

**Matter of Platinum Towing Inc. v New York City  
Dept. of Consumer Affairs**

2014 NY Slip Op 30407(U)

February 14, 2014

Supreme Court, New York County

Docket Number: 101141/13

Judge: Peter H. Moulton

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. PETER H. MOULTON  
SUPREME COURT JUSTICE  
*Justice*

PART 57

*In re: Platinum Towers Inc*

INDEX NO. 101141/13

*New York City Department of Consumer Affairs*

MOTION DATE \_\_\_\_\_

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 \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

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: 2/14/14

*[Signature]*  
HON. PETER H. MOULTON J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

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

Supreme Court: New York County  
Part 57

-----X  
In the Matter of:  
PLATINUM TOWING, INC.,

Petitioner,

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

-against-

Index No. 101141/13

NEW YORK CITY DEPARTMENT OF  
CONSUMER AFFAIRS,

Respondent.

-----X  
Peter H. Moulton, J.S.C.

Petitioner in this Article 78 proceeding, Platinum Towing Inc. ("Platinum"), operates tow trucks and participates in the New York City Police Department's Direct Accident Response Program ("DARP"). Platinum seeks to annul the decision of respondent Department of Consumer Affairs ("DCA") dated July 8, 2013, denying petitioner's participation in more than one DARP zone. Petitioner seeks an order and judgment allowing it to operate in more than one DARP zone.

DCA moves to dismiss the petition for failure to state a cause of action. As DCA has demonstrated that petitioner has no right to the relief requested, the motion to dismiss is granted.

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## BACKGROUND

DARP is a New York City Police Department program which provides for the removal of vehicles that have been involved in accidents and are unsafe to drive under their own power. DCA administers the admission of licensed tow truck drivers to the program. DARP was developed to address the problem of "chasing" which refers to tow truck companies racing to the scene of accidents in order to secure business. For each DARP zone there is a list of licensed towing companies that the Police Department can call on a rotating basis to respond to accidents.

Beginning in 1995 DARP applicants were restricted to operating solely in the zone or zones where it had a business location. However, under a "grandfather" exception, the DCA permitted tow companies which had participated in multiple DARP zones before December 6, 1994, to continue participating within those zones despite the rule change.

Petitioner claims that it is entitled to this grandfather exception. It bases this claim on the premise that it is the successor in interest to a company called Verrazano Auto Collision, Inc. ("Verrazano"). Verrazano was incorporated in 1978. It was initially owned entirely by Edith Frasca. Verrazano was entitled to participate in multiple DARP zones, and it retained these zones pursuant to the grandfather provision after the 1995 rule change.

Platinum was incorporated in December 2000. Initially, Frasca

owned 100% of Platinum.

In 2001 Frasca informed DCA that she would be changing Verrazano's name and operating her business solely under Platinum. She surrendered Verrazano's license. The petition states that this was an "accepted policy by the DCA at that time." According to the petition, Platinum's paperwork was approved by DCA. After further correspondence, in 2001 DCA issued Platinum a license and authorized it to participate in all DARP zones previously serviced by Verrazano. Thus, besides zone 11, which is Platinum's local precinct zone, DCA allowed Platinum to participate in DARP zones 10 and 24.

Thereafter, in September 2002, Frasca sold 50% of her shares in Platinum to Nicholas Romano. In September 2003, Frasca sold Romano her remaining 50% share of Platinum. DCA was notified concerning both purchases.

DCA rules require a company with a new principal having a 10% or more ownership interest to reapply for a license and wait one year after issuance before reapplying for the DARP program. (Administrative Code § 20-110.) However, DCA took no action when notified of Platinum's change of ownership. Platinum continued to operate in three DARP zones after the change in ownership.

According to DCA it "revamped" its DARP computer system in 2013 and in the process discovered eleven companies, including Platinum, that were operating in multiple DARP zones despite not

5] having been assigned multiple zones in 1994, the last year to qualify for grandfather status. DCA changed Platinum's assignment to DARP zone 11 exclusively.

When Platinum protested, DCA's general counsel wrote a letter dated July 8, 2013, setting forth DCA's reasons for the change. The letter explained that Platinum was not eligible for grandfather status as it was licensed in 2001. Additionally, the letter explained that Platinum's change in ownership would also be disqualify it from grandfather status, even had it somehow succeeded to Verrazano's grandfathered multiple zone participation in the program.

This proceeding ensued.

#### DISCUSSION

DCA regulations expressly provide that tow truck companies applying to the DARP program on or after December 6, 1994 may only apply to participate in the zone in which their business is located. (6 RCNY §§ 2-371(c); 2-374(a).) Platinum was not licensed until 2001. It did not exist prior to 2000. Accordingly it was not arbitrary and capricious for respondent to deny Platinum any DARP zones besides zone 11, where it has its place of business. Similarly, Platinum's change in ownership became another occasion where agency rules required that the company submit a new license application post 1994. (Administrative Code § 20-110.)

\* 6]

Accordingly, the change in ownership provides another rational basis for DCA's decision that is not arbitrary and capricious. DCA's rational construction of its regulations is entitled to deference. (See 23 Realty Assocs v Teigman, 213 AD2d 306, 308.)

These changes in corporate identity and ownership defeat any argument that Platinum somehow succeeded to Verrazano's "rights" to operate in multiple zones. To allow such a broad definition of succession rights would gut the DARP program's requirement that applicants after 1995 operate only in the zone where their business is located. Under petitioner's reasoning, any company that purchased a grandfathered company could succeed to the latter's multiple zones.

While DCA failed to discover Platinum's ineligibility until 2013, a governmental entity is not estopped from discharging its statutory duties, even in cases of delay. (E.g. Daleview Nursing Home v Axelrod, 62 NY2d 30.) For the same reasons, petitioner's laches argument fails. (See A.C. Transportation, Inc. v Board of Education, 253 AD2d 330, lv denied 93 NY2d 808.) There was no due process violation, as baldly stated in the petition, as Platinum had no property right to the additional routes.

At oral argument, the court granted petitioner leave to provide further briefing on whether a settlement between DCA and another towing company somehow demonstrated DCA's arbitrariness in this case. The case gave petitioner until January 21, 2014 to

provide this further briefing. On February 4, 2014, petitioner submitted correspondence on this point. Respondent countered with its own letter dated February 10, 2010. After reading this correspondence, the court finds that the settlement referenced by petitioner does not represent any unequal treatment of tow truck companies by DCA.

**CONCLUSION**

For the reasons stated, IT IS ORDERED AND ADJUDGED that the petition is denied and this proceeding is dismissed. The motion for a preliminary injunction is denied.

This constitutes the decision, order and judgement of the court.

Date: February 14, 2014



J.S.C.

**HON. PETER H. MOULTON**

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