

Tzoulis v New York City Police Dept.

2020 NY Slip Op 34352(U)

December 29, 2020

Supreme Court, New York County

Docket Number: 153919/2020

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

-----X

ANGELO TZOULIS,

Petitioner,

- v -

THE NEW YORK CITY POLICE DEPARTMENT -
LICENSE DIVISION,

Respondent.

-----X

INDEX NO. 153919/2020
MOTION DATE 11/27/2020
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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

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

Upon the foregoing documents, it is

ADJUDGED that the petition for relief, pursuant to CPLR Article 78, of petitioner Angelo Tzoulis (motion sequence number 001) is denied, and this proceeding is dismissed; and it is further

ORDERED that counsel for respondent 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 Angelo Tzoulis (Tzoulis) seeks an order to vacate a determination of the license division (LD) of the respondent New York City Police Department (NYPD) as arbitrary and capricious (motion sequence number 001). For the following reasons, the petition is denied, and this proceeding is dismissed.

FACTS

Tzoulis is a licensed electrician and the proprietor of a corporation called Freedom Electric & Data of New York, Inc. (Freedom Electric), which is located in Richmond County in the City of New York. *See* verified petition, ¶¶ 7-8. In 2015, the NYPD's LD approved Tzoulis's application for a "carry business" handgun license (CB license). *Id.*, ¶ 15. In October of 2018, Tzoulis applied to renew his CB license. *Id.*, ¶ 16. On March 5, 2019, the LD issued a notice of disapproval denying that renewal application. *Id.*, ¶ 17; exhibit C. On April 5, 2019, Tzoulis commenced an Article 78 proceeding in this Court to overturn the LD's determination (Index Number 154647/19). *Id.*, ¶ 20; exhibit D. The NYPD initially moved to dismiss that proceeding; however, on October 2, 2019 the parties executed a stipulation under which Tzoulis agreed to withdraw his original petition and instead file an internal appeal of the LD's notice of disapproval, so as to exhaust his available administrative remedies. *Id.*, ¶¶ 21-22; exhibits E, F. On January 21, 2020, the LD issued a "notice of disapproval after appeal" that denied Tzoulis's administrative appeal and upheld the original disapproval of his CB license renewal application (the LD determination). *Id.*, ¶ 23; exhibit G. The relevant portions of the LD determination found as follows:

"Pursuant to 38 RCNY 5-03, Mr. Tzoulis was required to submit documentation that established that his employment placed him in extraordinary personal danger, requiring authorization to carry a gun. Specifically, Mr. Tzoulis was instructed to submit bank statements with corresponding deposit and/or withdrawal slips that show that he

routinely engages in transactions that involve substantial sums of cash. Mr. Tzoulis failed to submit such bank statements with corresponding deposit/withdrawal slips. Although Mr. Tzoulis submitted approximately eight withdrawal slips, the slips reveal that he did not make all of the withdrawals. For example, the 8/10/18, 11/8/18 and 11/26/18 withdrawal slips list Ted Tzoulis as the person making the withdrawal, and the 8/16/18 withdrawal slip lists Theodore Tzoulis. In regard to the 8/17/18 and 12/27/18 withdrawal slips, which list Mr. Tzoulis' name, they do not correspond to any of the 8/17/18 cash withdrawals on the August bank statement or the 12/27/18 withdrawals on the December statement that Mr. Tzoulis submitted. In sum, Mr. Tzoulis failed to establish that he has the requisite 'proper cause' for a Carry Business license. Mr. Tzoulis failed to show, with documentary proof, that he routinely engages in substantial cash transactions.

"Mr. Tzoulis also claims in his appeal that he often responds to emergency calls in the middle of the night, as well as to check on jobs. But merely working at night or in the early morning hours does not establish 'proper cause' for the issuance of a Carry Business license. Mr. Tzoulis was required, and failed, to submit documentation - such as an NYPD Complaint Report - that demonstrates that he is in extraordinary personal danger due to having to work in the middle of the night. Further, although Mr. Tzoulis claimed that he was robbed at gunpoint in 2015, he failed to submit documentation regarding this incident. Additionally, a search by a License Division investigator failed to locate any NYPD Complaint Reports regarding this alleged incident.

"Mr. Tzoulis claims in his appeal that he is 'more vulnerable than most business owners who have the safety of their four walls to protect themselves' and notes that he is constantly out of the office. Additionally, Mr. Tzoulis claims that he is 'frequently called upon to travel into some of the most crime-ridden and dangerous areas of New York City at all hours.'

