

**Matter of Gomez v Bratton**

2015 NY Slip Op 31097(U)

June 12, 2015

Supreme Court, New York County

Docket Number: 101428/14

Judge: Paul Wooten

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This opinion is uncorrected and not selected for official publication.

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6/30/15  
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**SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY**

**PRESENT: HON. PAUL WOOTEN**  
*Justice*

**PART 7**

**In the Matter of the Application of  
MANUEL GOMEZ,**  
Petitioner,

**INDEX NO. 101428/14**

**For a Judgment under Article 78 of the  
Civil Practice Law and Rules,**

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**001**

**-against-**

**WILLIAM BRATTON, as Police  
Commissioner of the City of New York,  
THE CITY OF NEW YORK and THE NEW  
YORK CITY POLICE DEPARTMENT,**  
Respondents.

**The following papers, numbered 1 to 4, were read on this motion by petitioner for an order and judgment pursuant to Article 78.**

**Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...**  
**Answering Affidavits — Exhibits (Memo)**  
**Replying Affidavits (Reply Memo)**

<u>PAPERS NUMBERED</u>	
1	_____
2, 3	_____
4	_____

**FILED**

**JUN 30 2015**

**Cross-Motion:**  Yes  No

**COUNTY CLERK'S OFFICE  
NEW YORK**

Manuel Gomez (petitioner) commenced this proceeding pursuant to CPLR Article 78, seeking a judgment annulling and reversing respondents' final determination denying his application for a Carry Business handgun license. Petitioner also seeks an order directing respondents to issue petitioner a Carry Business or Carry Guard handgun license. Respondents oppose petitioner's application and assert that the New York Police Department (NYPD) License Division's decision to deny petitioner's application for a Carry Business handgun license should be upheld because it was rendered after a thorough investigation and full review of the petitioner's application materials, arrest record, mental health record, and

employment record, and it was not arbitrary, capricious or an abuse of discretion.

#### BACKGROUND

Petitioner served as an NYPD police officer from 1998 until he was dismissed for cause in 2011, and he has since received a New York State Private Investigator License. Petitioner is the owner of his own private investigator company called Black Ops Investigators Inc.

Petitioner submitted an application for a Carry Business handgun license with the NYPD License Division on December 20, 2013. His application was denied by a Notice of Disapproval, dated June 13, 2014, in which the Inspector noted that his application was disapproved as the Licensing Division found he lacked good moral character. This conclusion was based on petitioner's dismissal from the NYPD for cause as a result of being disciplined for negative behavior on numerous occasions, and following his arrest on August 28, 2009. Moreover, the Notice of Disapproval also outlined the false statements on petitioner's application, including his failure to disclose admission to an institution for mental illness, failing to disclose three prior arrests, and failing to note that a domestic report was filed against him on June 30, 2009 (see Notice of Petition, exhibit B). Additionally, the Notice stated "you have demonstrated a lack of candor by not disclosing the circumstances of your entire arrest history completely and truthfully nor did you provide documentation requested in regards to your arrests" (*id.*).

Petitioner appealed this determination by letter dated July 11, 2014 and received a Notice of Disapproval After Appeal, dated August 11, 2014, wherein the Appeal Board sustained the determination denying petitioner's application (see Notice of Petition, exhibit D). Specifically, the Appeal Board found that petitioner lacked the necessary proper cause for a license to carry a firearm, as well as the requisite good moral character. Thomas M. Prasso, the Director of the Licensing Division, stated that the aforementioned conclusion was based

upon petitioner's false statements regarding his arrest history and police response to a domestic incident in which he was involved.

Subsequently, on December 3, 2014, petitioner commenced the herein Article 78 proceeding seeking an order vacating the determination of the License Division which denied petitioner's application for a license to have and carry a concealed weapon, and for an order directing the Commissioner to issue such a license to plaintiff.

#### STANDARD

"Judicial review of an administrative determination is limited to whether it was arbitrary or capricious or without a rational basis in the administrative record, and once it is determined that the agency's conclusion had a sound basis in reason, the judicial function comes to an end" (*Matter of Rucker v NYC/NYPD License Div.*, 78 AD3d 535, 535 [1st Dept 2010]). The Court may not substitute its own judgment for that of the agency (*see Matter of Tolliver v Kelly*, 41 AD3d 156, 158 [1st Dept 2007]). "The agency's determination must be upheld if the record shows a rational basis for it, even where the court might have reached a contrary result" (*Kaplan v Bratton*, 249 AD2d 199, 201 [1st Dept 1998]). "A rational basis exists when the evidence adduced is sufficient to support the Commissioner's action" (*Papaioannou v Kelly*, 14 AD3d 459, 460 [1st Dept 2005]).

"The possession of a handgun license is a privilege rather than a right. The New York City Police Commissioner has broad discretion to grant licenses in accordance with the provisions of Penal Law § 400.00 and Administrative Code of the City of New York § 10-131[a][1]" (*Sewell v City of New York*, 182 AD2d 469, 472 [1st Dept 1992] [internal citations omitted]; *see Campbell v Kelly*, 85 AD3d 446 [1st Dept 2011] ["Possession of a handgun license is a privilege, not a right, and as such, it is subject to the broad discretion of the Police Commissioner"]). "The responsibility for determining whether an applicant has demonstrated

proper cause is entrusted to the discretion of the licensing official" (*Matter of Bernstein v Police Dept. of City of N.Y.*, 85 AD2d 574, 574 [1st Dept 1981]; *Hochreich v Codd*, 68 AD2d 424 [1st Dept 1979]). Pursuant to Penal Law § 400.00(1) and 38 RCNY § 5-02, which sets forth the parameters for issuance of a premises license, no license shall be issued where the applicant lacks good moral character (see Penal Law § 400.00[1][b]; 38 RCNY § 5-02[a]; 38 RCNY § 5-10[j]). Moreover, 38 RCNY § 5-10 sets forth the grounds for denial of a handgun license.

#### DISCUSSION

This Court determines, upon a review of the record, that respondents' decision to deny petitioner's application for a Carry Business handgun license was not arbitrary and capricious or an abuse of discretion and had a rational basis (see CPLR 7803[3]; *Matter of Rucker*, 78 AD3d at 535). The License Division reviewed petitioner's application, in accordance with Penal Law § 400.00 and 38 RCNY § 5-10, and determined that petitioner lacked the moral character and fitness required for the issuance of such a license, that petitioner failed to disclose his full arrest history in his application, that petitioner demonstrated a lack of candor and an unwillingness to cooperate with the Licensing Division, and that he failed to demonstrate proper cause for a Carry Business License. As there was a rational basis for denying petitioner's application for a Carry Business handgun license, respondents' determination should not be disturbed (see e.g. *Matter of Tolliver v Kelly*, 41 AD3d 156 [1st Dept 2007]).

#### CONCLUSION

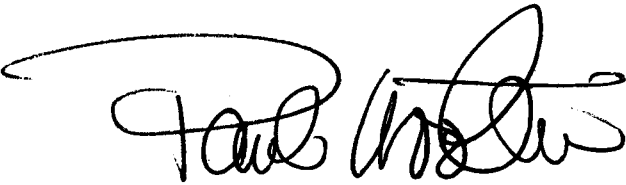
Accordingly, it is

ORDERED that petitioner's Article 78 petition is denied and the proceeding is dismissed, without costs or disbursements to respondents; it is further,

ORDERED that counsel for the respondents shall serve a copy of this Order, with Notice of Entry, upon petitioner and upon the Clerk of the Court, who is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

Dated: 6/12/15

Enter:   
PAUL WOOTEN J.S.C.

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

**FILED**  
JUN 30 2015  
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