

**Knight v City of New York**

2020 NY Slip Op 33578(U)

October 29, 2020

Supreme Court, New York County

Docket Number: 151725/2020

Judge: Carol R. Edmead

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL R. EDMEAD PART IAS MOTION 35EFM

Justice

INDEX NO. 151725/2020

CAVALIER KNIGHT,

Plaintiff,

MOTION DATE 11/15/2020, 11/28/2020

- v -

MOTION SEQ. NO. 001 002

THE CITY OF NEW YORK, DERMOT SHEA,

Defendant.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

The following e-filed documents, listed by NYSCEF document number (Motion 002) 83, 84, 85

were read on this motion to/for DISMISSAL

Upon the foregoing documents, it is

ADJUDGED that the application for relief, pursuant to CPLR Article 78, of petitioner Cavalier D. Knight (motion sequence number 001) is denied; and it is further

ORDERED that the cross motion, pursuant to CPLR 3211 (a) (7) and/or 3212, of respondent Dermot F. Shea, as the Statutorily Designated Handgun Licensing Officer and the Police Commissioner of the City of New York, and his successors in office to dismiss the petition (motion sequence number 002) is granted, and it is further

ORDERED that the clerk of the court shall enter judgment accordingly; and it is further

ORDERED that counsel for respondents shall serve a copy of this order along with notice of entry on all parties within twenty (20) days.

## MEMORANDUM DECISION

In this Article 78 proceeding, petitioner Cavalier D. Knight (petitioner) seeks an order to vacate a determination of the respondent Police Commissioner of the City of New York (the Commissioner) as arbitrary and capricious (motion sequence number 001), and the Commissioner cross-moves to dismiss the petition (motion sequence number 002). For the following reasons, the petition is denied, and the cross motion is granted.

### FACTS

On June 16, 2017, petitioner Cavalier D. Knight (f/k/a Robert A. Reynolds) submitted an application for a "Carry Business" handgun license (CBL) to the License Division of the New York City Police Department (NYPD). *See* verified answer, exhibit D. Petitioner evidently submitted a large quantity of documentation in response to subsequent NYPD requests. *Id.*, exhibits E-K. On December 13, 2017, the Administrative Appeal Unit of the NYPD's License Division issued a "notice of disapproval" that denied petitioner's CBL application. *Id.*, exhibit L. Petitioner then requested a further administrative appeal to the office of the director of the NYPD's License Division in a letter dated December 20, 2017. *Id.*, exhibits M, N. On October 17, 2019, the director of the NYPD's License Division issued a "notice of disapproval after appeal" that denied petitioner's appeal of the decision denying his CBL application. *Id.*, exhibit P. Petitioner initially commenced this Article 78 proceeding on February 16, 2020, but later filed an amended petition on March 13, 2020 (motion sequence number 001). *See* verified petition; verified amended petition. Shortly thereafter, the Covid-19 national pandemic caused the court to indefinitely suspend the majority of its operations. Nevertheless, counsel for respondents sought and received permission to modify and extend respondents' submission schedule. The Commissioner's office eventually filed both an answer and a motion to dismiss

the petition on May 27, 2020 (motion sequence number 002). *See* verified answer, notice of motion. After the timely submission of reply papers, this matter is now ready for disposition (motion sequence numbers 001 & 002).

### DISCUSSION

As an initial matter, the court notes that the fact that the Commissioner submitted an answer contemporaneously with his dismissal motion makes it improper to treat the latter as a pre-answer motion to dismiss pursuant to CPLR 3211 (a) (7). However, CPLR 3211 (c) permits the court to treat such a motion as one for summary judgment instead where “the parties [have] ‘deliberately chart [ed] a summary judgment course.’” *Wadiak v Pond Mgt., LLC*, 101 AD3d 474, 475 (1<sup>st</sup> Dept 2012), quoting *Elsky v Hearst Corp.*, 232 AD2d 310 (1<sup>st</sup> Dept 1996) (other citation omitted). Here, the extensive documentary evidence that the parties attached to their respective submissions makes it clear that they both intended to prove their claims, rather than simply litigate the sufficiency of the pleadings. Therefore, the court elects to treat the Commissioner’s motion as one for summary judgment.

