

<b>Matter of Macaluso v New York City Dept. of Bldgs.</b>
2013 NY Slip Op 31084(U)
May 15, 2013
Sup Ct, New York County
Docket Number: 104514/2012
Judge: Eileen A. Rakower
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts ( <a href="http://www.nycourts.gov/ecourts">http://www.nycourts.gov/ecourts</a> ) 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

HON. EILEEN A. RAKOWER

PRESENT: \_\_\_\_\_  
Justice

PART 15

Index Number : 104514/2012  
MACALUSO, ROGER  
vs.  
NYC DEPARTMENT OF BUILDINGS  
SEQUENCE NUMBER : 001  
ARTICLE 78

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

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 \_\_\_\_\_

No(s) 1, 2  
No(s) 3-4  
No(s) 5

Upon the foregoing papers, it is ordered that this motion is

**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).

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER**

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

Dated: May 15, 2013

  
\_\_\_\_\_, J.S.C.  
**HON. EILEEN A. RAKOWER**

- 1. CHECK ONE:  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE:  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

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

PRESENT: Hon. EILEEN A. RAKOWER

PART 15

Justice

In the Matter of the Application of  
ROGER MACALUSO,

INDEX NO. 104514/2012

Petitioner, **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  
1412)

- v -

THE NEW YORK CITY DEPARTMENT OF BUILDINGS,

MOTION CAL. NO. \_\_\_\_\_

Respondent.

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion for/to

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1, 2
Answer — Affidavits — Exhibits _____	3, 4,
Replying Affidavits _____	5

Petitioner Roger Macaluso ("Petitioner"), a Licensed Master Plumber, brings this Article 78 petition to annul respondent The New York City Department of Buildings' ("Respondent") second determination denying him a Master Fire Suppression Piping Contractor ("MFSPC") license. Respondent opposes the petition.

Petitioner had previously been issued a Master Plumber's License in January 2006. In support of his application for a Master Plumber's license, Petitioner submitted evidence of his work "installing and designing plumbing systems" under the direct supervision of a Licensed Master Plumber.

On December 29, 2007, Petitioner applied for the MFSPC license. After passing the written examination he submitted the following documentation to show that he worked in the "design and install[ation] of fire suppression and piping systems in the United States" in compliance with the time requirements needed for the license:

1- New York City Housing Authority, under supervision of Ben Paradiso, LMP #644 from April 14, 2003 to present, a total of 4 years 8 months, title "Plumber";

2- Jan Service Co., Inc., under supervision of Michael Gallagher, MFSPC #542, from December 10, 2002 to April 13, 2003, a total of 4 months, title "fire suppression piper fitter";

3- Bondee Enterprises/Ranshaw, under supervision of Richard Bonelli, MFSPC #714 from October 13, 1999 to December 9, 2002 a total of 3 years and 2 months, title "fire suppression pipe fitter".

Petitioner also submitted affidavits from Richard Bonelli, Michael Gallagher, John Maccarone and Benedict Paradiso. Each advised the agency that they supervised Petitioner, stated Petitioner's duties, the projects he worked on and the periods of time he worked. Mr. Bonelli, Gallagher and Maccarone stated that Petitioner worked in the enumerated projects as a full time journeyman plumber and his duties included "design and installation of plumbing and fire suppression systems." Mr. Paradiso stated that Petitioner worked for NYCHA from April 2003 to November 2006 [2 years 8 months] and his duties included "design and installation of plumbing systems."

Section 26-146(b) of the New York City Administrative Code provides that the applicant must have earned, by the application date, seven years' experience in the design and installation of fire suppression piping systems, or four years' experience in the design and installation of plumbing systems and three years' experience in the design and installation of fire suppression piping systems in the United States prior to the application date for the class of license for which the application is made.

By letter dated April 25, 2011, Respondent denied Petitioner's application for a MFSPC license stating, "although you hold a Master Plumber license (License Master Plumber #2055), based on a review of your application, and supporting documentation, you are unable to demonstrate that you have obtained seven years practical experience in the design and installation of fire suppression systems in the United States." Respondent refused to credit Petitioner for the period from August 26, 1996 to February 16, 2004, because this time was credited

towards the experience needed to obtain his Master Plumber's license and because a review of fire suppression permits obtained by his supervising licensee would only allow him to be credited with two years, five months of fire suppression experience.

Petitioner filed an Article 78 Petition with the Honorable Manuel J. Mendez on August 16, 2011, in which he sought to have the Court review Respondent's decision denying his application for a Master Fire Suppression Piping Contractor license. By Decision and Order dated January 27, 2011, the Honorable Manuel J. Mendez granted Petitioner's application, and Respondent's determination was annulled and the matter was remanded back to Respondent for reconsideration of Petitioner's application in a manner "not inconsistent with this decision" and "in a manner that comports with the requirements of the Administrative Code." The court specifically took issue with the Respondent's refusal to credit Petitioner with experience in obtaining his MFSPC license based merely on the fact that he was gaining experience for his plumbing license at the same time, finding that interpretation was inconsistent with the Administrative Code. Specifically, the court stated, "[t]he requirement that the applicant have worked solely in the design and installation of fire suppression piping systems, during the relevant period, or that practical experience be proven through work permits of supervising licensees, is not supported in the statutory scheme."

Upon reconsideration, in a letter dated August 31, 2012, Respondent again denied Petitioner's application for a MFSPC license, finding that he was not qualified. In the letter, Respondent states that Petitioner may not be credited with qualifying fire suppression experience while working for NYCHA, relying on statements made by Petitioner's supervising licensee Benedict Paradiso who stated that Petitioner's full time responsibilities at NYCHA included "the design and installation of plumbing systems, not fire suppression systems." Regarding Petitioner's employment with JAM, the Respondent states that Petitioner may not be credited with qualifying fire suppression experience because his supervisor, Michael Gallagher's correspondence with Respondent "raised questions regarding [Petitioner's] performance of fire suppression design and installation work during his employ [at JAM]". Additionally, pointing to a recent interview of Petitioner taken by Respondent on April 17, 2012, Respondent indicates:

When asked to apportion his time between the trades [of plumbing and fire suppression at Ranshaw and United] he claimed that his first

three years of experience at United (from August 1 1996 to October 1999) were spent performing plumbing work exclusively, while his remaining experience at United (1 month) and his time at Ranshaw (3 years) was split "50/50" between plumbing and fire suppression work. Based on his statements [Petitioner] spent approximately one month for United and half of the time he worked for Ranshaw, one year and six months, in the design and installation of fire suppression systems. Therefore, at most, he could be credited with one year and seven months of qualifying experience.

Moreover, the letter says that Petitioner:

failed to demonstrate that he gained three years of experience, cumulatively, in the design and installation of fire suppression systems. Working under the employ of an individual who holds a MP and a MFSPC licensee does not, on its own, adequately demonstrate the number of years of qualifying experience an applicant may claim in the design and installation of fire suppression systems when the applicant alleges that he performed both plumbing and fire suppression work during that period. Since [Petitioner's] years of experience from 1996 through 2002, was already credited towards his Master Plumber's license application, [Petitioner] was asked to explain how and when he may have gained three years of cumulative fire suppression experience in addition to the experience he gained in the design and installation of plumbing systems. Based on the aforementioned information, including [Petitioner's] Board appearance, the Department cannot credit Petitioner with three years of qualifying experience in the design and installation of fire suppression systems.

Petitioner now asserts in the present Article 78 Petition before this Court that Respondent failed to reconsider his application in a manner "not inconsistent" with Judge Mendez's January 27, 2012 decision and the Administrative Code.

It is well settled that possession of a license is a privilege, not a right, which is subject to reasonable regulation. (*See, Papaioannou v. Kelly*, 14 AD3d 459, 788 NYS2d 378 [1<sup>st</sup> Dept 2005]); *Montanez v. City of NY Dept of Buildings*, 8 Misc 3d 405, 797 NYS2d 863 [Sup Ct NY County 2005]). Judicial review of a

discretionary administrative action, such as the issuance of a license, is limited to finding whether there was a rational basis for the administrative action. (*Sullivan County Harness Racing Assn. v. Glasser*, 30 NY2d 269, 283 NE2d 603, 332 NYS2d 622 [1972]). Thus, the only issue for consideration by the court is whether the administrative determination— in this case whether petitioner qualifies for the license in question— was arbitrary and capricious, or an abuse of discretion (*Arrocha v. Board of Educ. Of City of NY*, 93 NY2d 361, 712 NE2d 669, 690 NYS2d 503 [1999]). An action is arbitrary if it “is without sound basis in reason and is generally taken without regard to the facts.” (*Pell v. Bd. of Educ.*, 34 NY2d 222, 313 NE2d 321, 356 NYS2d 833 [1974]). Once a rational basis for the administrative determination is shown, the function of judicial review has ended, and the agency’s determination must be upheld, even where the court might have reached a contrary result. (*Sullivan County Harness Racing Assn v. Glasser*, 30 NY2d 269, 283 NE2d 603, 332 NYS2d 622 [1972]).

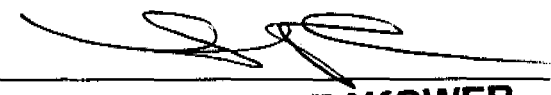
The Respondent’s decision to deny Petitioner’s MFSPC license on August 31, 2012, was consistent with the Honorable Manny Mendez’ August 16, 2011 Order as well as the Administrative Code. The decision was made after reviewing the facts, documentation, evidence presented in support of Petitioner’s application, and Petitioner’s testimony during his April 2012 interview with the Board to determine how much time Petitioner actually spent on the fire suppression systems. It was not arbitrary or irrational for Respondent to conclude from the information provided that Petitioner did not have the requisite experience in the design and installation of fire suppression piping systems to meet the three year requirement. Accordingly, the decision was a proper exercise of the Respondent’s discretion in issuing MFSPC licenses in New York City.

Wherefore, it is hereby,

ORDERED AND ADJUDGED that the Petition is denied and the proceeding is dismissed in its entirety.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: **May 15, 2013**



**HON. EILEEN A. RAKOWER**  
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).

Check one:      **FINAL DISPOSITION**     **NON-FINAL DISPOSITION**  
Check if appropriate:     **DO NOT POST**     **REFERENCE**