SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 33

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In the Matter of the Application of

PHILIP SMITH,

Petitioner,

Index No.: 154604/2015

Decision and Judgment

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

-against-

THE STATE OF NEW YORK, DEPARTMENT OF
MOTOR VEHICLES,

Respondent,

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HON. ALEXANDER W. HUNTER, JR.:

In this CPLR Article 78 proceeding, petitioner Philip Smith seeks an order granting a review of the determination of the New York State Department of Motor Vehicles (the DMV), and, upon such review, entering a judgment finding that the denial of petitioner's application for reinstatement of his motor vehicle driver's license was arbitrary and capricious and against the weight of credible evidence, or, alternatively, remanding this matter to the DMV to take such actions that are not contrary to the findings of this court.

Background

Petitioner is a New York State resident, and, prior to the revocation of his driver's license, was the holder of a class D New York State driver's license. The petitioner's "driving abstract" (the Driving Abstract) shows that he has had three alcohol-related driving offenses in the past 25 years. According to the Driving Abstract, on October 11, 2002, petitioner was convicted of his first driving while impaired offense, which resulted in a driver's license

suspension of 90 days (Certified Administrative Record, Driver's License Abstract at 4-5). On May 31, 2008, petitioner committed a driving while intoxicated offense and refused to submit to chemical test (*id.* at 3; 5). On June 10, 2008, petitioner's driver's license was suspended for one year for refusing the chemical test (*id.*). He was subsequently convicted of the driving while intoxicated offense on July 1, 2008, resulting in a six-month revocation of his driver's license (*id.*).

On June 21, 2011, petitioner was arrested for his third alcohol- related offense, aggravated driving while intoxicated with a blood alcohol content of 18% or more (*id.* at 5). He was convicted of this offense almost a year later, on June 13, 2012 (*id.*). This conviction resulted in the revocation of his driver's license, effective September 24, 2012, for 18 months (*id.* at 3). According to Christine Legorius, associate counsel with the DMV, when petitioner committed this last alcohol-related offense on June 21, 2011, he did not hold a valid New York State driver's license, as it had been revoked since June 10, 2008 for his refusal to take a chemical test and had never been restored (verified answer, Legorius aff., ¶ 21). As a result of his June 21st arrest, petitioner was placed into the custody of the Probation Department (petition, ¶ 9). After completing probation, on April 7, 2014, petitioner's probation officer recommended to the DMV License Examiner that petitioner be issued a conditional license with an interlock device (*id.*, exhibit E).

On April 21, 2014, petitioner submitted an application for relicensing (Certified Administrative Record at 28-29). On July 28, 2014, the DMV denied petitioner's application on the ground that petitioner's motor vehicle record deemed him a persistently dangerous driver. The denial letter from the DMV cited 15 NYCRR 136.5 (a) (4) and (b) (3) (I) (ii), as well as a list

of petitioner's motor vehicle incidents/convictions/accidents from 1994 to 2011 (*id.* at 25-26). The denial letter stated petitioner could submit an application for a new driver's license on or after five years from 3/25/2014, but a review of any subsequent application will be of the petitioner's entire driving history at that time (*id.* at 26).

On August 25, 2014, petitioner's attorney wrote a letter to the DMV asking it to issue a conditional license with a strict time limitation and an interlock device, as recommended by the Probation Department, to allow petitioner to drive to and from work to support his children (*id.* at 21-22). Petitioner also submitted a "Request for Consideration of Relicensing" application (*id.* at 19-20). On September 8, 2014, the DMV denied the request to reconsider, stating that petitioner could appeal its decision within 60 days of the letter (*id.* at 18). On November 12, 2014, petitioner filed an administrative appeal of this denial (id. at 12-17). The DMV Appeals Board affirmed the denial of petitioner's application of relicensing by a decision of appeal dated December 30, 2014 (*id.* at 8). There is no dispute that petitioner has exhausted all his administrative appeals. Petitioner now brings this Article 78 proceeding requesting review of the DMV's determination.

Discussion

Petitioner acknowledges that prior constitutional challenges to the amended provisions of 15 NYCRR 136.5, which governed the DMV's denial in this case, have been brought before New York State courts without success. Thus, he is not seeking reconsideration of those issues. What petitioner is challenging in this proceeding is the rational basis of the DMV's determination, pursuant to 15 NYCRR 136.5, in denying his application for relicensing.

Specifically, petitioner asserts that the DMV's determination denying the reinstatement of

his driver's license was arbitrary and capricious, because (1) the DMV ignored the recommendations by the Department of Probation; (2) the DMV improperly relied on reports of petitioner's prior motor vehicle accidents without any consideration of the cause of these accidents; (3) the DMV equated the unlicensed operation of a vehicle with a "dangerous driver" when driving a vehicle without a license is not proof of an inability to drive; and (4) the DMV refused to consider the economic impact the denial would have on petitioner's family. Petitioner also asserts that the DMV failed seek information related to his alcohol rehabilitation.

"In reviewing an administrative agency determination, [courts] must ascertain whether there is a rational basis for the action in question or whether it is arbitrary and capricious. An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts" (*Matter of Murphy v New York State Div. of Hous. & Community Renewal*, 21 NY3d 649, 652 [2013] [internal quotation marks and citations omitted]). "Where, as here, an agency's determination is rationally based, it will be upheld by the court which will defer to an agency's interpretation of its own regulations which is not manifestly irrational or unreasonable (*Matter of Brown v New York State Dept. of Motor Vehs.*, 44 Misc 3d 182, 188 [Sup Ct, Nassau County 2014], citing *Matter of Marzec v DeBuono*, 95 NY2d 262, 266 [2000]).

Despite petitioner's assertions to the contrary, the DMV did not act arbitrarily and capriciously, nor did it abuse its discretion, in denying petitioner's relicensure application. The denial was based upon petitioner's multitude of convictions and in conformance the requirements of 15 NYCCR 136.5.

The Legislature has conferred broad discretionary power over the reissuance of licenses which have been revoked by reason of alcohol- or drug-related revocations or test refusals (*see*

Vehicle and Traffic Law §§ 1193 [2] [b] [12] [b] and [3] and § 1193 [2] [c]), and such a determination rests within the discretion of the Commissioner of Motor Vehicles (Vehicle and Traffic Law § 1193 [2] [c] [1]). Further, 15 NYCRR 136.5 (b) (3) (i) and (ii), requires that the DMV Commissioner, upon receipt of a person's application for relicensing, conduct a lifetime review of such person's driving record, and shall deny the person's application for at least five years if the review shows that the person has three or four alcohol/drug-related driving convictions or incidents within 25 years, without any serious driving offenses as defined by 15 NYCRR 136.5 (a) (2), and the person's license is currently revoked for an alcohol- or drug-related driving conviction or incident.

Here, petitioner had three alcohol-related convictions, as defined by 15 NYCRR 136.5 (a) (1), within a 25-year look back period. Based on petitioner's driving record, he is not eligible for relicensing until the required additional five-year period has passed. Thus, petitioner's argument that the DMV's application of this regulation was arbitrary is without merit.

Petitioner specifically argues that the DMV was arbitrary in relying on reports of his prior motor vehicle accidents without any consideration of the cause. He also argues that the DMV improperly equated the unlicensed operation of a vehicle with a "dangerous driver" when driving a vehicle without a license is not proof of an inability to drive. These arguments fail to advance petitioner's case, as these alleged factors are irrelevant to the DMV's determination pursuant to 15 NYCRR 136.5. Even though the DMV's denial letter cited to petitioner's motor vehicle accidents and unlicensed operation of a vehicle, in addition to his alcohol-related convictions, his three alcohol-related convictions alone, and the fact that his license was revoked at the time for an alcohol-related conviction, were enough for the DMV to deny his application.

Petitioner also argues that the DMV ignored the recommendations by the Department of Probation and failed seek information related to his alcohol rehabilitation. However, petitioner has failed to show that the DMV was under any obligation to adopt the recommendations of the Department of Probation or that the DMV was required to seek information in regard to petitioner's alleged alcohol rehabilitation. If petitioner wanted to present a strong case to the DMV for relicensing, he should have included evidence of his alcohol rehabilitation with his relicensing application and August 24th letter.

Finally, petitioner argues that the revocation of his driver's license prevents him from supporting his family, as he is required to make child support payments. The DMV has to put the public's safety first and aid in making our roads as safe as possible. It cannot be said that the DMV's determination to do so here, despite a hardship to the petitioner, was arbitrary. Further, there are other means of transportation to get to and from work, and petitioner has not shown that he presented any evidence to the DMV of this alleged hardship to aid the DMV in reaching a different conclusion.

Accordingly, it is

ADJUDGED that the petition is denied and the proceeding is dismissed.

Dated: January 5, 2016

ENTER:

LSC

ALEXANDER W. HUNTER, JI