

Matter of Bonsignore v New York City Dept. of Bldgs.
2009 NY Slip Op 30266(U)
February 5, 2009
Supreme Court, New York County
Docket Number: 105408/08
Judge: Kibbie F. Payne
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: KIBBIE F. PAYNE
Justice

PART 4

In the Matter of the Application of
BRIAN BONSIGNORE,

INDEX NO. 105408/08

MOTION DATE 9-23-08

- v -

MOTION SEQ. NO. 001

NEW YORK CITY DEPARTMENT OF BUILDINGS et ano.

MOTION CAL. NO. _____

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

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion: Yes No

The proceedings is disposed of in accordance with the accompanying memorandum.

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 1419).

Dated: February 5, 2009



 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 4

-----X
In the Matter of the Application of
BRIAN BONSIGNORE,

Petitioner,

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

Index No. 105408/08

-against-

Judgment/Decision

NEW YORK CITY DEPARTMENT OF BUILDINGS
and THE CITY OF NEW YORK,

*This Judgment has been entered by the County Clerk
and notice of entry cannot be entered as and reason. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Office
141B.*

KIBBIE F. PAYNE, J.:

This Article 78 action is to review the final determination
of the New York City Department of Buildings (DOB) on December
19, 2007, denying the application of Petitioner for a Master Site
Safety Manager's License.

Between July 11, 1981 and October 29, 2005, Petitioner was
employed by the FDNY as a firefighter and then as a fire
lieutenant. In February 2007, Petitioner, in an attempt to be
granted a Site Safety Manager Certificate (SSM Certificate), took
and passed the New York City Site Safety Manager Examination.
One month later, Petitioner submitted an application to DOB for
an SSM Certificate.

After an investigation, on April 30, 2007, DOB denied
Petitioner's application, finding that Petitioner did not have
the requisite "practical experience and/or education to qualify

for [an SSM Certificate]."

By letter of May 29, 2007, Petitioner requested that DOB reconsider the prior determination. In response, in a letter dated June 18, 2007, DOB provided Petitioner with a detailed explanation as to why he did not meet the experience qualifications for an SSM Certificate. The letter stated that as a retired firefighter, the Petitioner did not enforce building administrative codes as required for the SSM Certificate. In addition, the letter noted that the Petitioner did not complete an 18-month on-the-job apprenticeship-training program.

The Petitioner attempted to show that he had completed an 18-month on-the-job apprenticeship-training program by way of 12 months of apprenticeship with a company known as Total Safety Consulting, and an additional six months of "protection of the public, firefighters and also construction workers," during which "his responsibilities pertained to safety."

In another exchange of letters, Petitioner sought to establish that he had satisfactory related experience to qualify him for the SSM Certificate. Notably, Petitioner apparently demonstrated that the Fire Department of New York enjoys "Cross Enforcement Authority with DOB." However, on December 19, 2007, the DOB finally determined that Petitioner's duties with the Fire Department involved code enforcement of occupied buildings, and not on buildings under construction, which is the focus of the SSM Certificate. As a result, DOB denied his application.

The DOB's discretionary decision denying Petitioner the privilege of an SSM Certificate is the type of administrative action that enjoys significant deference from the courts (see CPLR 7801 and 7803; *New York City Health & Hosps. Corp. v McBarnette*, 84 NY2d 194, 203 n, rearg denied 84 NY2d 865 [1994]). Indeed, this court "cannot interfere unless there is no rational basis for the exercise of discretion or the action complained of is 'arbitrary and capricious.'" *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 NY2d 222, 231 (1974) (citation omitted); see also *Matter of Arrocha v Board of Educ. of City of New York*, 93 NY2d 361, 363-364 (1999).

Here, Petitioner argues that he satisfies all the requirements for the issuance of an SSM Certificate, and that persons similarly situated had been granted licenses. See *Matter of Klein v Levin*, 305 AD2d 316, 317-318 (1st Dept), lv denied 100 NY2d 514 (2003) ("[a] decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious") (internal quotation marks and citation omitted).

First, there is ample evidence submitted by Petitioner himself that he never completed an 18-month on-the-job apprenticeship-training program. There is no indication that this requirement may be satisfied by piecing together two

separate apprenticeships. In fact, the regulations governing the designation as a Site Safety Manager indicate that "[s]uch training shall cover all aspects of site safety management and all phases of building construction, from the commencement of construction until the building is completely enclosed, and shall last a minimum of 18 months." 1 RCNY § 26-01 (c) (2) (i); emphasis added. The plain (and rational) meaning is that two shorter apprenticeships may not be substituted for one complete apprenticeship. As such, it was rational for DOB to reject Petitioner's proffer of the shorter apprenticeships as satisfying the requirements for the SSM Certificate.

Second, with regard to the parties similarly situated, this court has no evidence that their *applications* were similar to that of the Petitioner. Indeed, the document offering the names of the parties allegedly so situated indicates that they were "Code Enforcement Officials," whereas Petitioner has not offered any evidence that he was also such an official. In any event, even if Petitioner had identified himself as such, evidence has been submitted that the licenses of those individuals were issued before the DOB amended its background investigation practices in 2001. DOB, upon such amendment, was entitled to vary the outmoded and supplanted practices predating Petitioner's application by some six years.

The record indicates that Petitioner was given every opportunity to present and re-present his case, and he was

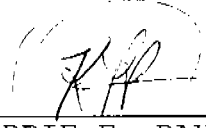
provided with detailed explanations and rationales of all DOB determinations. Compare Matter of Reynolds v City of New York, 294 AD2d 162, 163 (2002). It is also evident that he did not satisfy the requirements for the SSM Certificate. However, most importantly, and in all events, it is abundantly clear that the DOB determinations were neither arbitrary nor capricious.

Accordingly, it is hereby

ADJUDGED that the petition is denied and the proceeding is dismissed. The foregoing constitutes the decision and judgment of the court.

Date: February 5, 2009

ENTER:



KIBBIE F. PAYNE
J.S.C.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1472).