

**Yukanov v City of New York**

2021 NY Slip Op 30000(U)

January 4, 2021

Supreme Court, New York County

Docket Number: 152097/2020

Judge: Carol R. Edmead

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

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

*Justice*

-----X

ARTEM YUKANOV,

Plaintiff,

- v -

THE CITY OF NEW YORK, MICHAEL BARETTO,  
JONATHAN DAVID

Defendant.

-----X

INDEX NO. 152097/2020

MOTION DATE 04/13/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 27, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43

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 Artem Yukanov (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 Artem Yukanov (Yukanov) 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

On October 23, 2020, the court entered an order which, in relevant part, granted the NYPD's motion to unseal and review Yukanov's criminal record in order to prepare a comprehensive response to his Article 78 petition (motion sequence numbers 002 & 003). On November 19, 2020, the NYPD submitted that response, which consisted of an answer, exhibits and memorandum of law, all under seal. As a result of the privacy considerations which underlay the earlier motion practice, this decision will not include a detailed recitation of the facts of this case. Instead, it is sufficient to note that: 1) on January 14, 2019, Yukanov applied to the LD for a "premises business" handgun license (PB license); 2) on August 26, 2019, the LD issued Yukanov a "notice of disapproval" informing him that it had denied his PB license application; 3) Yukanov thereafter filed an administrative appeal of the LD's "notice of disapproval" (ND); and 4) on November 14, 2019, the LD issued a "notice of disapproval after appeal" (NDAA) informing Yukanov that his appeal was denied. *See* verified answer, ¶¶ 37-45; exhibits A, F, G, H. Yukanov then commenced this Article 78 proceeding on February 21, 2020. *See* verified petition. Shortly thereafter, the Covid-19 national pandemic caused the court to indefinitely suspend the majority of its operations. As previously mentioned, motion practice nevertheless ensued, and the NYPD eventually submitted an answer under seal on November 19, 2020. *See* verified answer. This matter is now fully submitted (motion sequence number 001).

## DISCUSSION

PB licenses in New York City are permitted by Penal Law § 400.00 (2) (a) & (b). The requirements to obtain such licenses are set forth in Penal Law § 400.00 (1), the relevant portions of which provide as follows:

“No license shall be issued or renewed except for an applicant . . . (b) of good moral character; (c) who has not been convicted anywhere of a felony or a serious offense or who is not the subject of an outstanding warrant of arrest issued upon the alleged commission of a felony or serious offense; . . . ; and (n) concerning whom no good cause exists for the denial of the license.” (emphasis added).

Penal Law § 400.00. The regulations that govern the LD’s issuance of PB licenses are set forth in 38 RCNY § 5-02, the relevant portions of which provide as follows:

“The requirements for the issuance of a Premises License are listed below. The license application shall be investigated, including a review of the circumstances relevant to the information provided in the application. During the pendency of the application, the applicant shall notify the License Division of any necessary correction to or modification of the information provided in the original application, or any change in her/his status or circumstances, which may be relevant to the application.

“The applicant shall:

“(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; . . .”

38 RCNY § 5-02. The regulations that govern the LD’s denial of PB licenses are set forth in 38 RCNY § 5-10, the relevant portions of which provide as follows:

“In addition to other bases for disqualification pursuant to federal, state, and local law and this chapter, an 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). Such a determination shall be made based upon consideration of the following factors:

“(a) The applicant has been arrested, indicted or convicted for a crime or violation except minor traffic violations, in any federal, state or local jurisdiction.

\* \* \*

“(e) The applicant made a false statement on her/his application, or failed to disclose her/his complete arrest history, including sealed arrests. Sealed arrests are made available to the License Division pursuant to Article 160 of the Criminal Procedure Law when an application has been made for a license to possess a gun.

“(f) The applicant is the subject of an order of protection or a temporary order of protection.

“(g) The applicant has a history of one or more incidents of domestic violence.

“(h) The applicant has a poor driving history, has multiple driver license suspensions or has been declared a scofflaw by the New York State Department of Motor Vehicles.

\* \* \*

“(m) The applicant fails to cooperate with the License Division's investigation of her/his application or fails to provide information requested by the License Division or required by this chapter.

“(n) Other information demonstrates an unwillingness to abide by the law, a lack of candor towards lawful authorities, 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.

In evaluating incidents or circumstances pursuant to this section, the License Division shall consider all relevant factors, including but not limited to the number, recency and severity of incidents and the outcome of any judicial or administrative proceedings.” 38 RCNY § 5-10. Appellate case law 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 (1<sup>st</sup> 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, Yukanov's disorganized petition argues that the NDAA was arbitrary and capricious in several respects.

First, Yukanov asserts that: 1) although he has an arrest history, he has never been convicted of a crime; 2) he has no knowledge of any domestic incident reports ever being filed against him; and 3) the LD "has been untruthful" concerning his driving history. *See* verified petition, ¶¶ 2-9. He particularly complains that "[t]here has been no showing of any criminal court complaint or other document which might show any rational basis to these charges which someone feels shows [his] lack of good moral character." *Id.*, ¶ 19. This argument appears to relate to the portion of the NDAA that found that Yukanov's arrest record, domestic incident history and driving record all demonstrated the existence of "factors," as described in 38 RCNY § 5-10, that indicated that Yukanov lacked the "good moral character" required to hold a PB license. *See* verified answer, exhibit H (NDAA).<sup>1</sup> The NYPD notes that: 1) Yukanov's arrest record disclosed three incidents - two for the misdemeanor of driving with a suspended license (once while in possession of a forged temporary license plate), and one for the felony of assault with the intent to cause physical injury (which he did not disclose); 2) Yukanov's domestic incident history, which he did not disclose to the LD, included two aggravated harassment complaints against him by the mother of his children (who alleged that he repeatedly called her at all hours of the day and night to make threats of physical violence) and the issuance of one order of protection against him; and 3) Yukanov's driving record showed 15 moving violations and 13 license suspensions between 2006 and 2018 (and indicated that he was classified as a scofflaw with respect to the suspensions). *Id.*, exhibit C; respondent's mem of law at 10. The

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<sup>1</sup> As a result of the court's sealing order, this decision will not reproduce the text of the NDAA, but will only describe and discuss its content as necessary.

court notes that neither Yukanov's PB license application, nor his Article 78 petition, includes the entire foregoing history. *Id.*, exhibit A; verified petition, exhibit C. Instead, he appended to those documents certain records of arrests in 2005 and 2006 on certain charges that were "adjourned in contemplation of dismissal" (ACD; one arrest was for the felony of avoiding cigarette taxes by selling untaxed cigarettes, the others for the misdemeanor of illegally possessing a police scanner and a public decency violation which resulted in a summons that Yukanov did not answer). *Id.* In any event, the totality of the foregoing material certainly contradicts Yukanov's assertion that the NDAA was not supported by documentary evidence.

More importantly, however, said foregoing material also justifies the LD's finding that enough of the "factors" described in in 38 RCNY § 5-10 were present to demonstrate that Yukanov lacked the "good moral character" necessary to hold a PB license. The LD reasonably found that Yukanov fell afoul of 38 RCNY § 5-10 (a) because of the records that he had been "arrested, indicted or convicted" of two felonies and two misdemeanors. It reasonably found that Yukanov fell afoul of 38 RCNY § 5-10 (f) and (g) because of the records of two domestic violence complaints by, and one order of protection for, his children's' mother. It reasonably found that Yukanov fell afoul of 38 RCNY § 5-10 (h) because the records of his driving history clearly show that it is "poor," and includes multiple drivers' license suspensions for which he has been classified as a "scofflaw." The LD reasonably found that Yukanov fell afoul of 38 RCNY § 5-10 (e) and (m) by failing to disclose his 2005 arrest for assault with the intent to cause physical injury on his PB license application. And the LD reasonably concluded that Yukanov fell afoul of 38 RCNY § 5-10 (n) because the records of his behavior over 15 years amply demonstrates that he is "unwillin[] to abide by the law," and displays a "lack of candor towards lawful authorities" as well as a "lack of concern for his own safety, that of others and/or the public"

(including his children's mother). The court finds that the foregoing documentary evidence that the LD considered provided a rational basis for the conclusion that Yukanov lacked the "good moral character" required to hold a PB license, and for the determination that his license application should be denied pursuant to 38 RCNY § 5-10.

Yukanov's legal arguments to the contrary are unavailing. The Appellate Division, First Department, has long rejected the assertion that the LD should not consider records of arrests that do not result in convictions. *See e.g., Matter of Tate v O'Neill*, 187 AD3d 684, 685 (1<sup>st</sup> Dept 2020), citing *Matter of Servedio v Bratton*, 268 AD2d 356 (1<sup>st</sup> Dept 2000). Yukanov's argument that the remoteness of his 2005 and 2006 arrests made the LD's reliance on them unreasonable is similarly incorrect. The First Department has consistently upheld the LD's denial of PB license applications based on an applicant's decade-old DUI arrests, driving infractions and/or domestic incident reports. *See e.g., Matter of Bradeanu v Davis*, 187 AD3d 634 (1<sup>st</sup> Dept 2020); *Matter of Dale v Safir*, 283 AD2d 248 (1<sup>st</sup> Dept 2001). Further, as previously observed, the complete record of Yukanov's arrests, domestic incidents and driving history stretches from 2005 to 2018. It therefore belies his claim that the only evidence before the LD was of overly remote incidents. Finally, Yukanov may not rely on the body of case law which holds that the LD should "consider the circumstances surrounding the [applicant's] arrests in determining [his or her] suitability for a permit." *Matter of Servedio v Bratton*, 268 AD2d at 356. His petition makes no attempt to explain exactly what "circumstances of his arrests" were so benign as to warrant overturning the LD's findings. Indeed, his assertions that he has "no criminal convictions," that "there is no proof of any physical injury to any person" and that there is "no evidence of . . . serious offenses" are all misleading and belied by the record. *See* verified petition, ¶ 27. Therefore, the

court rejects Yukanov's legal arguments, and finds that the LD's reliance on the entirety of his arrest, domestic and driving records was proper.

The remainder of Yukanov's petition argues that the NDAA violated his rights to due process under the United States Constitution's Fourteenth Amendment, and to firearms ownership under the Second Amendment. *See* verified petition, ¶ 11. However, these arguments are likewise unavailing. The First Department has repeatedly recognized the constitutionality of the firearms licensing procedures that the NYPD promulgated to effectuate Penal Law § 400.00. *See e.g., Matter of Bradeanu v Davis*, 187 AD3d at 634 ("Under this Court's settled precedent, the licensing scheme . . . satisfies the requisite constitutional standard."); *Matter of Sambula v Triborough Bridge & Tunnel Auth.*, 180 AD3d 543 (1<sup>st</sup> Dept 2020) (licensing scheme does not violate Second Amendment). Further, Yukanov misstates the Second Department's holding in *Matter of Burke v Colabella* (113 AD2d 794 [2d Dept 1985]), which merely ruled that "[w]hile a formal adversarial hearing is not required before a pistol license is revoked, the licensee must be given notice of the charges and evidence against him, and be given an opportunity to appear with his lawyer to rebut the charges," and only applied to license revocations, but *not* to license applications. 113 AD2d at 795; *see also Matter of Ogundele v Zambelli*, 159 AD3d 1002 (2d Dept 2018). Therefore, the court rejects these arguments.

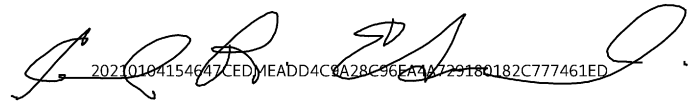
The court concludes that the administrative record furnished a rational basis for the findings and the determination in the NDAA and rejects all of Yukanov's arguments that it was an arbitrary and capricious ruling. Accordingly, the court finds that Yukanov's Article 78 petition should be denied as meritless and that 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 Artem Yukanov (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.

  
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01/04/2021  
DATE

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CAROL R. EDMEAD, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE