

**Matter of Sambula v Triborough Bridge & Tunnel
Auth.**

2019 NY Slip Op 30524(U)

February 27, 2019

Supreme Court, New York County

Docket Number: 155876/2018

Judge: Lynn R. Kotler

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 8**

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In the Matter of the Application of
ANTHONY SAMBULA,

Petitioner,

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

-against-

TRIBOROUGH BRIDGE AND TUNNEL
AUTHORITY d/b/a MTA BRIDGES and TUNNELS,

Respondent.
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**DECISION, ORDER AND
JUDGMENT**

INDEX NO.: 155876/2018
MOT SEQ.: 001

Present:
Hon. Lynn R. Kotler, J.S.C.

This is an Article 78 proceeding. Petitioner is a former employee of respondent Triborough Bridge and Tunnel Authority d/b/a MTA Bridges and Tunnels (the "Authority"). In this proceeding, petitioner seeks a judgment reversing respondent's determination denying petitioner's application for a Retiree Service Letter, also known as a "good guy letter," and compelling the Authority to provide Petitioner with such a letter. Petitioner complains that the Authority's refusal to provide him with a "good guy letter" was irrational, arbitrary and capricious, an abuse of discretion, and in bad faith. The Authority has answered the petition and contends that it is untimely and should otherwise be denied. For the reasons that follow, the petition is denied.

In an Article 78 proceeding, the applicable standard of review is whether the administrative decision: was made in violation of lawful procedure; affected by an error of law; or arbitrary, capricious or an abuse of discretion, including whether the penalty imposed was an abuse of discretion (CPLR § 7803 [3]). An agency abuses its exercise

of discretion if it lacks a rational basis in its administrative orders. “[T]he proper test is whether there is a rational basis for the administrative orders, the review not being of determinations made after *quasi*-judicial hearings required by statute or law” (*Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974] [emphasis removed]; see also *Matter of Colton v. Berman*, 21 NY2d 322, 329 [1967]).

The relevant facts are as follows. Petitioner was employed by the Authority as a Bridge and Tunnel Officer from October 23, 2006 to July 16, 2012. In connection with his employment, petitioner possessed a firearm. Petitioner suffered an on-duty injury which rendered him unable to perform the duties of his position and surrendered his firearm to the Authority on June 28, 2012.

On July 12, 2012, petitioner applied to the New York City Employee's Retirement System for disability retirement and was effectively terminated from the Authority on July 16, 2012. There is no dispute that after he surrendered his firearm, petitioner made no effort to restore his firearm status. The Authority explains what steps petitioner would have needed to take to do so, which includes: [1] submission by petitioner of Form OPS 01-14 entitled Request for Restoration of Firearm Carry Privileges/Request for Firearms Re-Qualification and documentation that the condition for surrender has resolved; and [2] a determination by the Vice President and Chief of Operations or the Director of Central Operations, after consultation with the General Counsel or designee, if necessary, that the reason for the surrender has been resolved (pursuant the Authority's Firearms Policy § 4.40).

Petitioner was terminated from the Authority on July 16, 2012. He applied on July

31, 2017, for a Retiree Service Letter, which allows the holder to carry a firearm without proceeding through the usual licensing requirements. The Authority denied petitioner's request in a letter dated March 20, 2018 which states in relevant part:

Based upon a review of [petitioner's] service record, the Authority determined that his last firearms qualification was on or about February 7, 2012, and that he surrendered his firearm to the Authority on or about June 28, 2012. Therefore, at the time of [petitioner's] retirement from the Authority on or about August 8, 2013, he was not authorized to carry a firearm. Since a Retiree Service Letter reflects an applicant's status at the time of their separation from the Authority, [petitioner] was and is ineligible to receive such a letter because he was not authorized to carry a firearm at the time of his separation from the Authority.

Assuming *arguendo* that the petition is timely, it must be denied on the merits.

Petitioner argues that he is entitled to the relief he seeks because he "is of high moral character and does not suffer from any mental health disability and/or impairment that adversely affects his ability to own, operate and/or secure a firearm." This point is of no moment, since these claims are not relevant to the issue of whether respondent's decision not to issue a Retiree Service Letter was arbitrary, capricious or irrational.

Here, petitioner cannot demonstrate that respondent's decision to deny issuing him a good guy letter is irrational. Indeed, the decision is clearly based upon the rationale that he is only entitled to such a letter if he was authorized to possess a firearm at the time that he was separated from employment, which on this record, he was not.

Nor is the determination arbitrary or capricious. Bright line rules regarding gun possession and ownership are sensical and there is no basis for this court to supplant the Authority's own rules regarding the issuance of a Retiree Service Letter. The

Authority's decision not to necessarily cull the entirety of a former employee's history conserves the agency's limited resources and protects, in part, public funds. Such a result does not necessarily prohibit petitioner from carrying a firearm. Rather, petitioner will merely have to go through the usual licensing requirements in order to obtain a permit to do so.

Finally, petitioner has wholly failed to demonstrate any bad faith on the Authority's part.

Accordingly, the petition is denied and this proceeding is dismissed.

CONCLUSION

In accordance herewith, it is hereby

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

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly denied and this constitutes the Decision, Order and Judgment of the court.

Dated: New York, New York
2/27/19

So Ordered:



Hon. Lynn R. Kotler, J.S.C.