

**Matter of Rapisardi v Department of Citywide Admin.
Servs.**

2011 NY Slip Op 31934(U)

June 15, 2011

Sup Ct, NY County

Docket Number: 101925/11

Judge: Alice Schlesinger

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

PART **IA** PART 16

PRESENT: **ALICE SCHLESINGER**
Justice

Giuseppe Rapisardi

The Dept of Citywide Admin
Services, et al.

INDEX NO. 101925/v
MOTION DATE _____
MOTION SEQ. NO. 001
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

Upon the foregoing papers, it is ordered that this ~~motion~~ Article 78 petition is granted in accordance with the accompanying memorandum decision.

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

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).

JUN 15 2011

Dated: June 15, 2011

Alice Schlesinger
ALICE SCHLESINGER J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE
 SUBMIT ORDER/JUDG. SETTLE ORDER /JUDG.

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

-----X

In the Matter of the Application of

GIUSEPPE RAPISARDI,

Petitioner,

Index No. 101925/11
Motion Seq. No. 00

For a Judgment under and pursuant to Article 78
of the CPLR

-against-

THE DEPARTMENT OF CITYWIDE
ADMINISTRATIVE SERVICES, THE NEW YORK
CITY DEPARTMENT OF BUILDINGS, and THE
CITY OF NEW YORK,

UNFILED JUDGMENT

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Respondents.

-----X

SCHLESINGER, J.:

Giuseppe Rapisardi is entitled to be awarded a Master Fire Suppression Piping Contractor (MFSPC) license by the New York City Department of Buildings. And in fact he was. On July 23, 2010, after having filed an application almost four years earlier on December 21, 2006, Mr. Rapisardi's application was approved.

This approval by the Department followed an initial denial on April 7, 2009 for insufficiency of work experience. In his original application Mr. Rapisardi had relied solely on work in this field under the supervision of Vincent Chiofalo, a holder of a MFSPC license and a supervisor of Rapisardi's work at Lafata-Corallo Plumbing & Heating. But the Department informed Mr. Rapisardi in its April denial letter that he could submit further documentation within 60 days to show additional experience. He did that. Specifically, in a letter dated May 19, 2009, Mr. Rapisardi explained that he had also worked under the supervision of another licensed fire suppression contractor, Edward Corallo, about whom

he had forgotten because Mr. Corallo had retired years earlier. A corroborating statement from Mr. Corallo accompanied this submission.

Mr. Rapisardi in his May 2009 submission also highlighted three specific permits under which he had worked and he calculated that those jobs alone constituted 31 months of qualifying work experience. Therefore, using these permits together with all the other permits worked under Mr. Corallo (there were 25 in all) plus additional permits he had worked under at another firm, Franco Belli Plumbing & Heating Corp., he believed he had far more than the requisite 36 months of experience.

The Department agreed. Ms. Aisha Norflett, Director of the Department's Licensing Unit, referring in part to these three highlighted jobs together with other work experience, stated that: "The Department has determined that you may be credited with three years of fire suppression experience and therefore meet the qualification requirement." The Board formally approved Rapisardi's application on July 23, the same day that the letter was sent.

But then something happened. An Article 78 petition was brought by Marco Babino, a colleague of Mr. Rapisardi's at Lafata since 1989 who had also worked under the same permits of Mr. Chiofalo and Mr. Corallo. Mr. Babino, with virtually the same work history as Mr. Rapisardi and the same application history, was denied a license in August 2010, even though he had also sought reconsideration using the Corallo information about which he, too, had forgotten, just the way Mr. Rapisardi had.

In Babino's Article 78, he set forth convincingly why the Department's denial of his application was arbitrary and capricious. Included in his arguments was a specific reference to Mr. Rapisardi, his co-worker who had received his license under the same facts. His petition, it seems clear, led to the Department's review of the Rapisardi approval.

Obviously realizing that the two decisions could not co-exist, as it made no sense to approve one and reject the other with virtually the same work history, the Department decided in favor of consistency rather than reason or fairness.

Specifically, on January 26, 2011, after Mr. Rapisardi had launched a new business, hired employees and entered into contracts, the Department sent him a letter from Shanee Graham, Licensing Attorney with the Department, telling him that the Department now intended to nullify his license thirty days from the date of the letter unless adequate proof was presented that the license had not been issued in error as to his work experience and the "good moral character" requirement. The letter began by telling Mr. Rapisardi that:

A review of your December 21, 2006 application for a Master Fire Suppression Piping Contractor ("MFSPC") license, including the documentation you submitted upon reconsideration, has raised questions regarding the appropriateness of the issuance of your license on September 1, 2010.

Not surprisingly, there was no mention of Mr. Babino. The letter, a relatively brief one, then proceeds to review the history of Mr. Rapisardi's application. At the end of the short second paragraph, Ms. Graham tells Mr. Rapisardi: "Upon review of your application, it appears that you have not earned adequate practical experience in the design and installation of fire suppression systems to obtain the MFSPC license". The next four paragraphs, at this point constituting more than half the letter, further review Rapisardi's application history. What follows is the complete explanation on this issue.¹

¹I say "on this issue" because the Department was now, for the first time questioning Mr. Rapisardi's "good moral character". More on that later in the opinion.

Based on the Department's recent review of your application, you were erroneously credited with fourteen months, three weeks and one day (fn 2) of practical experience as demonstrated through licensee permit records, while working at Lafata. Department records reveal that Mr. Chiofalo did not obtain any Department issued fire suppression permits from June 20, 1989 through July 10, 2000. The Department's assessment of your supervising licensee's permits mistakenly included permits issued after your employment ended with Lafata and permits issued to licensees other than Mr. Corallo and Mr. Chiofalo. Without this additional credited time, you have not demonstrated the requisite three years of experience in the design and installation of fire suppression systems.

Also, although it appears that you may have been credited with your experience under Belli, the Department also cannot credit you with any practical fire suppression experience while you were working there. While Mr. Belli obtained fire suppression permits (fn 3) during your employment, Mr. Belli's letter dated July 23, 2008, states that you only worked as a journeyman plumber, under supervision. Therefore, you did not gain any practical experience in the design and installation of qualifying fire suppression systems, during your employment at Belli.

fn 2 [included in the Department letter]: You were improperly credited with eleven months, two weeks and one day of experience under Mr. Chiofalo's supervision and three months and one week was incorrectly credited as under Mr. Corallo's supervision.

fn 3 [included in the Department letter]: The Department's denial letter dated April 7, 2009, states that Franco Belli obtained nine fire suppression permits during your employment. However, upon further review, Mr. Belli only received three permits from July 2000 through April 2002.

Counsel for petitioner characterizes the Department's determination as "without merit" and "not only irrational, but incomprehensible" (¶¶ 27 and 28). He cannot understand how the Department can now say with supposed precision that Mr. Rapisardi was erroneously credited with "fourteen months, three weeks and one day of practical experience" when six months earlier its review of the exact same evidence had led to a determination that Rapisardi did have the requisite 3 years of experience. That evidence included the April 24, 2009 letter from Edward J. Corallo confirming that Rapisardi had worked under his supervision from 1989 to July 10, 2000 and Mr. Rapisardi's highlighting of three jobs where he had worked for 31 months (of the 25 permits under Mr. Corallo). While the January 2011 letter discounts work under Chiofalo and Belli, the majority of the work under Corallo — which amounted to years — was not questioned.

Frankly, after reading the Department's Answer submitted in response to these assertions, I also find the new, reconsidered denial to be irrational, incomprehensible and without merit. For example, as to the Belli work experience with regard to which the Department on January 26, 2011 says, "it appears that you *may* have been credited with" (emphasis added)², the Department reduces Mr. Belli's permits from nine to three (the actual number appears to be six) but now gives him none based on the erroneous conclusion that he had worked there only as a "journeyman plumber."

However, it was clear, as pointed out in the Petition and in my March 11, 2011 decision, that the Department was relying on only part of a sentence in Mr. Belli's letter where the end of the sentence had been mistakenly omitted. The sentence read in its

² The Department obviously should know and be able to state with certainty what petitioner was credited with.

entirety: "During is (sic) employment Mr. Rapisardi worked under my supervision in numerous project (sic), his duties ranged from journeyman Plumber (sic)". Obviously, the end of the sentence was left out as the sentence does not complete the referenced "range" of duties, nor have any punctuation at its end; presumably the sentence would have gone on to read "to additional duties such as ...". The error is obvious because Mr. Belli then recommends Mr. Rapisardi as having the necessary fire suppression experience.

Even in respondent's Answer, no mention is made of this clear mistake, even though it had been pointed out in my March 11 decision, which preceded the Answer. With regard to the other acknowledged mistakes, there is absolutely no explanation. Nor is there any discussion of the 31 months of experience earlier found and the remaining 25 permits worked under.

All Respondent does in its Answer is repeatedly refer to the "erroneously approved" work experience, citing to the Department's determination upon reconsideration. What is more, the Answer is verified by an attorney, General Counsel for the City's Department of Buildings, who bases her knowledge on books and records and "communications with other employees" and contains nothing from an individual with personal knowledge. In paragraph 67 of the Answer, Respondent states that::

The Board, comprised of DOB employees, licensed Master Plumbers and licensed MFSPCs familiar with estimating the length and costs of jobs as part of their business, and others with technical expertise examine the permits issued by DOB and estimate how many months and/or years of experience could have been gained by the applicant with the presumption that the applicant was performing work under these permits.

But not one affidavit from any employee with or without experience or expertise is provided. No explanation is given to show why or how certain experienced employees approved the original application but then others with comparable experience denied it upon reconsideration. In other words, there is a complete absence of any attempt to justify the reversal of position or show the calculations (assuming there were any) that were the predicate for the reversal. It is the essence of arbitrariness.

As mentioned earlier, the Department additionally suggests in its January 26, 2011 letter that Mr. Rapisardi did not meet the "good moral character" requirement in §26-133 of the Administrative Code. This conclusion is based on a purportedly "false statement" that Rapisardi made in Section 9 of his LIC-2 application where he answered "No" to the question whether he had ever been convicted of an offense when in fact the Department in its background check had learned that on April 3, 2005, Rapisardi had pled guilty to the Misdemeanor of Criminal Possession of a Weapon in the 4th Degree.

As I stated in my March decision wherein I granted petitioner injunctive relief restraining the Department from "taking any further action vis-a-vis petitioner's license until a dispositive decision is reached", Mr. Rapisardi had acknowledged this conviction numerous times during the application process and the Department knew of the plea as early as 2003 when it granted Rapisardi a license in 2010. Also, the LIC-2 was filed after Rapisardi had been granted a license. Therefore, as his counsel argues, if the Department was truly serious about using this information, it would have to resort to a disciplinary proceeding and give petitioner a full hearing before his license could be revoked. But it is obvious that the "No" answer was a mistake. Exhibit K to the respondent's own Answer shows that on the DCAS form filed by Rapisardi on June 7, 2007, he answered "Y" (Yes) to the question whether he had been convicted of a crime.

So the moral character issue upon which the Department seemed to rely is really a non-issue. The alleged false statement has no significance in that it was obviously a mistake. What is more, it could not properly be the basis for a reassessment of Rapisardi's qualifications as it occurred after he was granted a license based on those qualifications.

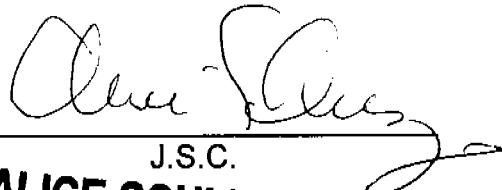
Yet the good moral character allegation does have significance. Why? Because it is indicative of the lengths to which the Department chose to go to attempt to justify its obviously unjustifiable reconsideration and reversal of position. The Department's actions here, in their January 2011 letter, seem to have been motivated by an attempt to justify Mr. Babino's denial and nothing else. The letter has none of the attributes of a considered, rational or fair determination. Therefore, I am nullifying the January 26, 2011 letter with the effect that Mr. Rapisardi's license will continue in full force and effect.

Accordingly, it is hereby

ADJUDGED that the petition is granted and the January 26, 2011 determination by the Department of Buildings is annulled and Giuseppe Rapisardi's license shall remain in full force and effect.

Dated: June 15, 2011

JUN 15 2011


J.S.C.
ALICE SCHLESINGER

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