

Papa v City of New York
2022 NY Slip Op 32852(U)
August 23, 2022
Supreme Court, New York County
Docket Number: Index No. 153333/2022
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH **PART** **14**

Justice

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MICHELE PAPA,

Petitioner,

- v -

CITY OF NEW YORK, NYC DEPARTMENT OF
BUILDINGS, CPS HR CONSLUTING

Respondents.

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INDEX NO. 153333/2022

MOTION DATE 08/19/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for ARTICLE 78.

The cross-motions by respondents to dismiss the petition are granted in part.

Background

Petitioner seeks to annul the denial of his application for a Master Plumber’s license. He claims that respondent’s denial was arbitrary because the failing grade he received for the Copper Sweat Assembly portion of the practical examination was wholly improper. Petitioner insists that the failure was a subjective conclusion and that the project he submitted was without blemish. He claims that the review as not really a review and was instead a predetermined conclusion relying on the opinion of the original examiner.

After the examiners (respondent CPR HR Consulting performed the exam) gave petitioner a failing grade for the substandard quality of the solder joints (NYSCEF Doc. No. 11 at 5), petitioner appealed. Petitioner explained that the “quality of the Solder joints in my project

were optimal and this quality is obvious to the plain eye, from observation. As such, the rating of my examination comprised a manifest error which is capable of reptition [sic] while evading review” (*id.* at 3).

Respondent the New York City Department of Buildings (“DOB”) rejected his appeal and found that there was “no error in scoring” and that the evaluation of petitioner’s performance followed the applicable criteria and DOB affirmed the conclusions of the subject matter experts hired by DOB (*id.* at 2). Respondents DOB and the City, as well as respondent CPR, made cross-motions to dismiss on the ground that the decisions were rational.

Discussion

In an article 78 proceeding, “the issue is whether the action taken had a rational basis and was not arbitrary and capricious” (*Ward v City of Long Beach*, 20 NY3d 1042, 1043, 962 NYS2d 587 [2013] [internal quotations and citation omitted]). “An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts” (*id.*). “If the determination has a rational basis, it will be sustained, even if a different result would not be unreasonable” (*id.*). “Arbitrary action is without sound basis in reason and is generally taken without regard to the facts” (*Matter of Pell v Board of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231, 356 NYS2d 833 [1974]).

The Court grants the cross-motions to dismiss. Petitioner’s complaints about his failing score on the exam amounts to a straightforward disagreement with the evaluator’s conclusions. This Court cannot substitute its own judgment for that of the examiner. The test results explain that solder was unsatisfactory because it was beyond ¼ of an inch from the joint and references pictures taken during the examination (NYSCEF Doc. No. 11 at 5). Respondents identified a

rational reason for denying petitioner's subsequent appeal to DOB. Petitioner's claims about the examination being subjective or that the examiner had a predisposition for failing him are wholly unsupported and completely without merit. Petitioner may think his work was satisfactory but the evaluator apparently disagreed and petitioner did not meet his burden to show that this Court can disturb that conclusion.


Petitioner's attempt, particularly in his opposition to the cross-motions to dismiss, to debate the merits of the evaluation misstates the purpose of an Article 78. This type of proceeding can only consider whether respondents acted arbitrarily; it is not this Court's role to delve into how the solder joints submitted by petitioner should look. The very nature of this exam requires a subject matter expert to evaluate petitioner's work. This Court is not in a position, based on the submissions before this Court, to simply side with petitioner because he disagrees with respondents' conclusions.

However, the Court declines to award respondent CPS any fees for being named as a party in this proceeding. CPS undoubtedly did the initial evaluation and failed petitioner. It should not have been named as a party because DOB issued the final determination but given the short statute of limitations provide for an Article 78, adding them as a party was not conduct meriting the awarding of fees.

Accordingly, it is hereby

ORDERED that the cross-motions by respondents to dismiss are granted to the extent that this proceeding is dismissed, the petition is dismissed and the Clerk is directed to enter

judgment accordingly in favor of respondents and against petitioner along with costs and disbursements upon presentation of proper papers therefor.

<u>8/23/2022</u> DATE	 ARLENE P. BLUTH, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input checked="" type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE