Matter of Ramirez v Department of Citywide Admin. Servs.
2014 NY Slip Op 30496(U)
March 5, 2014
Supreme Court, New York County
Docket Number: 103720/2011
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: LUCY BILLINGS J.S.C. Justice

PART 46

Index Number : 103720/2011
RAMIREZ, GERARDO
vs.
CITYWIDE ADMINISTRATIVE
SEQUENCE NUMBER : 002
REARGUMENT/RECONSIDERATION

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to 2, were read on this motion ~~to~~/for reargument

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1

Answering Affidavits — Exhibits _____ | No(s). 2

Replying Affidavits _____ | No(s). _____

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

The court denies petitioner's motion for reargument pursuant to the accompanying decision. C.P.L.R. § 2221(d)(2).

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

Dated: 2/7/14

Lucy Billings, J.S.C.
LUCY BILLINGS J.S.C.

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
COUNTY OF NEW YORK: PART 46
----------x

In the Matter of the Application of GERARDO RAMIREZ,

Petitioner

Index No. 103720/2011

DECISION AND ORDER

For a Judgment under and pursuant to Article 78 of the CPLR

- against -

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

Respondents

----------x

LUCY BILLINGS, J.S.C.:

I. BACKGROUND

In this proceeding pursuant to C.P.L.R. Article 78, petitioner moves to reargue his petition challenging respondent New York City Department of Buildings' denial of his application for a Master Plumber license on the ground that the determination is arbitrary, C.P.L.R. §§ 2221(d), 7803(3), a challenge that the court dismissed in an order dated December 21, 2012. C.P.L.R. § 7806. Respondent Department of Buildings (DOB) based its denial on petitioner's insufficient practical experience under the New York City Administrative Code provisions governing the license when petitioner originally applied for the license, requiring seven years of experience in designing and installing plumbing systems. N.Y.C. Admin. Code §§ 26-141, 26-142, 26-146(b) (effective through June 30, 2008). After oral argument, for the

reasons explained below, the court denies petitioner's motion for reargument. C.P.L.R. § 2221(d)(2).

Petitioner bears the burden to demonstrate that he satisfies the statutory and regulatory requirements for the license he seeks. 55 R.C.N.Y. § 11-02(d)(1); Reingold v. Koch, 111 A.D.2d 688, 690 (1st Dep't), aff'd, 66 N.Y.2d 994 (1985); Martin v. City of New York, 103 A.D.3d 412 (1st Dep't 2013); Chilson v. Hein, 94 A.D.3d 517, 518 (1st Dep't 2012). See San Filippo v. New York City Dept. of Bldgs., 68 A.D.3d 421 (1st Dep't 2009). The required seven years of experience in designing and installing plumbing systems in the United States to support a Master Plumber license application must be performed under the supervision of a licensed master plumber. N.Y.C. Admin. Code § 26-141(c) (effective through June 30, 2008).

Although no Administrative Code or regulatory provision requires an applicant to show the seven years of experience through permits, DOB used permits simply as a measure because all such work experience, at least in New York City, must have been performed under a permit. N.Y.C. Admin. Code § 26-142(a)(1)(a); Licata v. Department of Citywide Admin. Servs., 105 A.D.3d 520 (1st Dep't 2013). Conversely, no such work experience was allowed without a permit. N.Y.C. Admin. Code § 27-147.

Petitioner nonetheless contends that DOB's denial of his application for a Master Plumber license was arbitrary because DOB based its denial on his supervising licensees' insufficient number of permits during his employment under their supervision,

without a statutory or regulatory basis. He was particularly disadvantaged because he claims qualifying work experience outside New York City, where DOB does not issue permits, and in New York City but before DOB instituted its recordkeeping of permits.

II. PETITIONER'S PROOF OF HIS EXPERIENCE

Petitioner relied on affidavits of his former employers to substantiate his plumbing work experience. One of them, John Curley, attested that he employed petitioner full time from May 17, 2004, to February 7, 2008, but specifically denied supervising petitioner and explained that he worked directly for customers. Nevertheless, even assuming Curley's supervision, DOB was not obligated, and the court was not entitled, to consider those 44-45 months of experience, because petitioner failed to comply with DOB's request to provide evidence of where Curley was licensed, since he was not licensed in New York City. At a hearing before DOB July 15, 2009, petitioner not only acknowledged that Curley rarely supervised petitioner, but further failed to demonstrate that Curley was licensed and acknowledged that Curley's other employee who supervised petitioner was not licensed.

Another employer, Lucas Gentile, attested that "during the period of time in which Mr. Ramirez was employed and supervised by me . . . , a great deal of my firm's work was plumbing work performed for city agencies, notably HPD." V. Pet. Ex. F, at 5. Petitioner also testified at the hearing July 15, 2009, that he

worked for the New York City Department of Housing Preservation and Development (HPD) for six or seven years independent of Gentile's work for HPD, but petitioner's independent work was monitoring other contractor plumbers' work and was not supervised by a licensed master plumber. Therefore he did not claim his experience with HPD in his license application. Insofar as petitioner does claim his work under Gentile, and petitioner's application attests to the dates he worked for Gentile, Gentile did not corroborate the amount of time he supervised petitioner. Petitioner's testimony at the hearing did not remedy this deficiency, as petitioner revealed that the duration of his work for Gentile overlapped with the duration of his working for another supervisor, Marvin Gross, and petitioner alternated between working for each supervisor. Without any specification of the days per week or hours per day petitioner worked for Gentile versus Gross, petitioner failed to demonstrate quantifiable qualifying experience under Gentile, as well as Curley. Tsamos v. Department of Citywide Admin. Servs., 107 A.D.3d 604, 605 (1st Dep't 2013). See Aranda v. New York City Dept. of Bldgs., 101 A.D.3d 412, 413 (1st Dep't 2012).

Qualifying experience, moreover, does not include either minor alterations or ordinary repairs, which do not require a permit. N.Y.C. Admin. Code §§ 27-124, 125. The paucity of permits in DOB's records for petitioner's supervisors during the periods petitioner worked for supervisors Lucas Gentile and Marvin Gross indicates that the work they supervised constituted

minor alterations or ordinary repairs and thus explains DOB's conclusion in its denial that petitioner performed primarily ordinary repairs.

The court, however, assumed that all the work during petitioner's employment with Gross was design and installation and not ordinary repairs or minor alterations, amounting to a maximum of 34 months: less than three years. Rasole v. Department of Citywide Admin. Servs., 83 A.D.3d 509 (1st Dep't 2011). Making the same assumption regarding petitioner's work with Curley and Gentile does not avail petitioner any further, due to the other deficiencies in the evidence pertaining to the periods of petitioner's work for those two employers delineated above. Although petitioner's attorney in a request for reconsideration to DOB dated December 15, 2009, detailed the complexity, scope, and duration of the work petitioner performed at the addresses he and Gentile identified, there is no support in the record for this second hand account, other than Gentile's affidavits and petitioner's testimony as delineated.

III. DOB'S DENIAL OF THE LICENSE

Petitioner contends, just as he contended in support of his petition, that DOB's denial of his application rested on his inability to provide evidence that the work he performed under Gentile was under permits, because Gentile undertook the work before DOB instituted an information system that would have produced DOB records of Gentile's permits for the work. Where the work was for HPD, it did not maintain records that old

either.

Evidence of such permits would have been one method to evaluate whether petitioner had gained the required work experience for the license. Licata v. Department of Citywide Admin. Servs., 105 A.D.3d 520; Chilson v. Hein, 94 A.D.3d at 518; Blatt v. New York City Dept. of Citywide Admin. Servs., 12 A.D.3d 164 (1st Dep't 2004). As delineated above and in the court's prior decision, however, the denial rested on petitioner's failure to provide any evidence, such as an affidavit from Gentile specifying how much time petitioner worked with Gentile under his plumbing permits and allocating the time spent under Gentile versus the time spent under Gross during the same period. Any such evidence would have demonstrated the extent to which petitioner's work under each supervisor met the experience requirement. Aranda v. New York City Dept. of Bldgs., 101 A.D.3d at 413. See Rasole v. Department of Citywide Admin. Servs., 83 A.D.3d 509.

In fact, the documentation that DOB required and advised him was needed was supervising licensed master plumbers' affidavits specifying petitioner's job title, the dates petitioner worked with the licensee, the licensee's direct supervision of petitioner, and his duties in detail. V. Answer Ex. B. At no point did DOB insist on compliance with a regulation promulgated in 2009 requiring evidence of supervising licensees' work in the form of permits or completed contracts. 1 R.C.N.Y. § 104-01(c)(3). See Padmore v. New York City Dept. of Bldgs., 106

A.D.3d 453 (1st Dep't 2013). Even if DOB did not advise petitioner of its documentary requirements until he passed the license examination, after Gentile closed his business and disposed of his records, any such delay did not cause petitioner's failure to demonstrate the mandated experience for the license. Chilson v. Hein, 94 A.D.3d at 518. His burden, to specify qualifying work for the requisite duration, was not a secret requirement. Petitioner did not just fail to meet that burden with evidence in the form DOB set forth; he failed to show qualifying work for the requisite duration through any means: affidavits, contracts, permit applications, tax records, or Social Security records, to suggest but a few. E.g., Padmore v. New York City Dept. of Bldgs., 106 A.D.3d 453; Krasniqi v. Department of Citywide Admin. Servs., 105 A.D.3d 590, 591 (1st Dep't 2013). Nothing in the record indicates that respondents were unreceptive to these or other alternative forms of evidence.

IV. PETITIONER'S CLAIM OF INEQUITABLE TREATMENT

In sum, respondents did not limit petitioner to providing his supervising licensees' permits as support for his plumbing experience, but petitioner was not free to provide no support. Although he continues to protest that respondents did grant other Master Plumber license applications without the supporting documentation respondents required of him, DOB's own records of the permits issued to the supervising licensees for the applicants' work supported those applications, as those applicants' experience was in New York City and after DOB

instituted its recordkeeping system.

V. CONCLUSION

For all the above reasons, petitioner has not established that the court overlooked any material facts in evaluating his proof of his plumbing experience. C.P.L.R. §§ 2221(d)(2); Armstead v. Morgan Guar. Trust Co. of N.Y., 13 A.D.3d 294, 296 (1st Dep't 2004). Nor has he established that the court misapprehended applicable law in determining that respondent New York City Department of Buildings' denial of his application for a New York City Master Plumber license comported with lawful procedure, was neither affected by an error of law, nor arbitrary, and instead was rational and supported by the evidence presented. C.P.L.R. §§ 2221(d)(2), 7803(3) and (4); Profita v. Diaz, 100 A.D.3d 481, 482 (1st Dep't 2012); Harris v. Seward Park Hous. Corp, 79 A.D.3d 425, 426 (1st Dep't 2010); Garcia v. Jesuits of Fordham, 6 A.D.3d 163, 165 (1st Dep't 2004). See N450JE LLC v. Priority 1 Aviation, Inc., 102 A.D.3d 631, 632 (1st Dep't 2013); Martin v. Portexit Corp., 98 A.D.3d 63, 65 (1st Dep't 2012); Rivera v. Benaroti, 29 A.D.3d 340, 341 (1st Dep't 2006); Jones v. Budhwa, 23 A.D.3d 154 (1st Dep't 2005). Petitioner simply rehashes his prior contentions. Therefore the court denies petitioner's motion to reargue his petition and adheres to the original determination dismissing the petition. C.P.L.R. §§ 2221(d)(2), 7806.

DATED: February 7, 2014

LUCY BILLINGS, J.S.C.