitioner was not under the direct and continuing supervision of a master plumber during the years he worked at Vanguard (P&F).

Similarly, petitioner did not provide City with proof that the two years that he worked at B&F Piping and Heating qualified as experience for the purposes of a master plumber's licence. The letter petitioner submitted to City was signed by the woman that he listed as his supervisor on his application for his master plumber's licence. City's investigation revealed that she is not a licenced master plumber nor is the business licenced to do plumbing work in New York. Therefore, petitioner was not under the direct and continuing supervision of a master plumber during the years he worked at B&F.<sup>1</sup>

In reviewing petitioner's qualifications City adhered to the rules and regulations

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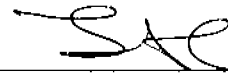
<sup>1</sup>City also excludes from its consideration years that petitioner worked at American Tel. & Tel. Co., because petitioner failed to establish specifically what he did for that company. This, however, was not listed in the June 6, 2006 letter which disqualified petitioner, and is not part of the record for review permitted under Article 78.

[\*6]  
which control all applications for a master plumber's licence. City did not act in an arbitrary and capricious manner and the record supports a rational basis for its determination. Accordingly, petitioner's application must be denied. Wherefore, it is hereby

ORDERED and ADJUDGED that the petition is denied and the proceeding is dismissed.

This constitutes the decision and order of the court.

Dated: December 3, 2007



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Eileen A. Rakower, J.S.C.

**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 11B).