

Matter of Hauzenberg v State of New York
2020 NY Slip Op 30661(U)
February 26, 2020
Supreme Court, Kings County
Docket Number: 0516439/2019
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No.: 0516439/2019
Return Date: 12-9-19
Cal. No.: 18

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In the Matter of the Application of

RAMI HAUZENBERG,
Petitioner,

For a judgment under Article 78 of the Civil
Practice Law and Rules

DECISION/ORDER

-against-

THE STATE OF NEW YORK, THE NEW YORK STATE
DEPARTMENT OF MOTOR VEHICLES, AND MARK
J.F. SCHROEDER, as Commissioner, New York State
Department of Motor Vehicles,

Respondents,
-----X

The following papers numbered 1 to 4 were read on this petition:

Papers:	Numbered:
Notice of Petition/Petition	
Affidavits/Affirmations/Exhibits.....	1
Petitioner's Memorandum of Law.....	
Respondent's Verified Answer	
Affidavits/Affirmations/Exhibits.....	2
Record of Proceedings.....	3
Respondent's Memorandum of Law.....	4
Petitioner's Reply	
Affidavits/Affirmations/Exhibits.....	

Upon the foregoing papers, the petition is decided as follows:

The petitioner, RAMI HAUZENBERG, brought this proceeding for a judgment pursuant to Article 78 of the CPLR annulling a final determination of New York State Department of Motor Vehicles (DMV) dated March 26, 2019, which affirmed the denial of his application pursuant to 15 NYCRR Part 136 for relicensure. Petitioner also seeks judgment requiring respondents to review

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his application for relicensure under a regime that meets constitutional requirements, awarding costs and disbursements pursuant to CPLR § 8101 and granting such other and further relief as the Court deems just and proper.

Petitioner's drivers license was permanently revoked on April 12, 2010 pursuant to VTL § 1193(2)(b)(12)(a)(I) after he had been convicted of four alcohol related offenses between November 2004 and February 2010. Two of these offenses were for Driving While Intoxicated in violation of VTL § 1192(3) and two were for Driving While Ability Impaired in violation of VTL § 1192(1). Even where a drivers license is permanently revoked, the legislature authorized the Commissioner of Motor Vehicles (the "Commissioner") to exercise his discretion and allow for relicensure after permanent revocation (*see* VTL §§ 510(6), 1193(2)(c) and 1194(d)). Pursuant to this authority, the Commissioner promulgated rule 15 NYCRR 136, *et seq.*, which was revised. Pursuant to the revised rules, the Commissioner is required to deny an application for relicensure where the applicant had three or four alcohol related convictions within a 25 year look back period as well as a "serious driving offense" as defined in 15 NYCRR 136.6(a)(2) unless the Commissioner sees fit to grant the application pursuant to 15 NYCRR § 136.5(d) which, in pertinent part, provides:

While it is the Commissioner's general policy to act on applications in accordance with this section, the Commissioner shall not be foreclosed from consideration of unusual, extenuating and compelling circumstances that may be presented for review and which may form a valid basis to deviate from the general policy, as set forth above, in the exercise of discretionary authority granted under sections 510 and 1193 of the Vehicle and Traffic Law.

On August 22, 2018, petitioner submitted an application for relicensure under the revised rules. Since the petitioner admittedly had four alcohol related convictions within the 25 year look back period as well as a "serious driving offense" as defined in 15 NYCRR 136.6(a)(2), the only

relevant issue on his application was whether there were unusual, extenuating and compelling circumstances which would warrant a departure from the general rule. By correspondence dated November 23, 2018, the DMV denied the application. Petitioner submitted a “Request for Reconsideration After Denial”, which was also denied by letter dated January 28, 2019. On or about February 14, 2019, the petitioner filed an “Administrative Appeal”. The DMV Appeals Board affirmed the denial of his application specifically finding that the petitioner’s application did not demonstrate “unusual, extenuating and compelling circumstances within the meaning of 15 NYCRR § 136.5(d). Petitioner now seeks to annul this determination.

Where, as here, no administrative hearing was required, judicial review of an agency’s determination is limited to whether the determination was irrational or arbitrary and capricious (*see Lemma v. Nassau Cty. Police Officer Indemnification Bd.*, 31 N.Y.3d 523, 528, 105 N.E.3d 1250, 1253–54 ; *In re Peckham v. Calogero*, 12 N.Y.3d 424, 431, 883 application 751, 911 N.E.2d 813 [2009]; *Matter of Salino v. Cimino*, 1 N.Y.3d 166, 172, 770 N.Y.S.2d 702, 802 N.E.2d 1100 [2003]; CPLR 7803[3]). The Court may not substitute its judgment for that of the agency responsible for making the determination, but must ascertain only whether there is a rational basis for the decision (*In re Peckham v. Calogero*, 12 NY3d at 431). Once it has been determined that an agency's conclusion has a “sound basis in reason,” the judicial function is at an end (*id.*).

Here, there was a sound basis in reason to find that the petitioner did not demonstrate that there were unusual, extenuating and compelling circumstances which warranted a departure from the general rule. In support of his application, the petitioner relied primarily on the report of Dr. Irene Boginsky, who stated that the petitioner needed a driver’s license so he could drive back and forth from the offices of those doctors who were treating him for his chronic medical conditions. No explanation was given, however, why public transportation or for-hire vehicle would not

suffice. Moreover, Dr. Boginsky who happens to be one of petitioner’s co-workers, did not state how often petitioner would have to be seen by a doctor in the future.

Further, only evidence submitted by petitioner of his sobriety for the six year period immediately preceding his application was a 2015 letter from a friend who opined that the petitioner was sober.

Petitioner did not demonstrate that the denial of his application for relicensure was irrational or arbitrary and capricious

The Court rejects petitioner’s procedural due process challenge. Petitioner bases this challenge on the unfounded assertion, made upon “information and belief”, that the DMV has refused all applications for relicensure pursuant to 15 NYCRR 136.5[d]. Indeed, as made clear by the affirmation of Renee L. Behrens, an Assistant Counsel with the DMV, petitioner’s assertion is patently false inasmuch as the Commissioner has granted applications for relicensure pursuant to 15 NYCRR 136.5[d] on at least 40 occasions.

For the above reasons, it is

ORDERED and **ADJUDGED** that the petition is in all respects **DENIED** and the proceeding is **DISMISSED**.

This constitutes the decision, order and judgment of the Court.

Dated: February 26 , 2020



PETER P. SWEENEY, J.S.C.

Hon. Peter P. Sweeney, J.S.C.

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KINGS COUNTY CLERK
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