

Matter of Crockwell v NYC Dept. of Bldgs.

2011 NY Slip Op 30107(U)

January 14, 2011

Supreme Court, New York County

Docket Number: 402025/10

Judge: Judith J. Gische

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

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

PRESENT: GISCHE
HON. JUDITH J. GISCHE Justice
J.S.C.

PART 10

BRIAN CROCKWELL

INDEX NO. 402025/10

MOTION DATE _____

MOTION SEQ. NO. 1

MOTION CAL. NO. _____

- v -

NYC DEPT OF BUILDINGS

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

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

motion (s) and cross-motion(s)
decided in accordance with
the annexed decision/order
of even date.

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: 1/14/11

[Signature]
HON. JUDITH J. GISCHE J.S.C.
J.S.C.

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):

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

-----X

In the Matter of the Application of

BRIAN CROCKWELL,

Petitioner,

Index No.
402025/10

-against-

NYC DEPARTMENT OF BUILDINGS and THE CITY OF
NEW YORK,

Respondents.

-----X

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

Papers	Numbered
OSC, Pet [Art. 78] w/exhs	1
Respondents' ans. w/exhs	2

JUDITH J. GISCHE, J.:

This proceeding arises in connection the NYC Department of Buildings decision not to renew petitioner, Brian Crockwell', plumbing license by the NYC Department of Buildings (DOB) based upon over \$760,000 owed in Environmental Control Board ("ECB") fines and penalties by "companies associated with [Crockwell's} license. Crockwell's prior license, No. P001757, expired as of May 11, 2010. Prior to its expiration, the DOB wrote to Crockwell on February 11, 2010, stating that he had failed to pay New York City Environmental Control Board penalties incurred in connection with his business, and that as a result, pursuant to §§ 28-401.12 and 28-301.19 of the NYC Administrative Code (NYC Code) (subsection 14), the Commissioner

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).

may refuse to renew his Master Plumber license. Notwithstanding efforts to resolve the issues, by May 18, 2010 no settlement had been reached. As a consequence, Crockwell does not have a plumbing license.

The NYC Code provides that “[t]he department may, following notice and an opportunity to be heard, refuse to renew a license or certificate of competence on any grounds on the basis of which it could deny, suspend or revoke such license.” NYC Code § 28-401.12. The NYC Code goes on to provide that “[t]he commissioner shall have the power to suspend or revoke a license or certificate of competence [for f]ailure to pay outstanding fines, penalties, or fees related to the individual’s professional dealings with the city or any other governmental entity.” NYC Code § 28-401.19 (14).

Crockwell’s license renewal application, submitted, according to the Petition, as of April 7, 2010, acknowledges that at the time of the application, Crockwell “owe[d] penalties or fines to the City of New York.” Despite this, Crockwell argues that

[t]he violations and or fines were issued to Brian S. Crockwell Inc., and Pure Watermain & Sewer, Inc., corporate entities which are responsible for their respective liabilities. [Crockwell] is not personally responsible for the debts of the corporation. However, the Respondents are intent on saddling [Crockwell] with said debt. Respondent fails [*sic*] to recognize that [Crockwell] has not dealt with the City as an individual. [Crockwell] has done so through two corporations. Hence, section 28-401.19 subsection (14) is not applicable to the instant case.

Petition, ¶ 6.

This argument is without merit. The NYC Code makes clear that renewal may be refused for fines or penalties “related to the individual’s professional dealings with the city.” NYC Code § 28-401.19 (14). First, there is no question, as argued by the Respondents, that the fines and penalties owed by Crockwell’s corporations arise from his “professional dealings with the City.”

Moreover, the NYC Code provides the authority to deny renewal of a license due to outstanding fines or penalties simply “related” to an individual’s professional dealings. Thus, Crockwell’s argument that he has dealt with the city “through two corporations,” satisfies the statute regardless of the nature or extent of his ownership. Finally, Crockwell’s allegation that the Respondents want to saddle him with the debt of his corporations is unpersuasive. Respondents are not seeking to make Crockwell personally responsible to pay the debts; the offending corporate entities can certainly pay the debts themselves. Respondents actions are based upon the a policy that a controlling shareholder, president and licensee on behalf of a corporation cannot continue to hold a master plumber’s licence, while the corporation, formed for the purpose of conducting the plumbing business, owes hundreds of thousands of dollars in fines, related to his conduct as a licensed plumber.

The action taken by Respondents, is neither arbitrary and capricious. Rather, the action of refusing to renew the license of Crockwell was taken upon a sound basis in reason, and with due regard to the facts of the matter. *See Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck*, Westchester County, 34 NY2d 222, 231 (1974); *see also Matter of Arrocha v Board of Educ. of City of N.Y.*, 93 NY2d 361, 363-364 (1999). Indeed, the record shows that DOB contacted Crockwell with a proper delineation and expatiation of the intention not to renew his license some three months before his license expired. *See Verified Answer, Exh. D, Letter of 2/11/10 to Crockwell from Eugenia Morales of the Licensing Unit of DOB.*

DOB’s determination is amply supported by the record. As such, it should be accorded great weight and judicial deference. *See Testwell v New York City Dept. of Bldgs.*, 2010 WL

4942212, *6 (1st Dept 2010), citing *Matter of Medical Malpractice Ins. Assn. v Superintendent of Ins. of State of N.Y.*, 72 NY2d 753, 763 (1988), *cert. denied* 490 US 1080 (1989), and *Flacke v Onondaga Landfill Sys.*, 69 NY2d 355, 363 (1987).

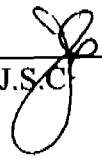
Accordingly, it is hereby

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

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

Dated: New York, NY
January 14, 2011

ENTER:

J.G. 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 141B).