

Matter of Filani v City of New York
2020 NY Slip Op 34074(U)
December 7, 2020
Supreme Court, New York County
Docket Number: 159335/2019
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTYPRESENT: HON. DEBRA A. JAMES

PART

IAS MOTION 59EFM

Justice

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INDEX NO. 159335/2019

In the Matter of the Application of OLAYINKA FILANI,

MOTION DATE 02/20/2020

Petitioner,

MOTION SEQ. NO. 001

For a Judgment under Article 78 of the CPLR

- v -

DECISION + ORDER ON
MOTION

THE CITY OF NEW YORK,

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for

ARTICLE 78 (BODY OR OFFICER)ORDER

Upon the foregoing documents, it is

ADJUDGED that the petition is denied and the proceeding is dismissed, without costs and without disbursements to respondent.

DECISION

In this Article 78 proceeding, petitioner Olayinka Filani seeks a judgment reversing the May 28, 2019 determination of respondent The City of New York¹ which denied his application for a Premises Residence Handgun License. Petitioner also requests

¹Respondent states that the "Police Commissioner of the City of New York is authorized to grant licenses for the keeping or carrying of firearms within the City of New York" and that the "License Division is the administrative arm of the NYPD [New York City Police Department] that fulfills this licensing function." NYSCEF Doc. No. 8, Respondent's Answer, ¶ 16.

that the court direct respondent to issue him the license. Respondent answers and opposes the petition, alleging that its determination is consistent with the law and is rationally based. As set forth below, the petition must be denied, as respondent's denial of the application has a rational basis and will not be disturbed.

Background and Factual Allegations

On April 27, 2018, petitioner submitted an application to the NYPD's License Division for a Premises Residence Handgun License. Petitioner owns a security company and is a security instructor. As part of the application, in relevant part, petitioner indicated that he was never "involved in a domestic incident which was reported to police." NYSCEF Doc. No. 9 at 8.

By letter dated February 15, 2019, respondent notified petitioner that his application was disapproved. The letter advised petitioner the following, in relevant part:

"Your application for a Premises Resident Handgun License is Disapproved as per Title 38 of the Rules of the City of New York (RCNY) § 5-10 (a), (g), (m) and (n) based on the following reasons: You were involved in a domestic incident on 12/14/2014 in which you threatened to harm yourself and menaced complainant with a knife. In addition, you failed to disclose this domestic incident."

NYSCEF Doc. No. 13 at 1.

Petitioner timely appealed the determination. In his submitted affirmation, he stated that he a "disciplined professional" and that he has "never engaged in acts of violence

as described in my notice of disapproval." NYSCEF Doc. No. 14, Filani affirmation, ¶ 6. Petitioner denied that any incident occurred on December 14, 2014. He stated, specifically, that he "was never involved in any domestic incident as alleged in the notice of disapproval sent to me dated February 15, 2019." Id., ¶ 3.

Petitioner continued that, upon receiving the disapproval, he was "directed to the 75th Precinct in Brooklyn Upon presenting the matter I was advised that there was no record of this incident." Id., ¶ 12. As a result, according to petitioner, "[t]he incident described as a basis of my disapproval for a handgun license cannot constitute the basis to deny my application because it never happened and I was not involved in such incident." Id., ¶ 14.

He continued that, Alisha Rochelle James (James), the alleged complainant in the December 14, 2014 incident, denied that the incident occurred. As part of his appeal, James submitted an affidavit stating, in relevant part, that petitioner is the father of her son and that he is a supportive and responsible parent. She continued that petitioner "is a mild tempered mannered [sic] and I have never known him to be involved in any kind of domestic violence or domestic incident since I have known him." NYSCEF Doc. No. 14, James affirmation, ¶ 5. James further states that she has "not been involved in

domestic incident involving [petitioner] and I am not aware of any domestic incident involving him and any other person." Id., ¶ 6.

Petitioner also submitted a statement as part of his appeal, in pertinent part:

"I Olayinka Filani, affirm that there was no incident between Alicia James and myself. I was not aware that a police report was made until I spoke with Detective Edward Rodriguez recently when he informed that there might have been an incident five years ago. He also confirmed that the incident has been closed."

NYSCEF Doc. No. 12 at 1.

Petitioner's counsel submitted a memorandum of law in support of his application. Counsel alleged, in relevant part, that both petitioner and James denied that a domestic dispute occurred and that there was no record of this occurring. Therefore, "[w]ithout any record of the alleged domestic violence incident, documentation, or affidavits by the alleged victim, there is no evidence to support" the License Division's disapproval of the application. NYSCEF Doc. No. 14 at 4.

Pursuant to a letter dated May 28, 2019, petitioner was informed that his appeal was denied. The letter, written by Jonathan David (David), Director of the NYPD License Division, informed petitioner that "Good Cause" exists to disapprove his application for a Premises Residence Handgun License. David explained that an applicant's history of domestic violence is

considered, in addition to "information that demonstrates an applicant's lack of concern for the safety of oneself and/or other persons." NYSCEF Doc. No. 15, notice of disapproval after appeal at 1. David noted that, although petitioner denied that the incident occurred, "there is credible evidence that in 2014, less than five years ago, Mr. Filani menaced Ms. James with a knife in front of their five-year old child. David also stated that there is credible evidence that, while holding the knife, Mr. Filani threatened to harm himself." Id. at 2.

David's letter advised petitioner as follows:

"In your appeal, you claim that there is no record of an alleged domestic dispute between Mr. Filani and Alicia James, and you provide affidavits by Mr. Filani and Ms. James in support of this claim. You state that there is no record of any such incident. However, NYPD has in its custody a Domestic Incident Report (DIR), prepared on 12/14/14, according to which Ms. James stated that Mr. Filani had come home on 12/14/14, and noticed that she placed his clothes in a plastic bag, after which he became upset and grabbed a kitchen knife. Ms. James then tussled with Mr. Filani for the knife. According to the DIR, Ms. James further stated that Mr. Filani then ran to the bathroom while threatening to harm himself. In addition, Ms. James stated that Mr. Filani had displayed the knife in front of her 5 year old daughter, which scared her. The DIR indicates that Mr. Filani and Ms. James were living together and that they have a child in common. Also on 12/14/14, Ms. James also filed a New York City Police Complaint Report against Mr. Filani for Menacing in connection with this incident."

Id. at 1-2.

Instant Petition

On September 25, 2019, petitioner commenced this article 78 proceeding seeking to overturn respondent's final decision denying his application for a Premises Residence Handgun License. He also requests that the court direct respondent to issue him the license.

According to the petition, which petitioner signed under penalty of perjury, respondent advised petitioner that his application was disapproved due to an incident involving domestic violence. Petitioner asserts "I am unaware of the alleged incident because it never happened and no record was provided to me although I requested the records several times from the Police Precinct where the incident was allegedly reported." NYSCEF Doc. No. 1, Petitioner's affirmation, ¶ 4. Petitioner states that the alleged complainant submitted a notarized affidavit stating that she "never reported any incident of domestic abuse to police." Id., ¶ 5. Petitioner maintains that he meets all the required criteria and that respondent had no basis to deny his application.

In its answer, respondent states its determination should be upheld as it was rational, reasonable and in accordance with the relevant law. It states that, after receiving petitioner's application, as part of its investigation, respondent was informed that petitioner was involved in a domestic dispute on

December 14, 2014. Respondent submits a complaint report (Complaint Report) generated by the NYPD in connection with this incident. The NYPD-issued Complaint Report states, in pertinent part, that petitioner was involved in a verbal dispute with James, his girlfriend. The case status was open, and the classification was entitled "menacing." NYSCEF Doc. No. 10 at 1. James advised police officers that petitioner had a knife and that she did not feel safe. The NYPD also generated a Domestic Incident Report (DIR) in connection with the incident. In that report, James alleged that she and petitioner had a dispute. Petitioner allegedly grabbed a knife and they "tussled" for the knife and petitioner threatened to harm himself and scared her five-year-old daughter. NYSCEF Doc. No. 11 at 1.

In light of the domestic incident reported on December 14, 2014, respondent argues that its decision to disapprove petitioner's license application was not arbitrary or capricious. "Thus, since the Complaint Report and DIR clearly established that in 2014 the Petitioner had been involved in a domestic incident, the License division acted properly and lawfully when it issued its [disapproval]." NYSCEF Doc. No. 16, respondent's memorandum of law at 13. Respondent states that applicants must be of good moral character and that, upon considering an application, respondent is allowed to consider an

applicant's history of incidents of domestic violence as well as other information concerning the lack of concern for the safety of oneself and/or other persons.

In addition, respondent claims that, by failing to disclose this incident, petitioner failed to provide truthful and accurate information. Respondent further argues that petitioner fails to state a cause of action for mandamus relief as the issuance of a license is a discretionary act.

Petitioner's Opposition

Petitioner argues that the respondent's determination lacks a rational basis as respondent has not established any conduct by petitioner that would render him unfit to possess a gun license. He states that he has been a security professional for at least 14 years and that he seeks the license to use a handgun as part of his work. He continues that he has no history of domestic violence "although a dubious and un-investigated false complaint that has been denied by the alleged complainant was brought up for the first time during Petitioner's application process." NYSCEF Doc. No. 18 at 5-6. Petitioner denies being involved in the 2014 incident. He claims that he was never interviewed in connection with that complaint and was not aware of it until after the denial of his license application. Although James submitted an affidavit denying that she made a

complaint, petitioner states that respondent never interviewed James as part of petitioner's application process.

Petitioner claims that, when he attempted to retrieve the record at the police precinct, he was advised that there was no record of the of the 2014 complaint. While he acknowledges receiving a copy of the NYPD complaint and the DIR, petitioner denies any involvement in this incident. He reiterates that both he and James submitted affidavits denying any involvement in this incident and James stated that she did not file this complaint. According to petitioner, if James did file this complaint in 2014, the court should not accept it, as it would have been a false complaint that was made out of spite. In any event, he maintains that he was never arrested nor charged in connection with this incident.

DISCUSSION

In accordance with CPLR 7803 (3), the relevant standard herein is whether the May 28, 2019 determination was arbitrary and capricious. "In reviewing an administrative agency determination, [courts] must ascertain whether there is a rational basis for the action in question or whether it is arbitrary and capricious. An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts." Matter of Murphy v New York State Div. of Hous. & Community Renewal, 21 NY3d 649, 652 (2013) (internal quotation

marks and citations omitted); see also CPLR 7803 (3) ("The only questions that may be raised in a proceeding under this article are whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion"). Once a court finds a rational basis for the agency's determination, its review ends. Matter of Hughes v Doherty, 5 NY3d 100, 107 (2005).

Application for a Premises Residence Handgun License

Respondent denied petitioner's application for a Premises Residence Handgun License. In pertinent part, the regulations governing the issuance of handgun licenses in New York City are codified in Chapter 5 of Title 38 of the RCNY. A Premises Residence Handgun License is defined as "a restricted handgun license, issued for a specific business or residence location. The handgun shall be safeguarded at the specific address indicated on the license, except when the licensee transports or possesses such handgun consistent with these Rules." 38 RCNY § 5-01 (a). Some of the requirements for this license include the following:

- "(a) Be of good moral character;
- "(b) Have no prior conviction for a felony or other serious offense, as defined in §265.00(17) of the New York State Penal Law, or of a misdemeanor crime of domestic violence, as defined in; § 921(a) of title 18 of the United States Code;

"(c) Disclose whether s/he is or has been the subject or recipient of an order of protection or a temporary order of protection

"(h) Be an applicant concerning whom no good cause exists for the denial of such license."

38 RCNY § 5-02 (a), (b), (c) and (h).

"[A]n application for a handgun license may be denied where it is determined that an applicant lacks good moral character or that other good cause exists for denial, pursuant to New York State Penal Law § 400.00 (1)." 38 RCNY § 5-10. Some factors to be considered prior to denying an application are whether the "applicant has a history of one or more incidents of domestic violence" and whether the applicant has "a lack of concern for the safety of oneself and/or other persons and/or for public safety, and/or other good cause for the denial of the license." See 38 RCNY § 5-10 (g), (n).

"It is well settled that the possession of a handgun license is a privilege, not a right, which is subject to the broad discretion of the New York City Police Commissioner." Matter of Papaioannou v Kelly, 14 AD3d 459, 460 (1st Dept 2005); see also Sewell v City of New York, 182 AD2d 469, 472 (1st Dept 1992) ("The New York City Police Commissioner has broad discretion to grant licenses in accordance with the provisions of Penal Law § 400.00 and Administrative Code of the City of New York § 10-131 ([a]) ([1])"). Furthermore, "respondent, by statute, has been delegated extraordinary power in these

matters." Matter of Papaioannou v Kelly, 14 AD3d at 460
(internal quotation marks and citations omitted).

Upon receipt of petitioner's application, respondent found that petitioner had a history of one incident of domestic violence. Specifically, according to records generated by the NYPD, in 2014, petitioner was involved in a domestic incident with James, his girlfriend. James had reported that she and petitioner engaged in a verbal dispute, that petitioner took out a knife and had threatened to hurt himself and that her daughter was scared. As a result, petitioner was informed that his application was denied for, among other things, having a history of one or more incidents of domestic violence and for having a lack of concern for the safety of oneself, both of which are factors to be considered prior to denying a license application.

It is well settled that, "[w]here the judgment of an agency involves factual evaluations in the area of that agency's expertise and is supported by the record, such judgment must be accorded great weight and judicial deference." Awl Indus., Inc. v Triborough Bridge & Tunnel Auth., 41 AD3d 141, 142 (1st Dept 2007). The court finds that respondent's determination herein denying petitioner's application for a Premises Residence Handgun License should not be disturbed as it was rational for respondent to rely on documented NYPD records when determining that "good cause exists for the denial." 38 RCNY § 5-10. See

e.g. Matter of Papaioannou v Kelly, 14 AD3d at 460 ("A rational basis exists when the evidence adduced is sufficient to support the Commissioner's action"); see also Matter of Tolliver v Kelly, 41 AD3d 156, 158 (1st Dept 2007) ("A court may overturn such an administrative determination only if the record reveals no rational basis for it, and may not substitute its own judgment for that of the agency").

After receiving the initial denial, both petitioner and James submitted affidavits denying that any domestic incident occurred. Petitioner further maintained that, when he went to the police precinct, there was no record of the incident. Nevertheless, respondent advised petitioner that it was relying on two NYPD records prepared on December 14, 2014; namely, the Complaint Report and the DIR. In the final determination, respondent informed petitioner that, despite his assertions, it possessed credible evidence that he menaced James with a knife in front of a child and also threatened to hurt himself. Although petitioner maintains that the incident did not occur, "[i]n such circumstances, a reviewing court may not reevaluate the weight accorded the evidence adduced . . . since the duty of weighing the evidence, interpreting relevant statutes and making the determination rests solely in the expertise of the agency." Awl Indus., Inc. v Triborough Bridge & Tunnel Auth., 41 AD3d at 142 (internal quotation marks and citation omitted).

James submitted an affidavit that she never filed a complaint against petitioner. Although petitioner believes that respondent should have interviewed James as part of the application process, the court will not second-guess respondent's investigative procedures. An administrative agency, "acting pursuant to its authority and within the orbit of its expertise, is entitled to deference, and even if different conclusions could be reached as a result of conflicting evidence, a court may not substitute its judgment for that of the agency when the agency's determination is supported by the record." Matter of Sam Wu v New York City Water Bd., 100 AD3d 470, 470 (1st Dept 2012) (internal quotation marks and citation omitted).

In addition, petitioner alleges that, if, in fact, James did submit a complaint, it would have falsely made in order to damage his reputation. As a result, the court should not accept this complaint. Nevertheless, "[a] court's role in an article 78 proceeding of this nature is not to determine the merits de novo, but to decide whether the [agency's] decision was rational, based on the evidence actually before them." Matter of Luisi v Safir, 262 AD2d 47, 50 (1st Dept 1999). Here, the court "cannot say that it was arbitrary and capricious" for respondent to consider the documented NYPD reports, and discount the James' denial as a recent retraction. Id.

Petitioner also seeks an order in the nature of mandamus, directing respondent to issue him a Premises Residence Handgun License. However, a mandamus to compel "applies only to acts that are ministerial in nature and not those that involve the exercise of discretion," such as the discretionary act of possessing a handgun license. Matter of Flosar Realty LLC v New York City Hous. Auth., 127 AD3d 147, 152 (1st Dept 2015) (internal quotation marks and citation omitted). Any relief requested in the nature of mandamus to compel is unavailable.

<u>12/7/2020</u>			
DATE		DEBRA A. JAMES, J.S.C.	
CHECK ONE:	☒ CASE DISPOSED	☐ NON-FINAL DISPOSITION	
	☐ GRANTED	☒ DENIED	☐ GRANTED IN PART
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	☐ OTHER
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE