Matter of Warner v NYS Dept. of Motor Vehs.
2021 NY Slip Op 32058(U)
September 30, 2021
Supreme Court, Broome County
Docket Number: EFCA2021000426
Judge: Eugene D. Faughnan
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At a Motion Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Broome County Courthouse, Binghamton, New York, on the 9th day of July, 2021, by virtual oral argument.

PRESENT: HON. EUGENE D. FAUGHNAN
Justice Presiding

STATE OF NEW YORK
SUPREME COURT: COUNTY OF BROOME

In the Matter of the Application of

MARTIN E. WARNER,

Petitioner,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules

DECISION, ORDER AND JUDGMENT

-vs.-

Index No. EFCA2021000426

NYS DEPARTMENT OF MOTOR VEHICLES, and MARK J.F. SCHROEDER, as Commissioner of the New York State Department of Motor Vehicles

Respondents.

APPEARANCES

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EUGENE D. FAUGHNAN, J.S.C.

Petitioner Martin E. Warner ("Warner") commenced this Article 78 proceeding on February 24, 2021 seeking and Order: 1) declaring that Respondents' denial of Warner's request for relicensing was arbitrary and capricious[1] and 2) vacating and reversing Respondents' determination denying Warner's application for relicensing. Respondents filed a Verified Answer and Return on May 7, 2021 (which was subsequently amended on May 12, 2021 and re-filed), and Petitioner filed a reply on May 11, 2021. The Petition was originally given a return date of April 9, 2021 and was adjourned at Respondents' request to May 14, 2021. Although that was a return date for the Court, due to ongoing limitations on in-person appearances at the Courthouse, the Court determined that virtual argument was more appropriate, so the matter was re-scheduled for virtual appearances on July 9, 2021. Both parties appeared at the argument via Microsoft Teams. After due deliberation, this Decision and Order constitutes the Court's determination with respect to the pending Petition.[2]

BACKGROUND FACTS

Petitioner's driver's license was revoked in February 2015 for refusal to submit to a chemical test. Petitioner also concedes that he has been convicted of three separate alcohol-related offenses within the 25 year look-back period.[3] He was convicted on August 27, 1993 of felony Driving While Intoxicated; he was convicted on May 22, 2013 of Driving with .08% Alcohol; and on September 9, 2014 he was convicted of a felony Driving While Intoxicated. Respondent also references a conviction in 1985, but that is prior to the 25 year look back period under 15 NYCRR §136.5(a)(3). There are some circumstance, however, where a person's lifetime alcohol convictions may be considered, which will be discussed below.

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[1] Respondents are collectively the New York State Department of Motor Vehicles and the Commissioner of Motor Vehicles, and will be referred to herein as Respondents or DMV.

[2] All the papers filed in connection with the Petition and Answer are included in the NYSCEF electronic case file, and have been considered by the Court.

[3] Pursuant to 15 NYCRR § 136.5 (a)(1), alcohol related offenses include driving while intoxicated, driving while impaired, and refusal to submit to a chemical test; further, 15 NYCRR § 136.5 (a)(3) also provides for a "25 year look back period", in which the DMV reviews the driver's alcohol related offenses in the 25 year period before the date of the revocable offense.

In September 2017, in an incident unrelated to his driving convictions and license revocation, Warner was a passenger in a vehicle involved in a serious motor vehicle accident. He claims to have sustained a variety of injuries including scalp and facial lacerations, traumatic brain injury, post-traumatic stress disorder, and multiple orthopedic injuries. He has also undergone multiple surgeries related to the injuries sustained in that accident. He claims that he continues to require frequent and ongoing medical treatments and that his lack of a driver's license impedes his ability to obtain necessary medical care. He has also submitted notes from his doctors supporting his re-licensure to be able to come to the medical appointments, and a medical note concluding his physical injuries do not prevent him from physically being able to drive.

In May 2020, Warner submitted an application for relicensing to the DMV. In that application, he explained his circumstances that he claimed justified his relicensing. He also included, among other things, the letters from medical providers supporting his relicensing, and evidence concerning the distance from his residence to the medical providers. He also produced evidence that public transportation is not available to him, or sufficiently distant as to not be practical.

Warner's application for relicensing was denied by a DMV examiner by letter dated June 10, 2020. The primary reason for the denial was that, in addition to the three alcohol related offenses within the 25 year look back period (15 NYCRR § 136.5 (b)(2)), Warner also had a "serious driving offense[]" as defined in 15 NYCRR § 136.5 (a)(2), in that Warner had accumulated more than 20 points on his driving record from violations within the 25 year look back period. The denial letter also advised Petitioner that he could request reconsideration within 60 days, and that if he had any "unusual, extenuating and compelling circumstance that … would justify approval of [his] driver license application" he should submit that with an attached form.

On June 29, 2020, Warner submitted an application for reconsideration, attaching much of the same documentation he submitted in his original application for re-licensure. He argued that the evidence constituted "unusual, extenuating and compelling circumstances" justifying relicensing. On August 10, 2020, Warner's request for reconsideration was denied, with said denial noting the Commissioner's general policy under Part 136 of the Commissioner's Rule and Regulations, and that "withdrawing the denial of your application for re-licensure …would be

inconsistent with our mission of promoting highway safety, as well as your safety and the safety of any passengers you may transport." The August 10, 2020 denial also noted that the determination could be appealed to the Department's Appeals Board.

On September 14, 2020, Warner appealed the reconsideration decision to the Appeals Board. In a Decision dated October 27, 2020, the Appeals Board denied Warner's application for re-licensure. The Decision noted the Petitioner's driving history and the evidence that he submitted, as well as reviewed the applicable Regulations. Ultimately, the Appeals Board concluded that "taking into consideration the Department's statutory responsibility to promote highway safety and protect the public welfare, the August 10, 2020 determination was reasonable and had a rational basis."

In this Article 78 proceeding, Warner claims that although the Respondents acknowledged his arguments and explanations in support of "unusual, extenuating and compelling circumstances", the decision does not reflect that a true, fair evaluation was conducted, and rather, the denial was pro-forma and boilerplate. Respondents, on the other hand, argue that the DMV decisions are consistent with the Commissioner's Regulations and safety concerns, fairly evaluated the evidence and Petitioner's arguments, and appropriately denied Warner's application for re-licensure based on his past driving history and convictions. In sum, that the action was not arbitrary and capricious, or an abuse of discretion.

LEGAL DISCUSSION AND ANALYSIS

The Court's review of an article 78 claim "is limited to whether respondents' determinations, made without a hearing, were arbitrary and capricious, irrational, affected by an error of law or an abuse of discretion." *Matter of Spence v. State Univ. of N.Y.*, 195 AD3d 1270, 1271 (3rd Dept. 2021) (internal brackets omitted), *quoting, Matter of Buffalo Teachers Fedn., Inc. v. Elia*, 162 AD3d 1169, 1172 (3rd Dept. 2018); *see*, CPLR 7803(3). If the agency's determination is supported by the facts and reasonable inferences, and has a rational basis in the law, it must be confirmed. *American Tel. & Tel. v. State Tax Com.*, 61 NY2d 393, 400 (1984). The Court of Appeals has provided explicit guidance in this regard, stating that:

> 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" (*Matter of Gilman v New York State Div. of Hous. & Community Renewal*, 99 NY2d 144, 149, 782 NE2d 1137, 753 NYS2d 1 [2002] [citation omitted]). An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts (*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, 231, 313 NE2d 321, 356 NYS2d 833 [1974]). If the court finds that the determination is supported by a rational basis, it must sustain the determination even if the court concludes that it would have reached a different result than the one reached by the agency (*id.*). Further, courts must defer to an administrative agency's rational interpretation of its own regulations in its area of expertise (*see Kurcsics v Merchants Mut. Ins. Co.*, 49 NY2d 451, 459, 403 NE2d 159, 426 NYS2d 454 [1980]).

Matter of Peckham v. Calogero, 12 NY3d 424, 431 (2009); see *Matter of Spence v. State Univ. of N.Y.*, 195 AD3d 1270.

