

Elashrafi v City of New York

2021 NY Slip Op 31506(U)

May 4, 2021

Supreme Court, New York County

Docket Number: 155409/2020

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 59EFM

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BASSEM ELASHRAFI,

Petitioner,

- v -

THE CITY OF NEW YORK, NEW YORK CITY
 DEPARTMENT OF CONSUMER AFFAIRS, NEW YORK
 CITY DEPARTMENT OF CONSUMER AND WORKER
 PROTECTION, COMMISSIONER LORELEI SALAS, IN
 HER OFFICIAL CAPACITY AS COMMISSIONER OF THE
 NEW YORK CITY DEPARTMENT OF CONSUMER
 AFFAIRS, AND THE NEW YORK CITY DEPARTMENT
 OF CONSUMER AND WORKER PROTECTION,

Respondents.

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HON. DEBRA A. JAMES:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 10, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38

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 disbursements to respondents.

DECISION

Respondents state the following grounds for their final determination dated May 7, 2020 denying petitioner's process server individual license renewal application:

"The Department concludes that you failed to bring to two traverse hearings your hand-written logbooks and your testimony at the hearings that you did not do so because the Department had them in its possession pursuant to audit was untruthful. In short, the

Department never requested the production of these logbooks and never had them in its possession; and, although you had agreed to do so, you have not provided the Department any proof, such as subpoenas or correspondence, to the contrary."

The two traverse hearings in question took place in May, June, and September 2019, for process that petitioner allegedly served in 2016 and 2017.

Petitioner appends to his petition copies of a certificate of mailing signed by one of respondents' employees, stating that, on September 16, 2013, such employee mailed a subpoena duces tecum to petitioner. Petitioner also attaches a copy of such subpoena, which is also dated September 16, 2013, that petitioner received from respondents. In support of his petition, petitioner also submits copies of subpoena duces tecum dated June 15, 2015, and also in the respondent's administrative record is a subpoena dated June 27, 2019.

Petitioner contends that such subpoenas sent to him by respondents refute respondents' finding that they never requested the delivery of and did not possess such logbook(s), therefore rendering respondents' determination denying renewal of his process server license on that basis arbitrary and capricious. However, upon careful reading, such subpoenas fail to support petitioner's contention.

The subpoena ad testificandum and duces tecum dated June 27, 2019 commanded petitioner to appear at respondents' offices on

July 22, 2019, and, at that time, produce, as set forth in Schedule A, "Your bound logbook(s) from May 2018."

Neither the subpoena duces tecum dated June 15, 2015 nor the subpoena duces tecum dated September 16, 2013 would cover such logbook(s). Moreover, the June 15, 2015 subpoena stated in bold instructions:

"All paper documents, including your log book(s), must be scanned into electronic files.

"You must submit an electronic copy of your log book(s), not the original."

Likewise, the September 15, 2013 subpoena stated in bold print:

"All paper documents must be scanned into electronic files.

"You must copy and scan your logbook(s) into an electronic file."

Petitioner's own submissions confirm that before the audit in question, respondents never requested that he deliver any of his original logbook(s) from May 2018, let alone any other period, to respondents. He failed to comply with the subpoena that directed him to produce any original logbook(s) from May 2018 to the date of his response to respondents at their offices on July 22, 2019 or thereafter, and his statement that he could not do so because such original documents were in respondents' possession was a falsehood. It is of no moment to petitioner's

failure to produce his logbook(s) from May 2018 to the date of his response that the respondents were in error with respect to whether or not they had conducted audits of his records for the periods May 1 through July 31, 2013 via the September 13, 2013 subpoena and August 1 through October 31, 2013 via the June 15, 2015 subpoena. Such audits are completely irrelevant to the petitioner's obligation to produce his bound logbook(s) from May 2018, the subject of the June 27, 2019 subpoena.

Accordingly, this court finds that respondents' determination denying petitioner's process server individual license application was rational and lawful. See Matter of Benvenuto v Suffolk County Dept of Consumer Affairs, 144 AD2d 455, 456 (2d Dept 1988).

Debra A. James
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<u>5/4/2021</u> DATE			<hr/> DEBRA A. JAMES, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED		<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