

**Matter of Martinez v New York City Dept. of Bldgs.**

2013 NY Slip Op 30623(U)

April 1, 2013

Sup Ct, New York County

Docket Number: 103814/12

Judge: Cynthia S. Kern

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  
COUNTY OF NEW YORK: Part 55

-----X  
In the Matter of the Application of

JUSTIN MARTINEZ,

Petitioner,

Index No. 103814/12

For an Order Pursuant to Article 78  
of the Civil Practice Law and Rules,

**DECISION/ORDER**

-against-

THE NEW YORK CITY DEPARTMENT OF  
BUILDINGS,

**FILED**

APR 02 2013

Respondent.

-----X  
HON. CYNTHIA S. KERN, J.S.C.

NEW YORK  
COUNTY CLERK'S OFFICE

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion  
for : \_\_\_\_\_

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Affirmation in Opposition.....	2
Replying Affidavits.....	3
Exhibits.....	4

Petitioner Justin Martinez brings the instant petition pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR") seeking to challenge a determination made by the New York City Department of Buildings (the "DOB") denying his application for a Master Fire Suppression Piping Contractor ("MFSPC") License. For the reasons set forth below, the petition is denied.

The relevant facts are as follows. On or about March 23, 2010, petitioner submitted an application (the "Application") to the Department of Citywide Administrative Services (the "DCAS") to take the MFSPC License Examination in order to obtain an MFSPC License from

the DOB. Petitioner listed his date of birth on the application as March 6, 1988, making him 22 years old at the time of the Application. In the section of the Application titled "Experience," petitioner listed "Master Fire Prevention System, Inc." as his employer from 2002 to "present." Petitioner's Application listed his qualifying experience as "physical installation in house, technical training NAFED Course, Kiddie Factory Training, direct training done under Peter Martinez." In addition, petitioner stated on the Application that he was certified by the Kiddie School and worked with his father, Peter Martinez ("Mr. Martinez"), since the age of ten after school and on weekends.

On or about July 28, 2010, petitioner passed the written examination for the MFSPC License. Thereafter, the DOB commenced an investigation of petitioner's work experience to determine whether petitioner met the qualifications for the MFSPC License. By letter dated October 8, 2010, the DOB advised petitioner that prior to granting an MFSPC License, petitioner's Application had to be reviewed by the Master Plumber and Master Fire Suppression Piping Contractor License Board (the "Board"). In addition, the DOB informed petitioner that he must submit documentation, such as notarized affidavits signed and sealed by the Licensed MFSPC (the "LMFSPC") who supervised his work, proving that he met the qualifications for an MFSPC License.

By letter dated March 15, 2011, Mr. Martinez, an LMFSPC, informed the DOB that petitioner worked under his direct and continued supervision as an "installer helper" for the seven years prior to the date of his letter. Mr. Martinez further stated as follows:

Mr. Justin P. Martinez joined our corporation on February 8<sup>th</sup> 2002 as a full time employee. His daily duties entail the practical experience of installing, testing and the maintenance of the fire suppression

system along with reading plans for each system under the Class a Master Fire Suppression Piping Contractor's License.

Mr. Justin P. Martinez has worked on a continuous basis since 2002. He has worked pro-bono on weekends helping me on many emergencies [sic] calls. He is currently supervised by me on [a] daily basis.

By letter dated January 25, 2012, the DOB responded to Mr. Martinez's March 15, 2011 letter and requested that he provide further information regarding the work petitioner performed under his supervision. The DOB also enclosed an "Experience Verification Form" (the "Form") to be completed and returned by Mr. Martinez within 30 days from the date of the letter. Mr. Martinez returned the Form to the DOB on or about April 4, 2012. In response to the question on page 3 of the Form regarding whether petitioner was employed on a full-time basis in the design and installation of plumbing and/or fire suppression systems, with full-time being defined as 35-40 hours per week, Mr. Martinez answered in the affirmative. However, despite indicating that petitioner worked on a full-time basis, Mr. Martinez identified several periods of part-time employment for petitioner on page 4 of the Form. Specifically, Mr. Martinez listed that petitioner worked under his supervision from 2002 through June 2004 for 16 hours per week at a wage of \$10 per hour; from August 2004 through August 2008 for 12 hours per week at a wage of \$12 per hour; from October 2008 through March 2010 for 12 hours per week for \$10 per hour.

By letter dated May 31, 2012, the DOB informed petitioner that his Application was denied because he failed to meet the seven year of qualifying experience requirement.

Specifically, the letter states:

Pursuant to Title 1 of the Rules of the City of New York, Section 104-01, the minimum experience requirements specified in the Code refer to "experience" gained as a result of full-time employment. By

[Experience Verification Form] dated April 4, 2012, your supervising licensee, Peter Martinez, stated that several years of your qualifying experience were earned during part-time employment. Specifically, he stated that for four different time periods, your weekly work hours ranged from ten to sixteen hours. Based on your licensee, a substantial portion of your claimed work experience was spent working less than the required hours to gain qualifying experience.

By letter dated July 31, 2012, petitioner's attorney requested that the DOB reconsider its determination denying petitioner's Application. In his letter, petitioner's attorney stated that when petitioner started working at Master Fire Suppression Systems, the firm owned by Mr. Martinez, in February 2002, petitioner was 14 years old and living at home, thus, he did not get paid for all of the hours that he worked and that the money petitioner did earn was more of an allowance than a salary. Petitioner's attorney further stated that in February 2002, petitioner worked with his father from 4pm to 8pm daily and 8 hours on Saturday and Sunday, averaging 36 hours per week and that when Mr. Martinez submitted the Form, "it was his mistaken belief that [his] son's hours needed to correspond to his reported earnings."

By letter dated December 26, 2012, the DOB denied petitioner's request for reconsideration and upheld its May 31, 2012 denial of petitioner's Application. In its letter, the DOB stated:

New York State's Child Labor laws restrict the number of hours minors may work. Based on the fact that Justin Martinez was a minor in February 2002, he could not have been legally employed full-time, as claimed. Even if Justin Martinez worked full-time in the summer and during weekends while he was a minor, he could not have gained seven years of qualifying experience between February 2002 and the date of his application, March 23, 2010. Therefore, the Department has determined that Justin Martinez has not sufficiently proven the requisite seven years of experience in the design and installation of fire suppression systems.

\* 5]

By Notice of Petition dated September 17, 2012 and Amended Verified Petition dated January 23, 2013, petitioner commenced the instant Article 78 proceeding seeking to annul, vacate and set aside the DOB's denial of petitioner's Application and directing the approval of a MFSPC License.

On review of an Article 78 petition, "[t]he law is well settled that the courts may not overturn the decision of an administrative agency which has a rational basis and was not arbitrary and capricious." *Goldstein v Lewis*, 90 A.D.2d 748, 749 (1<sup>st</sup> Dep't 1982). "In applying the 'arbitrary and capricious' standard, a court inquires whether the determination under review had a rational basis." *Halperin v City of New Rochelle*, 24 A.D.3d 768, 770 (2d Dep't 2005); see *Pell v Board. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 N.Y.2d, 222, 231 (1974)("[r]ationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard.") "The arbitrary or capricious test chiefly 'relates to whether a particular action should have been taken or is justified ... and whether the administrative action is without foundation in fact.' Arbitrary action is without sound basis in reason and is generally taken without regard to facts." *Pell*, 34 N.Y.2d at 231 (internal citations omitted).

In the instant action, the court finds that the DOB's determination denying petitioner's Application was made on a rational basis. Pursuant to New York City Administrative Code ("Admin. Code") § 28-410.4.1, an applicant for an MFSPC License must submit proof of at least seven years of experience within the ten years prior to the application in the design and installation of fire suppression piping systems in the United States under the direct and continued supervision of an LMFSPC holding the class of license for which the application is made. Title 1 RCNY § 104-01(c) defines the term "experience" as "that experience gained as the result of full-