When seeking summary judgment, the moving party bears the burden of proving, by competent, admissible evidence, that no material and triable issues of fact exist. *See e.g.*, *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985); *Sokolow, Dunaud, Mercadier & Carreras v Lacher*, 299 AD2d 64, 70 (1<sup>st</sup> Dept 2002). Once this showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action. *See e.g.*, *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980); *Pemberton v New York City Tr. Auth.*, 304 AD2d 340, 342 (1<sup>st</sup> Dept 2003). Here, the Commissioner seeks summary

judgment on its affirmative defense that petitioner's complaint should be dismissed for failure to state a cause of action pursuant to CPLR 7801 et seq. See verified answer, ¶¶ 411-423.

The court's role in an Article 78 proceeding is to determine, upon the facts before the administrative agency, whether the determination had a rational basis in the record or was arbitrary and capricious. See *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 230-231 (1974); *Matter of E.G.A. Assoc. Inc. v New York State Div. of Hous. & Community Renewal*, 232 AD2d 302, 302 (1<sup>st</sup> Dept 1996). A determination will only be found arbitrary and capricious if it is "without sound basis in reason, and in disregard of the [facts]." See *Matter of Century Operating Corp. v Popolizio*, 60 NY2d 483, 488 (1983), citing *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231. However, if there is a rational basis for the administrative determination, there can be no judicial interference. *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231-232. Here, the Commissioner asserts that (a) his October 17, 2019 notice of disapproval after appeal decision, which upheld the NYPD License Division's earlier denial of petitioner's CBL application, was not an "arbitrary and capricious" ruling, and (b) the instant petition should be dismissed because petitioner's Article 78 claim fails, as a matter of law, under the "arbitrary and capricious" standard of review. See verified answer, ¶¶ 411-423; respondent's memo of law at 11-18.

After reviewing both parties' extensive submissions, the court finds for the Commissioner. The October 17, 2019 notice of disapproval after appeal upheld the denial of petitioner's CBL application because petitioner "ha[d] not shown 'proper cause,' as required by Penal Law Section 400.00 (2) (f)." See verified answer, exhibit P. That statute provides that "[a]

license for a pistol or revolver, other than an assault weapon or a disguised gun, shall be issued to . . . have and carry concealed, without regard to employment or place of possession, by any person when proper cause exists for the issuance thereof.” Penal Law § 400.00 (2) (f). A CBL applicant may establish the statute’s prerequisite of “‘proper cause’ based upon business necessity by showing, inter alia, exposure to ‘extraordinary personal danger.’” *Matter of Alsaede v Kelly*, 96 AD3d 495, 496 (1<sup>st</sup> Dept 2012); *see also Matter of Martinek v Kerik*, 294 AD2d 221, 222 (1<sup>st</sup> Dept 2002). An NYPD “[pistol] licensing officer has broad discretion in determining whether proper cause exists for the issuance of a carry concealed license.” *Matter of Goldstein v Schwartz*, 185 AD3d 929, 930 (2d Dept 2020), quoting *Matter of McCarthy v Sini*, 172 AD3d 1069, 1070 (2d Dept 2019). Here, the Commissioner’s October 17, 2019 decision recited that he had reviewed all of petitioner’s extensive submissions, but nevertheless found that petitioner did not establish that his job as a retailer of firearms and body armor exposed him to the ‘extraordinary personal danger’ that would satisfy the “proper cause” requirement of Penal Law § 400.00 (2) (f). The court notes that the NYPD’s License Department and the Commissioner’s office both sent multiple requests to petitioner between August 2017 and October 2019 asking him to submit additional forms and documents in support of his CBL application and his subsequent administrative appeal. *See* verified answer, exhibits E-N, P-R. The court also notes that petitioner made timely responses to those requests and that he ultimately submitted hundreds of pages of documents, all of which the parties have kindly submitted copies of as exhibits to their respective papers in this proceeding. *Id.* From this volume of material, it can hardly be said that the Commissioner’s denial of petitioner’s administrative appeal lacked a “rational basis in the administrative record.” That record was extensive, and the Commissioner found that it did not contain sufficient proof of “proper cause” to satisfy Penal Law § 400.00 (2) (f). Having now

reviewed the entire record itself, the court is unable to discern any such proof either. The court notes that petitioner's 165-page amended petition does not identify which evidence he submitted might constitute proof of such "proper cause." *See* verified petition. Indeed, that pleading only mentions the words "Article 78" four times in passing, but contains no discussion of either the statute or of the "arbitrary and capricious" standard of review. *Id.*, at 2, 38-40 (paragraphs misnumbered). Instead, the petition sets forth 31 causes of action (which petitioner incorrectly denominates as "counts") that appear to challenge the Commissioner's October 17, 2019 decision on the grounds that it, or the various statutes which the Commissioner cited in it, are unconstitutional. *Id.* at 150-165. However, neither the petition nor petitioner's reply papers assert any argument that the Commissioner's October 17, 2019 decision was an "arbitrary and capricious" ruling that violated CPLR Article 78.

As a result, the court finds that the Commissioner has established that his October 17, 2019 decision had a rational basis in the administrative record, while petitioner fails to raise a triable issue of fact that it was instead an "arbitrary and capricious" ruling. Accordingly, the court finds that the Commissioner is entitled to summary judgment on his motion to dismissing so much of the petition that (at least facially) alleges a violation of CPLR Article 78.

The bulk of Knight's petition, is devoted to his argument that the statutory framework for firearms licensing that the New York State Legislature promulgated in Penal Law § 400.00 is unconstitutional because it violates both the United States Constitution's Second Amendment and the Equal Protection Clause of the Fourteenth Amendment. *See* verified petition, ¶¶ 63-326. The Commissioner asserts that Knight's constitutional claims are barred by barred by the doctrine of collateral estoppel. *See* respondents' mem of law at 20-22. The Commissioner is correct. Knight raised these exact same arguments in a previous Article 78 proceeding which he

commenced in 2014 (Index Number 101556/14), and which this court (Stallman, J.) denied in 2015. See *Matter of Knight v Bratton*, 48 Misc 3d 536 (Sup Ct, NY County 2015). Judge Stallman's decision rejected Knight's arguments and specifically found that New York's gun licensing procedures do not violate either the Second Amendment or the Equal Protection Clause. *Matter of Knight*, 48 Misc 3d at 542-543. Knight never appealed Judge Stallman's ruling. In order to invoke the doctrine of collateral estoppel, a party must show that "(1) the issues raised and resolved in the prior proceeding are identical to those decisive in the present proceeding; and (2) the party against whom collateral estoppel is asserted has had a full and fair opportunity to litigate the issues now said to be controlling." *Matter of Donziger*, 163 AD3d 123, 124 (1<sup>st</sup> Dept 2018); citing *Schwartz v Public Adm'r of County of Bronx*, 24 NY2d 65 (1969). Here, it is clear that both elements are present. As a result, the doctrine of collateral estoppel plainly bars consideration of Knight's constitutional arguments. Accordingly, the court disregards them.

### CONCLUSION

Accordingly, it is hereby

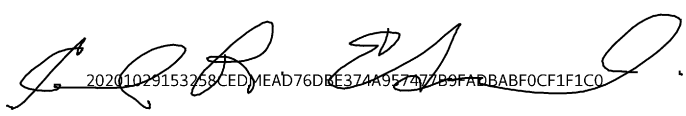
ADJUDGED that the application for relief, pursuant to CPLR Article 78, of petitioner Cavalier D. Knight (motion sequence number 001) is denied; and it is further

ORDERED that the cross motion, pursuant to CPLR 3211 (a) (7) and/or 3212, of respondent Dermot F. Shea, as the Statutorily Designated Handgun Licensing Officer and the

Police Commissioner of the City of New York, and his successors in office to dismiss the petition (motion sequence number 002) is granted, and it is further

ORDERED that the clerk of the court shall enter judgment accordingly; and it is further

ORDERED that counsel for respondents shall serve a copy of this order along with notice of entry on all parties within twenty (20) days.

  
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10/29/2020  
DATE

CAROL R. EDMED, J.S.C.

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION

GRANTED IN PART  OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE