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

PRESENT: O. PETER SHERWOOD PART 61
Justice

In the Matter of the Application of,
RAUL A. RODRIGUEZ,

Petitioner,

-against-

NEW YORK CITY TAXI & LIMOUSINE COMMISSION,

Respondent.

INDEX NO. 400957/2010

MOTION DATE June 16, 2010

MOTION SEQ. NO. 001

MOTION CAL. NO.

The following papers, numbered 1 to 5 were read on this petition for a judgment pursuant to CPLR Article 78

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1-2
Answering Affidavits — Exhibits	3-4
Replying Affidavits	5

Cross-Motion: ☑ Yes ☐ No

Upon the foregoing papers, the petition for a judgment pursuant to CPLR Article 78 and the respondent's cross motion to dismiss the proceeding are decided pursuant to the accompanying decision, order and judgment.

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).

Dated: 9/27/10

O. P. Sherwood
O. PETER SHERWOOD, J.S.C.

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

Check one: ☑ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

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In the Matter of the Application of
RAUL A. RODRIGUEZ,

Petitioner,

-against-

NEW YORK CITY TAXI & LIMOUSINE COMMISSION,

Respondent.

----------X

DECISION, ORDER AND JUDGMENT

Index No. 400957/2010

O. PETER SHERWOOD, J.:

In this proceeding pursuant to Article 78 of the Civil Practice Law and Rules (CPLR), petitioner Raul A. Rodriguez ("petitioner" or "Rodriguez"), proceeding *pro se,* seeks an order and judgment annulling as arbitrary and capricious respondent's denial of his application for a for-hire vehicle driver's license ("FHV license") and directing respondent New York City Taxi and Limousine Commission ("TLC") to issue him a FHV license or, alternatively, fully refund to him all fees paid in seeking a FHV license. Respondent cross moves for an order pursuant to CPLR § 3211 (a) (5) dismissing this proceeding as time barred. For the reasons stated below, the cross motion is granted and the petition is dismissed.

Background

On or about May 20, 2009, petitioner applied to the TLC for a FHV license (Petitioner's Memo in Support of the Petition [Pet's Memo], p. 1; Affirmation of William H. Vidal, Esq. In Support of Cross Motion [Vidal Affirm.], ¶ 3, Ex. "A"). A criminal background check conducted with respect to petitioner's application revealed that Rodriguez had been convicted in 1992 of drug-related charges and sentenced to 248 months in jail. He was released in April 2008 subject to five years of post-release supervision (Vidal Affirm. ¶ 4). In response to a request from TLC, petitioner submitted additional papers relative to his criminal history (Pet's Memo, p. 1).

By letter dated August 28, 2009, TLC notified petitioner that a License Fitness hearing was scheduled for October 14, 2009, to review petitioner's license application especially with respect to his criminal history and advised him that he could have legal representation at the hearing and could

present evidence and witnesses on his behalf (Vidal Affirm. ¶ 5, Ex. "B"). A hearing was held on October 14, 2009, before Administrative Law Judge (ALJ) S. Brand at which documentary evidence was submitted and petitioner testified. ALJ Brand issued a written decision dated October 20, 2009 recommending that Rodriguez be granted a FHV license. ALJ Brand reviewed the eight factors enumerated in New York State Correctional Law, Article 23-A, section 753, applicable to determining whether to grant a TLC license before concluding that petitioner did not pose any threat to the general public, had taken steps to become a productive member of society, expressed remorse for his past criminal conduct and that issuance of a FHV license would give petitioner an opportunity to continue to build on the positive steps of being a productive member of society (Vidal Affirm. Ex. "C").

TLC Deputy Commissioner of Licensing and Standards, Gary Weiss, upon reviewing petitioner's license application and ALJ Brand's analysis and recommendation, issued a letter to petitioner dated December 1, 2009 in which he disagreed with the ALJ's recommendation and denied petitioner's application for a FHV license (Vidal Affirm. ¶ 6, Ex. "D"). Petitioner acknowledges receiving this letter on December 7, 2009 (Pet's Memo, p. 2).

By Order to Show Cause dated April 13, 2010, petitioner commenced this CPLR article 78 proceeding for a judgment, *inter alia,* annulling and vacating respondent's determination. Rodriguez alleges in his verified petition that the denial of his FHV license application reflects a personal bias, rather than a just application of the relevant criteria for review of a license application. Petitioner contends that the Deputy Commissioner's determination constitutes an abuse of discretion. Attached to the petition is a letter from petitioner to Matthew Daus, the TLC Commissioner, challenging the denial of his license application and requesting a review of the determination. Petitioner also submits a letter dated January 14, 2010, to him from TLC's Assistant General Counsel Alison J. Hartwell responding to his request for review of the denial of his license application and advising petitioner that there was no right of appeal under the special procedures relating to fitness hearings of the denial of his license application. Ms. Hartwell also stated that the denial letter of Deputy Commissioner Weiss was, therefore, TLC's final determination (Pet's Memo Exs. "A" and "D").