Another articulation of the "arbitrary and capricious" standard is found in *300 Gramatan Ave. Assocs. v. State Div. of Human Rights*, 45 NY2d 176 (1978). That case involved a claim of racial discrimination in an apartment rental case, wherein the Petitioner had filed a discrimination claim with the State Division of Human Rights. The Court observed that "[g]enerally speaking, [an administrative agency's] determination is regarded as being supported by substantial evidence when the proof is so substantial that from it an inference of the existence of the fact found may be drawn reasonably." *300 Gramatan Ave Assocs*, 45 NY2d at 179 (internal quotation marks and end citations omitted). The Court also recognized that the concept of substantial evidence is often difficult to apply but that "[a] practical test, employed in ascertaining whether the proof is 'so substantial that from it an inference of the existence of the fact found may be drawn reasonably', is found in measuring the evidence against the standard of sufficiency such as to require a court to submit it as a question of fact to a jury." *Id.* at 181 (citations omitted)

There is no dispute that Warner has three alcohol related driving convictions within the 25 year look back period. Under the applicable regulations, if "the person has three or four alcohol- or drug-related driving convictions or incidents in any combination within the 25 year look back period and, in addition, has one or more serious driving offenses within the 25 year look back period, then the Commissioner shall deny the application." 15 NYCRR § 136.5 (b)(2). In addition to the three alcohol related driving convictions, the serious driving offense is established by virtue of his 20 or more points on his driving record (15 NYCRR § 136.5

(a)(2)(iv)). Once those two criteria are met, the application for re-licensing must be denied. 15 NYCRR § 136.5 (b)(2). There is no discretion. Thus, the initial denial was consistent with the applicable regulations, and supported by the facts.

Notwithstanding the clear directive of 15 NYCRR § 136.5 (b)(2) and lack of flexibility, the Regulations do provide some additional discretion to the Commissioner in 15 NYCRR § 136.5 (d), which provides that "[w]hile it is the commissioner's general policy to act on applications in accordance with this section, the commissioner shall not be foreclosed from consideration of unusual, extenuating and compelling circumstances that may be presented for review and which may form a valid basis to deviate from the general policy, as set forth above, in the exercise of discretionary authority granted under sections 510 and 1193 of the Vehicle and Traffic Law." Importantly, that subsection does not even mandate the Commissioner consider unusual, extenuating and compelling circumstances, but permits him or her to do so. 15 NYCRR § 136.5 provides the general framework to ensure that applicants are treated fairly and equally, and the purpose of 15 NYCRR § 136.5 (d) is to "ensure that [the Commissioner] has the flexibility to grant an application for relicensing where extraordinary circumstances render the application of the general policy inappropriate or unfair." *Matter of Gurnsey v. Sampson*, 151 AD3d 1928, 1930 (4th Dept. 2017); *see, Matter of Acevedo v. New York State Dept. of Motor Vehs.*, 29 NY3d 202 (2017).

Gurnsey v. Sampson also involved a determination of the DMV adverse to an applicant seeking re-licensing after his license was revoked. Before his license was revoked, he had accumulated five alcohol related convictions and one chemical test refusal. Petitioner then sought an exception based on "unusual, extenuating and compelling circumstances." While the existence of five alcohol related offenses is covered under a different part of the regulation than we have here (three offenses), the main issue was on the "unusual, extenuating and compelling" factor. Petitioner in that case submitted an affidavit that he was seven years sober, completed alcohol treatment programs, had not been convicted of any alcohol related driving offense in 20 years, and would benefit from being able to drive to work. The DMV denied his re-licensing, and he commenced an Article 78 proceeding, which was denied by the trial court. The Fourth Department concluded that the Commissioner's decision was not arbitrary and capricious, nor an abuse of discretion, and placed emphasis on the fact that Petitioner had not submitted any evidence supporting his alleged completion of alcohol treatment programs.

Similarly, in *Matter of Nicholson v. Appeals Bd. of Admin. Adjudication Bur.*, 135 AD3d 1224 (3rd Dept. 2016), Petitioner sought re-licensure after revocation for alcohol related driving offenses. The application was denied by DMV and that decision was upheld by the Appeals Board, prompting Nicholson to commence an Article 78 proceeding, which was dismissed by Supreme Court. The Third Department affirmed and noted that although Nicholson claimed he had undergone successful treatments for his alcohol problems and was a single parent caring for a 12 year old, Nicholson had failed to provide any documentation or details supporting his claims. Therefore, the Court concluded that denial of his application was not "arbitrary, irrational or an abuse of discretion in light of his dangerous driving history." *Matter of Nicholson v. Appeals Bd. of Admin. Adjudications Bur.*, 135 AD3d at 1225; *see also, Matter of Roderick v. New York State Dept. of Motor Vehs.*, 63 Misc3d 486 (Sup. Ct. Rockland County 2019) (court recognized that Petitioner presented some sympathetic factors, but failed to provide documentation as to the frequency of medical treatments of that other means of transportation could not meet his needs).

In the present case, it is evident that Petitioner's attorney made a concerted effort to ensure that the Petitioner avoided the documentation deficits that doomed Petitioners in the cases cited above, and the Court recognizes the commendable, and substantial, presentation of this Petitioner's claim of "unusual, extenuating and compelling circumstances". The evidence submitted included: documentation that Warner's last alcohol related driving offense was over 7 years ago; he has completed alcohol treatment programs (and he provided negative toxicology reports from February 2020, as well as treatment records from Addiction Center of Broome County which show he completed the program); a letter from Hon. William J. Pelella granting Petitioner permission to apply for reinstatement of his license (provided in accordance with DMV requirements because Petitioner was on probation at the time); letters from six different medical and therapy providers supporting Warner's re-licensing and stating it was necessary in order to permit him to attend appointments, and not contraindicated by medical problems; documentation as to a motor vehicle accident on September 21, 2017 which resulted in injuries to Petitioner, and photographic evidence substantiating those injuries; Google Maps documentation showing the distance from Petitioner's residence to his medical providers; and the local bus routes and schedules showing that Petitioner is not on the public bus routes. Petitioner also claims that due to his own injuries sustained in a motor vehicle accident, he is now more

aware of the need to take seriously the safety of all others on the roadways and the consequences of not doing so.

While the Court acknowledges that Petitioner has made a well organized presentation with supporting documentation to support his application to the DMV, it also cannot be denied that Petitioner's driving history is nothing short of atrocious. Respondents filed an Answer to this Petition, and included an affirmation of Renee L. Behrens, Esq., assistant counsel with DMV. Attached as an Exhibit to Ms. Behrens' affirmation is Petitioner's driving abstract, which shows that: Petitioner's lifetime driving history includes four alcohol related driving offenses (3 within the 25 year look back period), including the September 9, 2014 conviction for driving while intoxicated relating to an incident on February 2, 2014, which also involved a chemical test refusal which formed the basis for his license revocation; Petitioner has accumulated 54 lifetime points on his driving record (41 points within the 25 year look back period); Petitioner has also been involved in motor vehicle crashes with property damage on August 12, 2006, November 1, 2014 and March 29, 2015; and Petitioner has been convicted of 5 additional offenses since his license was revoked in February 2015, including 3 charges of facilitating aggravated unlicensed operation of a motor vehicle, and speeding in August 2014 with the conviction in May 2016. Ms. Behrens' affirmation also summarized the statutory and regulatory background concerning license revocations and re-licensing procedures, which has culminated with the current regulations of Part 136.

Petitioner's application for re-licensing was denied on June 10, 2020 under 15 NYCRR § 136.5 (b)(1), based on his three alcohol related offenses within 25 years, and his accumulated points on his driver's license (at least 20 points within the 25 year look back period). Petitioner does not dispute the driving history. Thus, the denial was mandatory based on the facts. Upon an application for reconsideration, Petitioner was allowed to submit evidence of unusual, extenuating and compelling circumstances. The record shows that the reconsideration was evaluated utilizing DMV form DS-322, and that the evaluator noted the number of points on Petitioner's driving record, the additional convictions after the license revocation, and the letters received in support of Petitioner's request. Petitioner objects to the facilitating aggravated unlicensed operation as part of the consideration, since those convictions do not necessarily mean that Petitioner was driving a vehicle. Petitioner has not submitted evidence that he was not driving, and the convictions may have been the result of plea bargains. In any event, they are

post revocation convictions relating to the operation of a motor vehicle. The conclusion of the examiner evaluating the reconsideration request was to deny the application based on a lack of regard for VTL (Vehicle and Traffic Law) and highway safety. As a result, on August 10, 2020, the Division Improvement Bureau of the DMV denied Petitioner's request for re-licensure, finding Petitioner's request "insufficient to justify deviating from the general policy of the Commissioner's Rules and Regulations-Part 136 ... [as it] would be inconsistent with our mission of promoting highway safety and the safety of any passengers you may transport." Contrary to Petitioner's assertions, the determination was not generic, but rather, relied on the particular facts of this case.

Petitioner further appealed the August 10, 2020 determination to the DMV Appeals Board, which affirmed the denial of the re-licensure by Decision dated October 27, 2020. The Decision concluded that given Petitioner's driving history and the responsibility of DMV to promote highway safety and protect the public, that the denial was appropriate.

Petitioner characterizes the Appeals Board decision as boilerplate, and lacking reasonable relation of the facts of the case. That is not true. The Appeals Board Decision sets forth, in detail, several of the factors Petitioner relied upon in his appeal, and Petitioner's driving history. After evaluating those factors, the Appeals Board concluded that the prior denial of re-licensing was rational.

When making the determination as to whether to grant relicensing, the DMV must weigh an applicant's supporting evidence against the applicant's driving history, bearing in mind the agency's role in protecting the public and promoting highway safety. *See e.g. Matter of Nortz v. New York State Dept. of Motor Vehs. Appeals Bd.*, 186 AD3d 977, 978 (4th Dept. 2020) ("Even assuming, arguendo, that petitioner established the existence of such circumstances, we agree with respondent that the denial of her application was not arbitrary, irrational or an abuse of discretion in light of petitioner's history of recidivism and her risk to others.") Even when considering all the factors and arguments supplied by the Petitioner, and assuming them to be true and accurate, given this Petitioner's extensive negative driving history, the Court cannot conclude that denial of his application for re-licensing was arbitrary and capricious, or lacked a rational basis. There is ample evidence of Petitioner's violations and convictions evidencing a disregard for vehicle and traffic safety. The record also supports the fact that DMV gave due consideration to Petitioner's argument throughout the application, determination and review

process. The agency must ultimately weigh the factors and arrive at a determination. As long as all the factors are considered, the Court must give proper deference to the agency to interpret and enforce its rules and regulations. Whether the Court agrees or disagrees with the determination has no bearing. The Court must simply ensure that the agency's decision is supported by the record evidence and is not arbitrary and capricious. Here, DMV's decision is rational and supported by the evidence. It was a proper exercise of the agency's discretion.

Petitioner also seeks an Order vacating and reversing DMV's decision and ordering Respondents to restore his driving privileges. However, mandamus is not available when the action is discretionary as opposed to ministerial. *NY Civ. Liberties Union v. State of New York*, 4 NY3d 175, 184 (2005). The issuance of a license after revocation is discretionary with the Commissioner [*Matter of Acevedo v. New York State Dept. of Motor Vehs.*, 29 NY2d at 213] and therefore, not subject to mandamus.

CONCLUSION

Based on the foregoing discussion, it is hereby

ORDERED, that Respondent's denial of Petitioner's request for relicensing is confirmed, and the Petition is denied and dismissed.

THIS CONSTITUTES THE DECISION AND ORDER OF THIS COURT.

ENTER:

Dated: September 30, 2021
Binghamton, New York

HON. EUGENE D. FAUGHNAN
Supreme Court Justice

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Martin E. Warner v. New York State Department of Motor Vehicles et al

Assigned Judge: Eugene D Faughnan

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