

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

2011 NY Slip Op 32830(U)

October 6, 2011

Supreme Court, New York County

Docket Number: 104897/11

Judge: Carol E. Huff

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

PRESENT: CAROLE E. HUFF
Justice

PART 32

INGRASSIA, ANTHONY

INDEX NO.

104897/11

MOTION DATE

THE DEPT. OF CITYWIDE
ADMINISTRATIVE SVCS.

MOTION SEQ. NO.

01

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 _____

FILED

Cross-Motion: Yes No

OCT 11 2011

Upon the foregoing papers, it is ordered that this motion

NEW YORK
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motion is decided in accordance
with accompanying memorandum decision

Dated: OCT 06 2011

CAROLE E. HUFF
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: PART 32

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In the Matter of the Application of : Index No. 104897/11

ANTHONY INGRASSIA, :

Petitioner, :

For a Judgment under and pursuant to Article 78 of the :
Civil Practice Law and Rules :

- against - :

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

Respondents. :

-----x

FILED

OCT 11 2011

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CAROL E. HUFF, J.:

In this Article 78 proceeding, petitioner seeks to annul the determination of respondent New York City Department of Buildings (“DOB”), dated December 23, 2010 (“Determination”), denying petitioner’s application for a master plumber’s license. Petitioner also seeks an order directing respondents to grant the license, and an order directing respondents to produce documents pursuant to a FOIL request.

The basis for denial of petitioner’s application was his purported failure, pursuant to the Administrative Code of the City of New York § 26-146, to have earned seven years experience in the design and installation of plumbing systems. Determination ¶ 2. Petitioner has passed the written and practical examinations that are also required of license applicants.

In his application, petitioner submitted evidence of plumbing work experience as follows:

from June 2, 2000 through October 10, 2006, with Classic Plumbing & Heating Co.; and from June 1, 1979 through December 30, 1980, with Joseph A. Izzo Plumbing and Heating.

DOB found that the thirty-two permits issued to the supervising licensee at Classic during the time of petitioner's employment – considering the “scope of work, as well as the nature and complexity of each of these jobs, among other factors” – were sufficient to amount to only six months and two days of creditable work. It also found that his wages during the time period were too low to support the amount of work that petitioner claimed. Further, DOB discounted petitioner's work with Izzo because Mr. Izzo was deceased and petitioner had failed to support his “claimed experience through contemporaneous documentation,” and also because it was “unable to verify through [DOB] records that permits were issued” to Izzo.

With respect to creditable work, petitioner argues that there is no statutory requirement as to the number of permits required for a master plumber's license, and that DOB did not consider all the relevant work that the Classic supervising licensee performed. He also disputes DOB's time calculation for the work credited.

With respect to low wages, petitioner argues that there is no statutory criterion as to wages, and that DOB simply ignored his affidavit stating that he was a 49% owner of Classic and took lower wages because of his ownership status.

With respect to work performed with Izzo, petitioner argues that, as directed by a DOB employee, he submitted an affidavit stating the nature of the work. He also contends that DOB's failure to locate its own records detailing permits issued to Izzo should not be held against him.

Petitioner also contends that he was not provided an opportunity to appear before the DOB board to explain questions about his application, and that other applicants had been given

the opportunity.

An administrative determination such as the one at issue here will be upheld unless it is shown that the determination “was affected by an error of law . . . or was arbitrary and capricious or an abuse of discretion.” CPLR 7803(3). Normally, an agency “acting pursuant to its authority and within the orbit of its expertise, is entitled to deference, and even if different conclusions could be reached as a result of conflicting evidence, a court may not substitute its judgment for that of the agency when the agency's determination is supported by the record.” Partnership 92 LP & Bld. Mgt. Co. Vv State of N.Y. Div. of Hous. & Community Renewal, 46 AD3d 425, 429 (1st Dept 2007), aff’d 11 NY3d 859 (2008). However, “[a] decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reasons for reaching a different result on essentially the same facts is arbitrary and capricious.” Tall Trees Const. Corp. v Zoning Bd. of Appeals of Town of Huntington, 97 NY2d 86, 92 (2001) (quoting Knight v Amelkin, 68 NY2d 975, 977 [1986]). “[F]ailure to conform to agency precedent will, therefore, require reversal on the law as arbitrary, even though there is in the record substantial evidence to support the determination made.” Matter of Charles A. Field Delivery Service, Inc., 66 NY2d 516, 520 (1985).

Pursuant to petitioner’s FOIL document request and following the filing of respondents’ verified answer, respondents supplied petitioner with records of the applications of what, petitioner states, “DOB . . . admit[s] is but a minority of the approved applications for plumbing licenses dating from 2002.” Verified Reply ¶ 4. Petitioner submits copies of twenty-one of the applications submitted before parts of the relevant statutes changed in July 2008. In all of them, applications were approved where evidence of the number of permits and time and nature of

creditable work was comparable to petitioner's or were substantially less. Respondents have not sought leave to file a sur-reply with respect to this newly submitted evidence, and so there is no explanation before the court concerning these discrepancies. Consequently, the Determination is annulled as arbitrary and capricious, and the matter is remanded to DOB for reconsideration in light of the standard for awarding licenses as evidenced in prior applications such as the ones presented by petitioner.

Accordingly, it is

ADJUDGED that the petition is granted to the extent that the Determination is annulled, and the matter is remanded to DOB for reconsideration without delay.

FILED

OCT 11 2011

Dated: **OCT 06 2011**

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