

Tsamasiros v New York City Dept. of Bldgs.
2022 NY Slip Op 31229(U)
April 13, 2022
Supreme Court, New York County
Docket Number: Index No. 154993/2021
Judge: William Perry
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. WILLIAM PERRY PART 23

Justice

-----X

CHRISTOS TSAMASIROS,	INDEX NO. <u>154993/2021</u>
Petitioner,	MOTION DATE <u>08/16/2021</u>
- v -	MOTION SEQ. NO. <u>001</u>

THE NEW YORK CITY DEPARTMENT OF BUILDINGS,
THE CITY OF NEW YORK

**DECISION + ORDER ON
MOTION**

Respondent.

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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, 24, 25, 26, 27, 28, 29

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

Petitioner Christos Tsamasiros brings this Article 78 petition to challenge Respondent New York City Department of Buildings' denial of his application to renew his trade licenses. The petition is fully submitted and is denied for the reasons stated below.

Background

Petitioner earned his Master Fire Suppression Piping Contractor License in 1999 and his Master Plumber License in 2000, both of which expire every three years, requiring their holders to submit renewal applications. (NYSCEF Doc No. 1, Petition, at ¶¶ 14-15.) On June 18, 2020, Petitioner submitted renewal applications for both licenses. (NYSCEF Doc No. 15.) On both renewal applications Petitioner answered affirmatively to the question "Have you ever been convicted or pled guilty to an offense anywhere (an offense is defined as a violation, misdemeanor or felony)?" (*Id.*) In two Licensing Supplemental Affidavit forms, Petitioner stated that on March 19, 2019, he was convicted of "Offering a false instrument for filing in the first degree" and was subjected to a "Plea/Fine [of] \$187,656.00." (NYSCEF Doc Nos. 16, 17.)

Via letter dated August 21, 2020, Respondent informed Petitioner that it had the authority to refuse to renew a license based on one's poor moral character, pursuant to NYC Admin. Code § 28-401.19, and requested further information regarding Petitioner's conviction. (NYSCEF Doc No. 18.) Specifically, Respondent requested "a signed and notarized letter from yourself explaining the circumstances and steps you were alleged to have taken that resulted in your criminal conviction," "relevant court records," and "any evidence of your rehabilitation or good character including a Certificate of Relief from Disabilities." (*Id.*)

Petitioner responded on October 16, 2020, stating:

In accordance with our conversations, we are counsel to Christos Tsamasiros. In accordance with your letter dated August 21, 2020 we hereby submit certain documents regarding a certain criminal conviction. As set forth in the Affidavit and documents hereto, it is to be noted that the criminal conviction concerned a certain corporate entity formerly owned by Mr. Tsamasiros. Accordingly, the conviction was not actually directed at him. However, in order to be totally honest on the renewal application, Mr. Tsamasiros disclosed same. Further, as set forth herein, the conviction had nothing to do with his work and pertained to certain monies used for legitimate business expenses.

(NYSCEF Doc No. 19.) Petitioner attached an affidavit, two letters of character (NYSCEF Doc No. 21), and, most importantly, the March 19, 2019 Plea Agreement in which Petitioner's former corporation, Bay Ridge Mechanical Corporation, pled guilty to the offense of Offering a False Instrument for Filing in the First Degree. (NYSCEF Doc No. 19 at 2.) The Plea Agreement found that Petitioner, who was Bay Ridge's president, principal owner, and sole shareholder, had "engaged in a scheme to defraud New York State tax authorities and others by falsifying Bay Ridge's business records in that Tsamasiros negotiated checks written to Bay Ridge ... and failed to properly report any of this U.S. currency as gross receipts ... for tax years 2012 through 2017[.]" (NYSCEF Doc No. 5, Plea, at ¶ 9a.) The Plea Agreement further stated that Bay Ridge owed the amount of \$104,335.00 and subjected it to a fine of \$187,656.00, which was paid upon the entry

of the Plea Agreement. (*Id.* at ¶¶ 9-10.) Additionally, Bay Ridge was subject to a three-year conditional discharge, and agreed to generally “lead a law-abiding life.” (NYSCEF Doc No. 6.)

Respondent denied Petitioner’s renewal applications via letter dated January 21, 2021, citing to New York City Admin. Code §§ 28-401.19(2) [“The making of a material false or misleading statement on any form or report filed with the department or other governmental entity”] and (13) [“Poor moral character that adversely reflects on his or her fitness to conduct work regulated by this code”]. (NYSCEF Doc No. 3, Denial.) Respondent went on to state that:

On your application (LIC2) and supplemental application (LIC34) forms, you disclosed having been convicted or pled guilty to an “offense” which was defined as a violation, misdemeanor or felony. You indicated that you were convicted of a “Crime” on March 19, 2019 and fined \$187,656. When requested to clarify your conviction, you submitted a new application form stating the conviction was for Offering a False Instrument for Filing in the First Degree. You were subsequently requested to provide further documentation including any evidence of your rehabilitation. In response, you submitted a copy of the plea agreement, an affidavit from yourself and a copy of the Conditional Discharge resolution.

Based on the court records, you were found to have engaged in a scheme involving the submission of falsified business records to the NYS Department of Taxation and Finance. As the president and sole owner of licensed plumbing business Bay Ridge Mechanical Corp., you attempted to obscure payments in order to conceal one million dollars in additional compensation and fraudulently reduce your tax liability by \$104,335. In furtherance of the scheme, you negotiated checks, utilized a check cashing business and significantly underreported the business’s gross receipts and sales on tax returns from the years 2012 to 2017. As part of the plea agreement, Bay Ridge Mechanical received three years of probation and was required to pay restitution of \$187,656.

In your explanation letter, you emphasized that it was the corporation, rather than yourself, that pleaded guilty, and that the misconduct did not involve the performance of plumbing or sprinkler work. You alleged that the cashing of checks was for legitimate business petty cash purposes such as tips and the purchase of minor job materials. While you stated that, in retrospect, Bay Ridge Mechanical should have reported the cashed checks as income, you did not individually admit to any wrongdoing or take any personal responsibility for your company. In support of your character, you submitted two reference letters from Father Evagoras Constantinides and George Poulon.

(NYSCEF Doc No. 3., Denial.)

Petitioner alleges that the denial was an abuse of discretion, arbitrary, and in error of law. First, Petitioner argues that, by simply waiting and denying his renewal application rather than holding a hearing, Respondent deprived him of his statutory right to notice and an opportunity to be heard provided by § 28-401.19 and 1 RCNY § 105-05. (NYSCEF Doc No. 1, Petition at ¶¶ 47-64.) Petitioner further argues that the penalty imposed is disproportionate to the offense (*id.* at 65) and that far more severe offenders have had their licenses renewed. (*Id.* at ¶¶ 72-79.)

Finally, Petitioner argues that the penalty goes against the public policy of “disfavoring bias against persons with criminal records in employment and licensure decisions” embodied in Correction Law §§ 752-753. (*Id.* at ¶ 80.) Correction Law § 752 states that “No application for any license ... shall be denied or acted upon adversely by reason of the individual’s having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of ‘good moral character’ ... unless (1) there is a direct relationship between ... the previous criminal offenses and the specific license or employment sought or (2) the issuance ... would involve an unreasonable risk ... to the general public.” Correction Law § 753 provides an analytical framework to make such a determination.

In opposition, Respondent argues that the determination was rational, reasonable, supported by the record, and within the Respondent’s discretion, as Petitioner’s failure to lawfully and accurately report the taxes of Bay Ridge for the years 2012-2017 shows Petitioner’s “willingness to defraud government agencies and provide dishonest information for pecuniary gain which continued for several years.” (NYSCEF Doc No. 24, Opposition, at 3-4, 13.) Respondent also argues that correspondence between the parties establishes that Petitioner was afforded statutory due process and that Correction Law §§ 752 and 753 are inapplicable, as those provisions pertain only to an individual’s prior convictions, while here, the conviction pertained to Bay Ride,

a corporation. (*Id.* at 13-15.) In any event, Respondent argues that the applications would have been denied even if the Correction Law analysis had been applied. (*Id.*)

Discussion

“[I]t is settled that in a proceeding seeking judicial review of administrative action, the court may not substitute its judgment for that of the agency responsible for making the determination, but must ascertain only whether there is a rational basis for the decision or whether it is arbitrary and capricious. Moreover, where, as here, the judgment of the agency involves factual evaluations in the area of the agency's expertise and is supported by the record, such judgment must be accorded great weight and judicial deference.” (*Flacke v Onondaga Landfill Sys., Inc.*, 69 NY2d 355, 363 [1987] [internal citations omitted].) “The arbitrary or capricious test chiefly relates to whether a particular action should have been taken or is justified and whether the administrative action is without foundation in fact.” (*Matter of Pell v Board of Educ. of Union Free School Dist. No.1 of the Towns of Scarsdale and Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974].) A court “may not overturn an agency's decision merely because it would have reached a contrary conclusion.” (*Davies v New York City Dept. of Bldgs.*, 2012 WL 5363541 [Sup Ct, NY County 2012], quoting *Matter of Sullivan County Harness Racing Assn. v Glasser*, 30 NY2d 269, 278 [1972].)

New York Administrative Code § 28-401.12 [“Renewal of license or certificate of competence”] states that:

Applicants shall provide evidence satisfactory to the [Department of Buildings] that he or she is fit to perform the work authorized by the particular license as provided by department rule. Applications for renewal are subject to investigation by the Department. ... The department may, following notice and an opportunity to be heard, refuse to renew a license or certificate of competence on any grounds on the basis of which it could deny, suspend or revoke such license.

Further, § 28-401.19 [“Suspension or revocation of license or certificate of competence”] provides the grounds that Respondent may invoke for denial, suspension, or revocation of a license.

Petitioner argues that Respondent erred in refusing to conduct an analysis pursuant to Correction Law § 752 [“Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited”]. (Petition at ¶ 80.) That provision states that:

No application for any license or employment, and no employment or license held by an individual, to which the provisions of this article are applicable, shall be denied or acted upon adversely by reason of the individual's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of “good moral character” when such finding is based upon the fact that the individual has previously been convicted of one or more criminal offenses, unless:

- (1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought or held by the individual; or
- (2) the issuance or continuation of the license or the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

Relatedly, Correction Law § 753 [“Factors to be considered concerning a previous criminal conviction; presumption”] provides that:

1. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall consider the following factors:
 - (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
 - (b) The specific duties and responsibilities necessarily related to the license or employment sought or held by the person.
 - (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
 - (d) The time which has elapsed since the occurrence of the criminal offense or offenses.

(e) The age of the person at the time of occurrence of the criminal offense or offenses.

(f) The seriousness of the offense or offenses.

(g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.

(h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

2. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein.

Notably, the denial letter expressly stated that a Correction Law analysis was not performed because the criminal conviction at issue was that of Bay Ridge, rather than Petitioner in his individual capacity. (NYSCEF Doc No. 3, Denial, at 3, fn 4.) As such, Respondent stated that its “determination was based on your underlying actions that resulted in the business’s guilty plea.”

(*Id.*) Notwithstanding the above disclaimer that a Correction Law analysis was not performed, Respondent went on to explain that:

Master Plumber and Master Fire Suppression Piping Contractor, Class B licenses authorize the holder to design, install, maintain and modify plumbing, gas, and water-based fire suppression systems. They are also the only individuals permitted to own and operate plumbing and fire suppression businesses and supervise the performance of licensed work. As part of their duties, licensees are required to file permits for plumbing and fire suppression work and certify such work is completed in accordance with all technical and administrative regulations on forms submitted to the Department. Due to the obvious hazards associated with this work, the Department must rely on its licensees to provide accurate reports and comply with all applicable requirements to ensure the safety of the public and property.

...

As licensed Master Plumbers and Fire Suppression Contractors are entrusted to file accurate plans and reports for plumbing, gas and fire suppression systems, your fraudulent and dishonest conduct directly reflects on your ability to perform these essential duties. While you emphasized that Bay Ridge Mechanical, rather than yourself, pleaded guilty to the criminal offense, as the president and sole owner

licensee, you were personally and fully responsible for the falsified tax returns and operations of the business. Your poor management of Bay Ridge Mechanical and attempt to distance yourself from the business's conviction further demonstrates your unfitness to possess the privileges of these licenses including the ability to own and operate a Department-licensed business.

(Denial at 2.)

Based on the record, the court finds that Respondent's denial of the renewal applications was neither arbitrary nor capricious and that it was supported by a rational basis. Respondent was fully entitled to weigh Petitioner's involvement in Bay Ridge's conviction (New York City Admin. Code § 28-401.12 ["Applications for renewal are subject to investigation by the Department"]), find it to be evidence of "poor moral character that adversely reflects on his fitness to conduct work regulated by [the] Code" (New York City Admin. Code § 28-401.19[13]), and deny the license in its own discretion. (*Testwell, Inc. v New York City Dept. of Bldgs.*, 80 AD3d 266, 277 [1st Dept 2010] ["The discretion of the Department extends to the determination of what constitutes untrustworthy conduct"]; *see also Crockwell v NYC Dept. of Bldgs.*, 2011 WL 223358 [Sup Ct, NY County 2011] [holding that Respondent's denial of an individual's master plumber license renewal application based on over \$760,000.00 of outstanding fines owed by applicant's corporations was neither arbitrary nor capricious, where applicant was the "controlling shareholder, president, and licensee"].)

Petitioner's argument that he was entitled to a Correction Law analysis (Petition at ¶¶ 80-106) is without merit, as the conviction at issue was that of Bay Ridge's, rather than Petitioner in his individual capacity. (Correction Law § 752 ["no employment tor license held by an *individual* ... shall be denied or acted upon adversely by reason of the *individual's* having been convicted of one or more criminal offenses"] [emphasis added].) In any event, as noted above, Respondent reviewed Petitioner's supplemental submissions and upon analysis of those submissions, found a

direct relationship between the criminal offense of Bay Ridge and the specific licenses sought to be renewed (Correction Law §752[1]), and that renewing the license would pose a risk to the safety of the public. (Correction Law § 752[2].)

Petitioner is not entitled to a hearing (*M.S.B.A Corp. v Markowitz*, 23 AD3d 390, 391 [2d Dept 2005]) or the relief of mandamus (*Assn. of Contracting Plumbers of the City of New York, Inc. v LiMandri*, 2010 WL 4267883 [Sup Ct, NY County 2010]) because of the discretionary nature of license renewals. As such, it is hereby

ADJUDGED that the application is denied and the petition is dismissed, with costs and disbursements to respondent; and it is further

ADJUDGED that respondent does recover from petitioner, costs and disbursements in the amount as taxed by the Clerk, and that respondent have execution therefor.

4/13/2022
DATE


WILLIAM PERRY, J.S.C.

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