"Mr. Tzoulis does not explain why he believes that he is more vulnerable because he often works outside of his office. Nevertheless, merely working or traveling outside of an office does not, ipso facto, establish proper cause. Further, Mr. Tzoulis failed to explain how he is in extraordinary personal danger by traveling to different locations. Additionally, pursuant to 38 RCNY 5-03(b), merely working in, or traveling through, a 'high crime' area does not establish 'proper cause' for the issuance of a Carry license. Mr. Tzoulis was required to submit documentary proof that he is exposed to extraordinary personal danger due to recurrent threats to his life or safety, which he failed to do.

"For the reasons stated above, your appeal of the disapproval of Mr. Tzoulis' Carry Business license renewal application is denied."

Id., exhibit G.

Tzoulis then commenced this Article 78 proceeding on June 4, 2020. *See* verified petition. He notes that the Covid-19 national pandemic forced the court to suspend most of its operations shortly thereafter, and that the Governor issued several executive orders that

suspended the statutes of limitations and filing deadlines for many claims. *Id.*, ¶ 24. As a result, Tzoulis asserts that the instant proceeding is timely, despite his having commenced it more than four months after the NYPD issued the final LD determination. *Id.*, ¶ 25. For its part, the NYPD filed an answer to Tzoulis's petition on November 27, 2020. *See* verified answer. This matter is now fully submitted (motion sequence number 001).

DISCUSSION

CB licensing procedures in New York City are subject to Penal Law § 400.00 (2) (f), the relevant portion of which authorizes the issuance of licenses to “have and carry concealed [firearms], without regard to employment or place of possession, by any person when *proper cause* exists for the issuance thereof” (emphasis added). *See also* 38 RCNY § 5-03. Appellate case law involving CB license applications recognizes that 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). A reviewing court's role in an Article 78 proceeding is to determine, upon the facts before an administrative agency, whether the agency's 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 (1st Dept 1996). The court will only find an agency's determination to be 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 agency's 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, Tzoulis's sole argument is that the LD's determination was arbitrary and capricious because it "blatantly ignored the uncontradicted and unchanged facts of [his] 'proper cause' showing." See verified petition, ¶¶ 48-54. In other words, Tzoulis disputes the LD's factual findings regarding "proper cause." The LD determination contained three factual findings related to that issue, each of which the court will review.

First, the LD determination noted that Tzoulis's CB license renewal application alleged that he routinely handled "extremely large sums of money," including monthly cash deposits and withdrawals of over \$1,000,000.00 dollars, but that he failed to present bank statements and corresponding deposit/withdrawal slips which supported this allegation. See verified petition, exhibit G. The LD determination further noted that several of the eight deposit/withdrawal slips that Tzoulis did present showed that another party made the subject deposit or withdrawal, while other slips simply did not appear on the bank account statement which they supposedly corresponded to. *Id.* The LD determination concluded that Tzoulis's submissions did not satisfy 38 RCNY § 5-03, which requires "documentary proof that [a CB license applicant's] employment actually requires that s/he . . . routinely engages in transactions involving substantial amounts of cash, jewelry or other valuables or negotiable items." The court finds that the records described in the LD determination provided a rational basis for the conclusion that Tzoulis's evidence failed to satisfy 38 RCNY § 5-03. That evidence simply does not connect Tzoulis personally to large and regular cash transactions. Tzoulis nevertheless argues that the FD determination "simply blinks at the bank records," which show that "[o]n an average

monthly basis, [he] makes deposits of cash and checks . . . and withdrawals” of over a million dollars. *See* verified petition, ¶ 50. However, the 2018 Freedom Electric bank statements that Tzoulis annexed to his petition do not support this assertion. Those records show that the majority of Freedom Electric’s monthly activity consists of check transactions and electronic funds transfers. They do not appear to list any cash transactions, nor are they accompanied by cash deposit/withdrawal slips. Further, Tzoulis’s name does not appear on any of the Freedom Electric account data. As a result, the records do not constitute evidence that Tzoulis regularly conducts sizable cash transactions. Even if he had produced such evidence, however, it would not by itself constitute proof of “a special need for the [CB] license distinguishable from that of other persons similarly situated.” *Matter of Milo v Kelly*, 211 AD2d 488, 489 (1st Dept 1995), quoting *Matter of Conciatori v Brown*, 201 AD2d 323, 323 (1st Dept 1994). In any case, the court discounts Tzoulis’s evidence, and rejects his first argument as unsupported.

