

Tenesela v New York City Taxi & Limousine Commn.
2010 NY Slip Op 33355(U)
December 2, 2010
Supreme Court, New York County
Docket Number: 108805/10
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **HON. EILEEN A. RAKOWER**

PART 15

Justice

Index Number : 108805/2010

TENESELA, SEGUNDO

VS.

NYC TAXI AND LIMOUSINE COMMISSION

SEQUENCE NUMBER : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

Exhibits ...

PAPERS NUMBERED

1

2,3

4

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

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).

DECIDED IN ACCORDANCE WITH ACCOMPANYING DECISION / ORDER

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: 12/2/10


HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/JUDG.

SETTLE ORDER /JUDG.

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

UNFILED JUDGMENT
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

-----X
SEGUNDO TENESELA,

Petitioner,

-against-

NEW YORK CITY TAXI AND LIMOUSINE
COMMISSION,

Respondent.
-----X

Index No.
108805/10

**DECISION
and ORDER**

Mot. Seq.
001

HON. EILEEN A. RAKOWER:

Segundo Tenesela ("Petitioner") brings this Petition under Article 78 of CPLR seeking an order annulling the March 4, 2010 determination of the New York City Taxi and Limousine Commission ("TLC"), which denied Petitioner's application for a for-hire vehicle ("FHV") driver's license.

Petitioner previously held a FHV driver's license from 1997 through 2005. On April 11, 2005, TLC revoked Petitioner's FHV license on the grounds that Petitioner had fraudulently used a social security number which was never assigned to him on his 1997 application for an FHV license.

Petitioner subsequently reapplied for an FHV license on two occasions in 2007, and once in 2008. With respect to his 2008 application, TLC conducted a Licensee Fitness Hearing on October 22, 2008 ("the 2008 Hearing"). In the 2008 Hearing, Administrative Law Judge ("ALJ") Landis recommended that Petitioner's application for an FHV license be granted. ALJ Landis found that Petitioner credibly testified that, at the time he purchased the false social security number, he was a recent immigrant with no command of the English language, and that he was unaware that what he did was wrong. ALJ Landis further noted that Petitioner demonstrated that, since the 2005 revocation, he has obtained his Green Card and a valid social security number, and has been gainfully employed as a chef in a restaurant.

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However, on January 15, 2009, TLC Commissioner/Chair Matthew Daus rejected ALJ Landis's recommendation and denied Petitioner's application. In his decision, Commissioner Daus stated that the conduct underpinning the 2005 revocation "demonstrates an inability to be truthful with the TCL and the public, and an inability to follow government rules and regulations." Commissioner Daus further stated that he "[saw] little evidence of rehabilitation...."

Petitioner reapplied for an FHV driver's license on August 25, 2009. TLC conducted another Licensee Fitness Hearing on February 9, 2010 ("the 2010 Hearing"). In the 2010 Hearing, ALJ Vlantes recommended that Petitioner's application be granted. ALJ Vlantes similarly credited Petitioner's testimony concerning the circumstances surrounding his false social security number, and noted that he "maintained a perfect TLC record" during the period in which he had an FHV license, had a "perfect" DMV record, and had no criminal convictions. In sum, ALJ Vlantes found that Petitioner "is an honest and forthright man, who made an ill-informed, wrong decision back in 1989."

By decision dated March 4, 2010, Commissioner Daus once again rejected the recommendations of the ALJ and denied Petitioner's application. This time, Commissioner Daus set forth the following as grounds for denial:

In your present license application, you failed to disclose your prior revocation. ALJ Vlantes did not discuss this in his recommendation. It is your responsibility as an applicant to make sure that your application is completely and accurately filled out.

Petitioner subsequently brought this Petition challenging Commissioner Daus's March 4, 2010 determination.

It is well settled that the "[j]udicial review of an administrative determination is confined to the 'facts and record adduced before the agency'." (*Matter of Yarborough v. Franco*, 95 N.Y.2d 342, 347 [2000], quoting *Matter of Fanelli v. New York City Conciliation & Appeals Board*, 90 A.D.2d 756 [1st Dept. 1982]). The reviewing court may not substitute its judgment for that of the agency's determination but must decide if the agency's decision is supported on any reasonable basis. (*Matter of Clancy -Cullen Storage Co. v. Board of Elections of the City of New York*, 98 A.D.2d 635,636 [1st Dept. 1983]). Once the court finds

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a rational basis exists for the agency's determination, its review is ended. (*Matter of Sullivan County Harness Racing Association, Inc. v. Glasser*, 30 N.Y. 2d 269, 277-278 [1972]). The court may only declare an agency's determination "arbitrary and capricious" if it finds that there is no rational basis for the determination. (*Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 231 [1974]).

NYC Admin. Code §19-505(b) provides that applicants for an FHV license must, *inter alia*, "[b]e of good moral character." 35 RCNY §8-15(a) provides that if TLC believes that an applicant does not meet the qualifications for licensure, "it may direct that such respondent appear for a fitness hearing. Such hearing shall be conducted by an ALJ." Subdivision (e) provides that after a hearing, the ALJ "shall issue a Recommended Decision which shall include a determination as to the respondent's fitness to possess a license." Where, as here, the applicant was previously licensed, "the Recommendation shall be issued to the Chairperson," who may "accept, reject or modify said Recommendation."

Here, the Court finds that Commissioner Daus's March 4, 2010 determination is supported by a rational basis, and therefore cannot be disturbed on judicial review. In light of the fact that Petitioner failed to disclose his prior revocation in his most recent application, it was rational for Commissioner Daus to conclude that Petitioner lacked the candor required to be considered "of good moral character." Indeed, at the end of the application, Petitioner signs a declaration certifying, "[u]nder penalties of perjury... that all the information herein is true, correct and complete." In addition to Petitioner's application raising questions of truthfulness that speak to his moral character, 35 RCNY §6-02(c) provides that TLC "may deny an application for a license or renewal of a license... if it finds that an applicant has made a material misstatement or misrepresentation on an application for such a license or the renewal thereof."

Moreover, Petitioner provides no authority, statutory or otherwise, for the proposition that Commissioner Daus's review of Petitioner's application was limited to the ALJ's recommendation, or that he was bound by the ALJ's findings (*see American Express Co. v. Tax Appeals Tribunal*, 190 A.D.2d 104, 109 [3rd Dept. 1993]) (regulation providing for *de novo* review by tribunal does not conflict with statute authorizing tribunal to "either affirm[], revers[e], or modify[]" ALJ's determination). Petitioner's reliance on the City Administrative Procedure Act ("CAPA"), NYC Charter §1046, is unavailing, as that provision applies solely to agency "adjudications." "Adjudication" is defined by the CAPA as "a proceeding

in which the legal rights, duties or privileges of named parties are required by law to be determined by an agency..." (NYC Charter §1041(a)). The subject TLC Fitness Hearing is not a proceeding "required by law," as made clear by the permissive language of 35 RCNY §8-15(a), which provides that TLC "may" direct an applicant to appear for a fitness hearing (emphasis added).

Wherefore, it is hereby

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

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: December 2, 2010



EILEEN A. RAKOWER, J.S.C.

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