

Matter of McCann v New York City Dept. of Bldgs.

2011 NY Slip Op 32889(U)

October 7, 2011

Sup Ct, NY County

Docket Number: 112031/2010

Judge: Lucy Billings

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SCANNED ON 11/11/2011

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

PRESENT: LUCY BILLINGS
J.S.C.
Justice

PART 44

Index Number : 112031/2010

MCCANN, PETER A.

vs.

N.Y.C. DEPT OF BUILDINGS

SEQUENCE NUMBER : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

1

2

3

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~~ and adjudged that:

The court denies the petition and dismisses this proceeding, pursuant to the accompanying decision. C.P.L.R. § 7806.

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: 10/7/11

Lucy Billings

LUCY BILLINGS

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 46

-----X

In the Matter of the Application of
PETER A. McCANN,

Index No. 112031/2010

Petitioner,

For a Judgment Under Article 78 of the
Civil Practice Law and Rules

- against -

DECISION AND ORDER

NEW YORK CITY DEPARTMENT OF BUILDINGS,

Respondent

-----X

LUCY BILLINGS, J.S.C.:

Petitioner seeks to vacate respondent's denial dated May 14, 2010, of his application for a New York City Master Fire Suppression Piping Contractor license and application for reconsideration of respondent's original denial. The parties agree that, since petitioner originally applied for the license before July 1, 2008, when the New York City Administrative Code statutes governing the license were recodified, the prior statutes govern respondent's determinations. Respondent based its denial on the following grounds.

Petitioner worked under the direct supervision and control of a Master Fire Suppression Piping Contractor licensee during 1985 to 2006, a span of 21 years. Since fire suppression piping requires a permit, however, respondent determined that petitioner's supervisor did not obtain permits for enough such work that would indicate the seven years of experience in design

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and installation of fire suppression piping required for a license. N.Y.C. Admin. Code §§ 26-146(b), 27-147, 27-180 (effective through June 30, 2008). Nor did petitioner's earnings, which petitioner presented for 1997 to 2006, demonstrate full-time employment as an apprentice or journeyman in that work or in the design and installation of plumbing systems, which may constitute up to four of the seven years of qualifying experience.

I. RESPONDENT'S CONSIDERATION OF THE PERMITS UNDER WHICH PETITIONER WORKED TO MEASURE HIS WORK EXPERIENCE

Although neither Administrative Code § 26-146(b) nor any other provision requires an applicant to show the seven years of experience through permits, respondent simply used permits as a measure because all such work experience must be performed under a permit. Conversely, no such work experience may be performed without a permit. N.Y.C. Admin. Code §§ 27-147, 27-180 (effective through June 30, 2008).

Petitioner suggests that respondent has set an arbitrary, unknown number of permits under which an applicant must have worked, but nothing in the record here supports such a suggestion. Respondent's original denial November 5, 2009, of petitioner's application showed the number of permits during each year from 1994 through 2006 that respondent considered and how respondent assessed the work under those permits: as "small fire suppression work which does not suggest full time employment."

V. Answer Ex. H, at 1. Nothing in the record indicates respondent gave petitioner no credit for this work; instead,

respondent credited him with "one year and eight months of qualifying fire suppression experience" out of the requisite three years, V. Pet. Ex. A, at 2; V. Answer Ex. J, at 2, even after crediting him with four years of qualifying experience in design and installation of plumbing systems. See Auringer v. Department of Bldgs. v. City of N.Y., 24 A.D.3d 162, 163 (1st Dep't 2005).

In seeking reconsideration January 5, 2010, petitioner was free and, under Administrative Code § 26-146(b) and 55 R.C.N.Y. § 11-02(d)(1), bore the burden to show that his work in design and installation of fire suppression piping or of plumbing systems under permits for that work entailed more or different work than respondent's evaluation. Yet he made no such showing before the administrative decisionmakers considering his application, nor has he made any proffer of new evidence on that issue to be considered on a remand to the administrative agency. E.g., Auringer v. Department of Bldgs. v. City of N.Y., 24 A.D.3d at 163-64; Luisi v. Safir, 262 A.D.2d 47, 49-50 (1st Dep't 1999); Poster v. Strough, 299 A.D.2d 127, 142-43 (2d Dep't 2002). See ADC Contr. & Constr. Corp. v. New York City Dept. of Design & Constr., 25 A.D.3d 488 (1st Dep't 2006); Rizzo v. New York State Div. of Hous. & Community Renewal, 16 A.D.3d 72, 76-77 (1st Dep't 2005); Kirmayer v. New York State Dept. of Civ. Serv., 24 A.D.3d 850, 852 (3d Dep't 2005).

II. PETITIONER'S WORK UNDER PLUMBING PERMITS

Instead, petitioner maintained that he obtained three years of qualifying experience in design and installation of fire suppression piping while working more than four years full-time under plumbing permits. Respondent nevertheless determined that, while petitioner's plumbing work under permits included his installation of sprinkler heads, with their piping, fittings, valves, and hangers, that work is not equivalent to fire suppression work under a permit. See Rasole v. Department of Citywide Admin. Servs., 83 A.D.3d 509 (1st Dep't 2011). Specifically, that plumbing work does not include complex hydraulic calculations, determination of fitting friction, or consideration of a planned system's shape and scope: the distance at which the sprinkler line will activate the sprinkler head, for example.

III. PETITIONER'S EARNINGS

Finally, petitioner contends that his wages were low because he worked for his family's business and received other non-monetary reimbursement for his work. Again, however, he has failed to meet his burden to offer, before the administrative decisionmakers, or even in this proceeding, any specification of what those benefits were, to warrant a remand.

IV. CONCLUSION

Upon this record, petitioner has not established that respondent's disapproval May 14, 2010, of his application and its reconsideration violated lawful procedure, was affected by an

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error of law, was arbitrary, lacked a rational basis, or was unsupported by the evidence presented. C.P.L.R. § 7803(3) and (4). Therefore the court denies the petition and dismisses this proceeding. C.P.L.R. § 7806. This decision constitutes the court's order and judgment of dismissal.

DATED: October 7, 2011

Lucy Billings

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.

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