

**Matter of Jacaruso v New York City Dept. of Bldgs.**

2018 NY Slip Op 31900(U)

August 6, 2018

Supreme Court, New York County

Docket Number: 153899/2017

Judge: John J. Kelley

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 56**

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**IN THE MATTER OF THE APPLICATION OF**

**MARK JACARUSO,**

Petitioner,

**Index No. 153899/2017**

**FOR A JUDGMENT PURSUANT TO CPLR ARTICLE 78**

**DECISION AND ORDER**

*-against-*

**THE NEW YORK CITY DEPARTMENT OF BUILDINGS  
AND THE CITY OF NEW YORK,**

Respondents.

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**HON. JOHN J. KELLEY**

In this Article 78 proceeding, the petitioner seeks to annul a determination of the respondent, the New York City Department of Buildings (DOB), which denied his application for a Site Safety Manager Certificate. The petitioner argues that the denial was arbitrary and capricious, as well as contrary to established law.

The petitioner has been employed as a construction inspector with the DOB since 2001. In 2016, the petitioner applied for a Site Safety Manager Certificate, pursuant to Title 1 of the Rules of the City of New York (“RCNY” or “Rules”), Section 104-08(a)(1)(i). The Rules require successful applicants to have completed a course and have “equivalent education and construction experience as determined by the [DOB].” Section 1-04-08 of the Rules defines “equivalent education and construction experience” and states, in relevant part, that a certificate shall be issued to anyone with “eight years of experience within 10 years prior to the date of the application as a building code enforcement official charged with enforcement of the provisions of the New York City Building Code.” The rule further provides that the enforcement experience “must have included inspections of major buildings under construction or demolition and thus the basis for qualification excludes officials whose primary role was to perform inspections of occupied or vacant buildings.”

The petitioner argues that he had the necessary experience in inspecting major buildings under construction or demolition, and accordingly, was well-

qualified for the certificate. Nevertheless, his application was denied because the DOB found that he failed to demonstrate that a majority of his inspection experience while employed with DOB was obtained through inspecting major buildings under construction or demolition, as opposed to vacant lots or occupied non-major buildings. The petitioner then sought, and was granted, leave to file an application for reconsideration.

In his reconsideration application, the petitioner submitted employment verification forms that referenced his experience in inspecting major buildings. The verification forms were filled out and signed by his supervisors and/or former supervisors. The DOB rejected the verification forms, finding that they did not constitute adequate proof that the petitioner had inspected major buildings under construction for a majority of the time that he was employed as an inspector with the DOB. Instead, the DOB only considered the petitioner's civil service titles and the general job descriptions of his assigned DOB units. The DOB's denial found that the scope of the work performed by the petitioner's assigned units did not generally include the inspection of major buildings under construction or demolition. The DOB acknowledged that the petitioner's supervisors verified that a significant amount of his experience (more than 50%) was on major buildings but found that "no evidence such as route sheets, was provided to substantiate this alleged experience." The DOB determined that "additional information was required to demonstrate that the [petitioner's] experience substantially deviated from the normal scope of inspections of the units he worked in." Accordingly, the DOB denied the petitioner's application. This proceeding followed.

The petitioner argues that his full employment record with the DOB, including employment verification forms, route sheets, and other documentation detailing his inspection work should have been reviewed by the respondents. The petitioner argues that the DOB's review did not adequately consider all his work experience, the majority of which includes inspections at major buildings and construction sites.

In reviewing an agency determination under CPLR Article 78, the Court is "limited to inquiry into whether the agency acted arbitrarily or capriciously" (*Arbusio v New York City Dept. of Buildings*, 64 AD3d 520, 522 [1st Dept 2009]). The decision is arbitrary if there is no "sound basis of reason" or if the decision is made without "regard to the facts" (*Resto v State Dept. of Motor Vehicles*, 135 AD3d 772, 772 [2d Dept 2016]). In this case, the DOB had a non-discretionary

duty to issue the certificate if the petitioner satisfied the requirements set forth in the Administrative Code. The petitioner complied with the requirements. He submitted completed and notarized verification forms, as well as notarized letters from his former supervisors. This information substantiated the petitioner's claim that he had the required qualifying experience on major buildings. The respondents objected to the verification forms and gave them no weight solely because they contradicted the official job descriptions of the petitioner's assigned units. This determination was irrational and based on nothing more than unsubstantiated speculation. Instead of making an independent evaluation and investigation of the petitioner's work experience and qualifications, the DOB simply relied on vague job titles and concluded that the petitioner could not establish that he had the relevant inspection experience.

The DOB now has acknowledged that it was not until the inception of this action that it even made an effort to locate the petitioner's route sheets, which were in their exclusive custody and control. Instead it relied on arbitrary "unit descriptions" to support its denial of the petitioner's application, despite the fact that the petitioner had submitted evidence demonstrating that he frequently performed inspection work outside the scope of the unit descriptions. Indeed, the record shows that one of the Executive Directors of the DOB acknowledged that one of the petitioner's assigned units "conduct[ed] inspections at a major project site." For these reasons, the DOB should have either reviewed Petitioner's route sheets or relied on the verification forms (which were completed by petitioner's supervisors and/or other DOB employees) in order to make an accurate determination regarding petitioner's qualifications.

Furthermore, the DOB did not sufficiently consider the fact that the petitioner was not a typical applicant for the certificate. At the time of his application, the petitioner already was a long-time DOB employee who credibly claimed to have inspected numerous buildings over a 15-year period. The application asked the petitioner to submit the addresses of every building that he inspected over the course of his employment as a DOB inspector. The petitioner credibly demonstrated that this requirement was impracticable and could not reasonably apply to him as a government inspector, as opposed to a private safety inspector who likely would have only worked for longer periods on a much smaller number of construction sites. As referenced above, neither the petitioner nor his supervisors had access to route sheets or any records detailing all the buildings that the petitioner inspected. It was for this reason that the petitioner requested that the

DOB provide him with copies of his route sheets so that he could properly complete his verification forms—a request that was not accommodated. Instead, the DOB indicated that it would rely on its human resources department to provide the missing information. This did not happen.

For all the reasons above, this Court concludes that a remand to the DOB is appropriate. The Court declines to mandate that the DOB issue a license to the petitioner, but rather requires it to render a determination based on a more comprehensive and fair consideration.

Based on the above, it is

**ORDERED and ADJUDGED** that the petition is granted to the extent of remanding this matter to the DOB, and the proceeding is remanded for further proceedings consistent with this decision. The Court notes that it has considered all the parties' other arguments in reaching its conclusion.

The Clerk is directed to enter judgment accordingly.

Dated: August 6, 2018

ENTER



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HON. JOHN J. KELLEY, J.S.C.

**HON. JOHN J. KELLEY**  
**J.S.C.**