Next, the LD determination noted that Tzoulis alleged that he “often responds to emergency calls” or “checks on jobs” in the “middle of the night,” but found that “merely working at night or in the early morning hours does not establish ‘proper cause’ for the issuance of a [CB] license,” and that Tzoulis had “failed, to submit documentation . . . that demonstrates that he is in extraordinary personal danger due to having to work in the middle of the night.” *See* verified petition, exhibit G. It also noted that Tzoulis had claimed to have been robbed at gunpoint in 2015 while working, but that he had failed to document that alleged incident, and the NYPD had no record of it. *Id.* The LD determination concluded that Tzoulis’s failures of proof violated 38 RCNY § 5-03, and precluded a finding of “proper cause” pursuant to Penal Law § 400.00 (2) (f). *Id.* The court agrees. The Appellate Division, First Department, has plainly held that “general allegations about . . . work hours and location” are insufficient to demonstrate “a

special need for self-protection distinguishable from that of the general community or of persons engaged in the same profession” as is required by 38 RCNY § 5-03. *Matter of Kaplan v Bratton*, 249 AD2d 199, 201 (1st Dept 1998), quoting *Matter of Klenosky v NYC Police Dept.*, 75 AD2d 793, 793 (1st Dept 1980), *affd* 53 NY2d 695 (1981). Here, Tzoulis’s petition merely restates his “general allegations about work hours and location.” *See* verified petition, ¶¶ 51-53. The court rejects them in light of the cited appellate precedent. The court further notes that Tzoulis’s petition contained no documentation of “extraordinary personal danger” to himself of the sort that he alleged that the LD had “blinked at” (e.g., crime incident reports). Tzoulis bears the burden of proof on such matters. *Matter of Kaplan v Bratton*, 249 AD2d at 201. Because he has failed to meet it, the court rejects his second argument.

Finally, the LD determination noted that Tzoulis claimed to be “more vulnerable than most business owners who have the safety of their four walls to protect themselves,” since he is “constantly out of the office” and “frequently called upon to travel into some of the most crime-ridden and dangerous areas of New York City at all hours.” *See* verified petition, exhibit G. However, the LD determination found that Tzoulis failed to “explain why he believes that he is more vulnerable because he often works outside of his office, and noted that “merely working or traveling outside of an office does not, ipso facto, establish proper cause.” *See* verified petition, exhibit G. The court again finds that the law supports the LD’s determination. The First Department holds that “[t]he fear felt by petitioner . . . as a result of having to travel to and from high crime areas for the purpose of inspecting buildings and . . . transporting large sums of cash is too vague to constitute ‘proper cause’ within the meaning of Penal Law § 400.00 (2) (f), absent documentation substantiating the cash carried or a showing of particular threats, attacks or other extraordinary danger to personal safety.” *Matter of Martinek v Kerik*, 294 AD2d 221, 221-

222 (1st Dept 2002); *see also Matter of Theurer v Safir*, 254 AD2d 89, 90 (1st Dept 1998) (“The mere fact that petitioner travels in high-crime areas to distribute petty cash to company employees and collect COD’s does not establish proper cause.”). Here, the petition merely alleges that “it should be obvious to all” that Tzoulis has a “unique need [for] self defense [which] constitutes ‘proper cause’ to permit the renewal of [his CB] license.” *See* verified petition, ¶ 53. However, the above-cited appellate precedent makes it clear that Tzoulis must demonstrate particularized “threats, attacks or dangers to personal safety,” and that he cannot establish “proper cause” by simply relying on generalized fears that are “obvious to all.” Because that is all he has done, the court rejects his third argument.

Finally, Tzoulis argues that “[p]erhaps the most compelling reason for reversal here is that there have been absolutely no changes in [his] business circumstances from 2015.” *See* verified petition, ¶ 54. However, this argument is unsustainable, since the law does not recognize an expectation of renewal of CB licenses. Therefore, the court rejects Tzoulis’s final argument, and concludes that the LD’s determination that he failed to establish “proper cause” for the renewal of his CB license was rationally based on the material in the administrative record. Thus, the court also concludes that Tzoulis has failed to show that the LD determination was an arbitrary and capricious ruling. Consequently, Tzoulis’s Article 78 petition must be denied as meritless, and this proceeding should be dismissed.

CONCLUSION

ACCORDINGLY, for the foregoing reasons it is hereby

ADJUDGED that the petition for relief, pursuant to CPLR Article 78, of petitioner Angelo Tzoulis (motion sequence number 001) is denied, and this proceeding is dismissed; and it is further

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

Carol R. Edmead
HON. CAROL R. EDMEAD
J.S.C.
J.S.C.

12/29/2020
DATE

CAROL R. EDMEAD, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE