

**Runway Collision Specialists, Inc. v New York City
Dept. of Consumer & Worker Protection**

2024 NY Slip Op 30436(U)

February 8, 2024

Supreme Court, New York County

Docket Number: Index No. 159461/2023

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

-----X

RUNWAY COLLISION SPECIALISTS, INC.,

Petitioner,

- v -

THE NEW YORK CITY DEPARTMENT OF CONSUMER
AND WORKER PROTECTION,

Respondent.

-----X

INDEX NO. 159461/2023

MOTION DATE 01/31/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for ARTICLE 78.

The petition to annul respondent’s determination denying petitioner a license for a tow truck company is denied.

Background

Petitioner explains that its principal, Mr. Pritsinevelos, used to own a different tow truck company (hereinafter, “RTC”), which had a renewal license denied by respondent in January 2021. RTC then brought an Article 78 proceeding where it prevailed; however, the Appellate Division, First Department reversed that trial court opinion. The First Department found that respondent “rationally determined that petitioner Runway Towing Corp. Inc. (Runway) repeatedly charged excessive towing and storage fees for tows performed under the Direct Accident Response Program (DARP), Rotation Tow Program (ROTOW), and Arterial Highway Program (Arterial Tow Program)” (*Runway Towing Corp., Inc. v New York City Dept. of*

Consumer and Worker Protection, 211 AD3d 621, 622, 178 NYS3d 708(Mem) [1st Dept 2022]).

It added that RTC's due process arguments were without merit because it lacked a property interest in the renewal of an expired license and it was not entitled to a hearing (*id.*).

The petition next explores various criminal indictments relating to the former Commissioner of the Department of Buildings and alleged conspiracies involving a competitor tow truck company. Petitioner insists that there was some effort to block RTC's towing contracts by this direct competitor in conjunction with certain government officials. It argues that respondent engaged in the same conspiracy here to block petitioner from getting a tow truck license.

Petitioner maintains that it is a new venture separate and apart from RTC, with a new location and that it specializes in the repair of damaged vehicles. It claims it needs a tow truck to bring inoperable vehicles back to its shop for repair. Petitioner complains that it demanded a hearing and that respondent refused and speculates that illegal conduct is afoot.

Petitioner claims that respondent abused its authority and its illegal conduct cannot form the basis for the denial of the license application here. It argues that previously respondent issued a subpoena to RTC and then used the responsive documents it received to manufacture "non-willful violations amounting to no more than \$6,000 in overcharges."

In opposition, respondent contends that its determination to deny petitioner a license was rational. It observes that it logically determined that petitioner was simply an attempt by RTC's principal (Pritsinevelos) to circumvent respondent's decision not to renew RTC's license by moving its operation to another, newly formed entity. Respondent emphasizes that applicants for tow truck licenses must have good moral character and, based on Mr. Pritsinevelos' prior conduct running RTC, petitioner is not entitled to a license.

Respondent argues that petitioner has not stated a basis to find that respondent's determination was arbitrary or capricious and instead petitioner makes inflammatory accusations towards respondent and respondent's staff. It observes that it investigated the relationship between RTC and petitioner and found that they shared common ownership. Respondent contends that petitioner's attempt to relitigate a separate Article 78 petition has no bearing on the instant decision. It points out that RTC overcharged customers in about 92% of its tows.

In reply, petitioner emphasizes that crimes have been committed by the former commissioner of the DOB (a separate agency) and point to indictments allegedly relating to those crimes. It insists that a direct competitor involved in that criminality still has its license and so that means petitioner should have its license application approved.

Discussion

In an Article 78 proceeding, "the issue is whether the action taken had a rational basis and was not arbitrary and capricious. An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts. If the determination has a rational basis, it will be sustained, even if a different result would not be unreasonable" (*Matter of Ward v City of Long Beach*, 20 NY3d 1042, 1043, 962 NYS2d 587 [2013]).

The Court begins its analysis with respondent's determination. Respondent first issued a notice of intent to deny petitioner's application for a license on June 23, 2023 (NYSCEF Doc. No. 20, exh A). In this notice, respondent observed that it had previously denied the renewal license for RTC "based on numerous violations of the laws and rules governing tow truck companies. . . The information in the Application indicates that Runway Collision is attempting to circumvent the denial of Runway Towing's license renewal application by moving its

operation to another corporation, Runway Collision. Additionally, Chris Pritsinevelos' intimate involvement with the operations of Runway Towing renders the prospective licensee unfit to maintain a license from DCWP” (*id.*). Respondent gave petitioner 15 days to provide a response to these allegations.

Respondent then issued a final determination in July 2023 denying the license application. It concluded that “DCWP finds that Runway Collision Specialists Inc. license application is simply an attempt to circumvent the Department's denial of Runway Towing Corp.'s license by moving its operation to another corporation, Runway Collision Specialists Inc. Additionally, Christopher Pritsinevelos' intimate involvement with the operations of Runway Towing Corp. renders the prospective licensee unfit to maintain a license from DCWP” (NYSCEF Doc. No. 20 at 4).

Respondent observed that there is common ownership between RTC and petitioner, that petitioner was using a vehicle previously registered to RTC, and using the same fax number as RTC (*id.* at 3). It emphasized that petitioner simply did not adequately refute the notion that Mr. Pritsinevelos engaged in morally questionable behavior in the operation of RTC by overcharging customers and that he would be intimately involved with petitioner.

The Court denies the petition as respondent cited a rational basis for its decision. Christopher Pritsinevelos, when he ran Runway Towing, was denied a license renewal because he was caught overcharging and cheating customers 92% of the time (*see* NYSCEF Doc. No. 20 at 47of 129). Respondent was justified in not permitting Mr. Pritsinevelos to open up another similarly named company in order to get another license. Given the prior conduct by RTC (which was cited by the First Department), it would be bizarre for respondent to ignore this prior misconduct and grant petitioner a license.

Petitioner wholly fails to address respondent's factual contentions about the previous overcharging by RTC and the common ownership between these entities. Instead, petitioner engages in classic "whataboutism." It complains about a vast conspiracy, alleged illegal conduct by the commissioner of separate agency and that a competitor (who purportedly engaged in illegal conduct) still retains its license.¹

In this Court's view, these unrelated matters are irrelevant. Petitioner did not establish that there was corruption in this determination regarding denying the license to Mr. Pritsinevelos' latest entity. Instead, it offers a wildly speculative theory based on allegations lodged against other parties and individuals. For instance, it was not the former DOB commissioner who issued the denial of petitioner's tow truck license yet petitioner rants about him.

In order to credit petitioner's theory, this Court would have to ignore the fact that petitioner was caught overcharging customers 92% of the time and make all manner of factual findings of misconduct by numerous individuals, including the person who issued respondent's determination. Petitioner did not meet its burden to establish such serious allegations or even to merit a hearing. Moreover, petitioner was not entitled to a hearing before respondent as stated in the First Department's decision with respect to RTC (*see Runway Towing Corp., Inc.*, 211 AD3d at 622).

Summary

The Court recognizes the deep frustration that petitioner clearly feels towards respondent. But those frustrations are not a basis for this Court to set aside respondent's rational


¹ Respondent actually addressed this point in its determination and noted that this competitor only retains its tow truck license as a result of a preliminary injunction issued by a state court judge.

determination that petitioner’s venture is simply an attempt to evade respondent’s prior denial to RTC. That prior denial rested on RTC’s uncontroverted overcharging of customers. That is a satisfactory basis to find that petitioner’s principal does not possess good moral character (a basis to deny a tow truck license) and so his attempt to form a new entity was rationally denied.

That other individuals may have done worse things (and possibly committed serious crimes) does not mean that respondent was required to give petitioner a license. And petitioner’s attempts to minimize RTC’s lawbreaking is not a basis to annul respondent’s determination. It was up to respondent to assess whether or not petitioner and RTC were closely related enough to justify denial of petitioner’s application. Respondent cited numerous grounds for these two entities’ close relationship and rationally concluded that this was an obvious attempt to evade the prior license denial to RTC.

Accordingly, it is hereby

ADJUDGED that the petition is denied and this proceeding is dismissed with costs and disbursements to be awarded to respondent upon presentation of proper papers to the Clerk.

<u>2/8/2024</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 checked="" type="checkbox"/>	<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"/>	REFERENCE
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