Respondent cross moves to dismiss the petition. TLC contends that this Article 78 proceeding, which must be brought within four (4) months of the time petitioner received notice of

TLC's final determination, is untimely. TLC avers that such four-month limitations period must be measured from December 7, 2009, the date petitioner received the determination of Deputy Commissioner Weiss and such limitations period, therefore, expired on April 7, 2009. Accordingly, this proceeding commenced on April 13, 2009 is untimely.

In reply, petitioner argues that because he had not been advised that the determination of Deputy Commissioner Weiss was a final determination since the TLC special procedures governing fitness hearings do not provide for an appeal, that the statute of limitations should be computed from the time he received Ms. Hartwell's letter, which petitioner contends was on February 10, 2010, and not from the time he received Deputy Commissioner Weiss' denial of his FHV application (Pet's Reply to Cross Motion). He contends that as a lay person unaware of the agency's practices he cannot be blamed for his failure to act on the denial of his FHV application by Deputy Commissioner Weiss. Petitioner further contends that he attempted to file this Article 78 proceeding on April 5, 2010, but was advised by the pro se Clerk's Office that it could not be filed because in was not in proper form.

Discussion

The general rule is that the statute of limitations for review of an agency determination runs from the date the determination "becomes final and binding upon the petitioner" (CPLR § 217 [1]), *i.e.* when petitioner received notice of the determination and was aggrieved by it (*see, Community Counseling & Mediation Servs. v New York City Dept. of Health & Mental Hygiene,* 45 AD3d 315 [1st Dept 2007]; *Triway Realty Corp. v City of New York,* 218 AD2d 592 [1st Dept 592 [1st Dept 1995]). Such final determination here was the determination of Deputy Commissioner Weiss, dated December 1, 2009, denying petitioner's application for a FHV license. Thus, the statute of limitations here runs, at the latest, from December 7, 2009, when, as petitioner acknowledges, he received Deputy Commissioner Weiss' determination. This proceeding was commenced on April 13, 2010, and, thus, is untimely.

It is well-settled that inquiries for reconsideration of an agency determination do not expand the relevant statute of limitations (*see, Raykowski v New York City Dept. of Transp.,* 259 AD2d 376 [1st Dept 1999]). Consequently, petitioner's request for further review did not extend or toll the time to commence an Article 78 proceeding (*see, Community Counseling & Mediation Servs.,* 45 AD3d

at 258; *Matter of M & D Contrs. v New York City Dept. of Health,* 233 AD2d 230 [1st Dept 1996]). Moreover, while the application of the relevant statute of limitations here may cause hardship, a statute of limitations is not open to discretionary change by the courts no matter how compelling the circumstances (*see, Arnold v Mayal Realty Co.,* 299 NY 57, 60 [1949]). In this regard, the courts of this state have held that "when given its intended effect such a statute is one of repose, and experience has shown that the 'occasional hardship is outweighed by the advantage of outlawing stale claims'" (*id.* at 60 *citing Schmidt v Merchants Dispatch Transp. Co.,* 270 NY 287, 302 [1936]).

Furthermore, a self-represented litigant must still comply with statutory deadlines and acquires no greater rights than any other litigant (*see, Duffen v State,* 245 AD2d 653 [3d Dept 1997], *lv denied* 91 NY2d 810 [1998]; *Greenfield v Gluck,* 2003 NY Slip Op 50729 [U] [App Term, 2nd & 11th Jud. Dists. 2003]). Therefore, petitioner's ignorance of TLC's regulations concerning review of determinations on license applications did not excuse his failure to timely commence this proceeding.

Lastly, the court notes that petitioner's reply to respondent's cross motion consists of an unsworn statement which is of no probative value (*see, Duffy v Universal Maintenance Corp.,* 227 AD2d 238 [1st Dept 1996]; *Adams v Alexander's Dept. Stores of Brooklyn, Inc.,* 226 AD2d 130 [1st Dept 1996]; *Public Adm'r of Bronx Co. v Trump Village Const. Corp.,* 177 AD2d 258 [1st Dept 1991]). Hence, petitioner's statement therein concerning his effort to file this Article 78 proceeding on April 5, 2010, even if it were to be deemed sufficient to save this proceeding from dismissal, must be disregarded.

Conclusion

Based upon the foregoing discussion, it is

ORDERED that respondent's cross motion to dismiss the petition is granted; and it is further

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

This constitutes the decision, order and judgment of the court.

DATED: 9/27/10

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).

ENTER,

PETER SHERWOOD
J.S.C.