

Duncan v Chandler

2018 NY Slip Op 31251(U)

June 18, 2018

Supreme Court, New York County

Docket Number: 160341/2016

Judge: Debra A. James

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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. DEBRA A. JAMES

PART 59

Justice

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KHALI DUNCAN,

INDEX NO. 160341/2016

Petitioner,

MOTION DATE 06/23/2017

- v -

MOTION SEQ. NO. 001

RICK CHANDLER, NEW YORK CITY DEPARTMENT OF
BUILDINGS, NEW YORK CITY ELECTRICAL LICENSE BOARD,
WILLIAM HINCKLEY,

Respondents.

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The following e-filed documents, listed by NYSCEF document number 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

were read on this petition for ARTICLE 78 (BODY OR OFFICER).

JUDGMENT

Upon the foregoing documents, it is

ADJUDGED that the petition of the petitioner pursuant to Article 78 petition is denied and the proceeding is dismissed, without costs or disbursements in favor of respondent and against petitioner.

DECISION

In this Article 78 proceeding, petitioner Khali Duncan seeks to reverse a decision by the New York City Department of Buildings (DOB), dated November 14, 2016, which denied his application for a Master Electrician's License.

Background

In March 2012, petitioner Duncan graduated from a qualified apprenticeship program, which had lasted five and one-half years. In October 2014, petitioner applied to take the Master Electrician's license written examination, which he passed. In August 2015, petitioner applied to DOB for a Master Electrician's License.

On May 23, 2016, DOB denied petitioner's application. DOB found that, as a graduate of an apprenticeship program, petitioner was required to demonstrate five and one-half years of experience, as described in the statute, separate from his training in the apprenticeship program. DOB found that petitioner had only demonstrated ten months and eight days of experience outside of the apprenticeship program.

Petitioner requested that DOB reconsider his application. Petitioner contended that DOB had misconstrued and misapplied the statute by failing to credit him for the experience he gained while working for licensed master electricians during his apprenticeship program.

On November 14, 2016, DOB denied petitioner's request for reconsideration, finding that he did not have the required five and one half (5½) years of experience. DOB rejected petitioner's assertion that the experience he gained during his

5½ apprenticeship program was sufficient to satisfy the statutory requirements.

In denying petitioner's request, DOB's letter stated that New York City Administrative Code (NYC Admin. Code) § 27-3010(a)(3) allows a graduate of an apprenticeship program to reduce the number of years of required practical experience from seven and one-half (7½) years to five and one-half (5½) years but it does not permit an applicant to use the experience gained as part of an apprenticeship training program to meet the required 5½ years of practical experience.

The letter states that "[p]ractical experience is an integral part of the apprenticeship training program and it cannot be counted towards the separate years of practice experience requirement."

In December 2016, petitioner commenced this Article 78 proceeding, seeking to vacate and reverse DOB's decision as arbitrary and capricious. Specifically, petitioner argues that there is nothing in NYC Admin. Code § 27-3010 that requires an applicant to have 5½ years of experience separate from any experience gained during a qualified apprenticeship program.

Analysis

NYC Admin. Code § 27-3010 (a) (3) provides that, with certain exceptions, an applicant for a license as a master electrician must have at least 7½ years of relevant experience

in the installation, alteration and repair of wiring and appliances for electric light, heat and power in or on buildings or comparable facilities. Such experience must take place under the direct supervision of a licensed master electrician or special electrician.

Relevant here, the statute provides that certain applicants, including those who have completed qualified apprenticeship programs, need only have 5½ years of qualified experience. Specifically, § 27-3010 (a) provides that the satisfactory experience requirement is fulfilled by:

A graduate of a vocational, industrial, trade school, or apprenticeship program[,] registered with the New York state department of labor, specializing in electrical wiring, installation and design or applied electricity, who has worked at least five and one-half (5½) years and during such time a minimum of seventy-seven hundred (7700) hours of such experience must have been obtained by working with his or her tools on the installation, alteration and repair of wiring and appliances for electric light, heat and power in or on buildings or comparable facilities.

To succeed in this proceeding, petitioner must demonstrate that DOB's decision was arbitrary and capricious, lacked a rational basis or constituted an abuse of discretion. Fronshtein v Chandler, 150 AD3d 552, 553 (1st Dept. 2017).

As set forth above, NYC Admin. Code § 27-3010 (a) provides that, with certain exceptions, an applicant for a license as a master electrician must have at least seven and

one-half years of relevant experience. One such exception is for graduates of qualified apprenticeship programs, such as petitioner. In such cases, the statute requires that such an applicant have 5½ years of experience. Matter of Gristina v Smith, 177 AD2d 388, 388 (1st Dept. 1991).

It is undisputed that petitioner did not have 5½ years of experience, separate from his apprenticeship, at the time of his application. Despite this, petitioner contends that DOB erred in denying his application because he should have been credited with experience gained during his apprenticeship.

Petitioner's argument is unpersuasive. NYC Admin. Code §27-3010 specifically requires that a graduate of an apprenticeship program have 5½ years of experience. Nothing in the statute indicates that such experience may be gained during the apprenticeship program and before the applicant graduates.

In denying petitioner's application, DOB reasonably found that, while the experience gained during the apprenticeship program was integral to such a program, it was not sufficient to eliminate the need for separate experience outside of the apprenticeship program. Significantly, the court notes that it is within DOB's expertise to determine how much, and what type, of experience is required to obtain a Master Electrician's License, and such expertise is entitled to significant deference from the court. See Matter of Save

Gansevoort, LLC v City of New York, 158 AD3d 483, 486 (1st Dept. 2018).

Given such deference, the court finds that petitioner has not demonstrated that such a finding is arbitrary, capricious, or lacks a rational basis. Nor has petitioner demonstrated that the result here should be different because his apprenticeship lasted 5½ years.

Finally, petitioner's reliance on Stathopolos v Smith, 141 Misc2d 1023 (Sup Ct, NY Co 1988), though logical, nonetheless fails to support his case. In Stathopolos, the judge held that under the experience requirement for a master electrician's license under NYC Admin. Code § 27-3010(a)(3), it was arbitrary and capricious for DOB to have added seven and one-half years (for a total of eleven and one-half [11½] years) to the four years of experience that it took for petitioner Stathopolos to move from an apprentice to journeyman under Labor Law § 815. The Stathopolos judge remanded the matter back to DOB for "further proceedings in accordance with this decision". Stathopolos does not support petitioner's argument that his

experience in the apprenticeship program before his graduation counted toward the post graduate 5½ years of experience required for an apprenticeship program graduate to qualify for the master electrician's license under NYC Admin. Code § 27-3010(a)(3).

6/18/2018
DATE

Debra A. James
DEBRA A. JAMES, J.S.C.

CHECK ONE: CASE DISPOSED DENIED

APPLICATION: GRANTED NON-FINAL DISPOSITION OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

DO NOT POST FIDUCIARY APPOINTMENT REFERENCE