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| Matter of Agro v Shea |
| 2022 NY Slip Op 30816(U) |
| March 11, 2022 |
| Supreme Court, New York County |
| Docket Number: Index No. 151491/2021 |
| Judge: Alexander Tisch |
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ALEXANDER TISCH PART **18**

Justice

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In the Matter of the Denial of the BUSINESS CARRY
HANDGUN License Renewal Application of,

LUIGI AGRO,

Petitioner,

- v -

DERMOT F. SHEA, As the Statutorily Designated Firearms
Licensing Officer, and As the Police Commissioner of the
City of New York, and his Successors in Office,

Respondent.

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INDEX NO. 151491/2021
MOTION DATE 09/29/2021
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

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

Petitioner moves by verified petition, pursuant to Article 78 of the New York Civil Practice Law and Rules, for an order directing respondent to reinstate and renew his pre-existing New York City carry business handgun license. Respondent answers and opposes the petition.

Petitioner, the owner of La Life Paving, Inc., challenges the New York City Police Department license division’s October 14, 2020 final determination denying his application to renew his carry business license. He argues that his carry business handgun license had been first issued in 2011, and renewed in 2013 and 2016, with the requisite finding of “proper cause” pursuant to Penal Law § 400.00 (2)(f). *See also* RCNY § 5-03(b). Petitioner argues that it is arbitrary and capricious for an administrative agency to reach a conclusion contrary to a prior determination without an explanation. *See Matter of Charles A Field Delivery Serv. (Roberts)*, 66 N.Y.2d 516, 518 (1985). The essence of petitioner’s argument is that because the license

division had found “proper cause” for the previous granting of a license and two subsequent renewals that those determinations are entitled to some level of deference.

Respondent contends that the license division’s determination had a rational and reasonable basis. Respondent disapproved the renewal application due to petitioner’s failure to provide sufficient documentation to establish “proper cause.” *See* NYSCEF Doc. No. 29 (Notice of Disapproval). Petitioner asserted that as part of his paving business he is required to travel “in or around the five boroughs at all hours of the day and night placing [him] in unsafe and secure positions.” *Id.* Further, petitioner’s company “is required to conduct paving work in the overnight hours, as opposed to during the day, in high crime areas of New York City, making [him] vulnerable to becoming a victim of a crime.” *Id.* However, petitioner “failed to provide any documentation of recurrent threats (or any threats) to [his] life or safety while traveling and/or conducting business at night.” *Id.* Petitioner also indicated that he has to “carry cash in connection with [his] business.” *Id.* “However, a review of [his] banking documentation does not reflect cash deposits and [he] failed to provide documentation of proof that [his] occupation actually requires [him] to routinely engage in transactions that expose [him] to extraordinary personal danger.” *Id.* In fact, in a follow-up response petitioner admitted that he does “not make cash deposits,” but that his need for the handgun license “is for protection while working odds hours in all types of neighborhoods.” *Id.*¹ Petitioner appealed the determination, which resulted in a final determination where respondent affirmed its position that petitioner failed in his application to show proper cause because he did not adequately demonstrate exposure to any special danger or need for self-protection that would require a handgun. *See* NYSCEF Doc. No. 31.

¹ Respondent provided petitioner with the opportunity to submit additional proof to support petitioner’s generalized assertions of need in his application before a determination was rendered. *See* NYSCEF Doc. No. 27.

Respondent argues that it has broad discretion over all phases of the handgun licensing process. *See Matter of Papaioannou v. Kelly*, 14 A.D.3d 459 (1st Dept 2005). Respondent further relies on *Matter of O'Brien v. Keegan*, 87 N.Y.2d 436 (1996) to support its position. In *O'Brien*, the Court of Appeals held that “[e]ligibility for a license in the first instance or for renewal is contingent upon an investigation by a licensing officer, and a finding that all statements in the application are true.” *Id.* at 439. Therefore, “as a threshold matter, the investigation of an applicant for a carry concealed license must yield ‘proper cause’ to the licensing officer’s satisfaction for a license to issue.” *Id.* “This extraordinary power reposed in a licensing officer in and of itself supports respondent’s determination to restrict the scope of a petitioner’s license.” *Id.* Moreover, “a licensing officer’s power to determine the existence of ‘proper cause’ for the issuance of a license necessarily and inherently includes the power to restrict the use of a license to the purposes that justified its issuance.” *Id.* “Without such a power to condition, the licensing officer’s authority to allow possession of a handgun only for proper cause would be rendered meaningless and the obvious regulatory purpose of the statute would be frustrated.” *Id.*

In the instant matter the respondent found that the reasons given in the application for the license, upon greater scrutiny, didn’t reflect the petitioner’s present situation. In this context it was reasonable for respondent to deny the renewal of the license, even if it had been granted and renewed on prior occasions based on a similar record, because a licensing agency “is authorized to review renewal applications and determine whether each renewal application establishes that “proper cause” still exists.” *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 [1974]; *See Matter of Campisi v. Shea*, — A.D.3d —, 2022 NY Slip Op 00938 (1st Dept 2022). Therefore, this Court

does not find the denial of the renewal license to be arbitrary and capricious under currently prevailing law, and that respondent rationally concluded that the petitioner’s application failed to establish the requisite “proper cause.” See *Matter of Baldea v. City of New York License Div. of the NYPD*, 194 A.D.3d 634 (1st Dept 2021); *Matter of Girandola v. Shea*, 193 A.D.3d 543 (1st Dept 2021).

Petitioner also seeks mandamus to compel respondent to issue a license but mandamus to compel “applies only to acts that are ministerial in nature and not those that involve the exercise of discretion” such as the issuance of a handgun license. *Matter of Flosar Realty LLC v. New York City Housing Auth.*, 127 A.D.3d 147, 152 (1st Dept 2015). The Court has considered petitioner’s remaining arguments and find them unavailing.

Accordingly, it is ORDERED and ADJUDGED that the petition is denied and dismissed.²

This shall constitute the decision and order of this Court.



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| | 3/11/2022 | | | | |
| | DATE | | | ALEXANDER TISCH, 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"/> |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | <input type="checkbox"/> | GRANTED IN PART | <input type="checkbox"/> |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> | SUBMIT ORDER | <input type="checkbox"/> |
| | <input type="checkbox"/> | | <input type="checkbox"/> | FIDUCIARY APPOINTMENT | <input type="checkbox"/> |
| | | | | REFERENCE | <input type="checkbox"/> |

² The Court notes that this decision doesn’t preclude the petitioner from applying for a limited use carry handgun license that he held prior to 2011.