

**CC & E Auto. Corp. v New York City Dept. of  
Consumer & Worker Protection**

2024 NY Slip Op 30678(U)

March 5, 2024

Supreme Court, New York County

Docket Number: Index No. 150691/2022

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

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

*Justice*

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CC & E AUTOMOTIVE CORP., PAUL AGUILERA

Petitioner,

- v -

NEW YORK CITY DEPARTMENT OF CONSUMER AND  
WORKER PROTECTION,

Respondent.

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**INDEX NO.** 150691/2022

**MOTION DATE** 03/04/2024<sup>1</sup>

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 7, 8, 9, 10, 11, 12, 13, 14, 15

were read on this motion to/for ARTICLE 78.

The petition to annul respondent’s denial of a tow-truck license is denied.

**Background**

Petitioners complain that respondent denied CC & E Automotive Corp. (“CC&E”)’s application for tow truck license and that respondent revoked petitioner Aguilera’s individual tow truck license. They insist that these actions were based on an erroneous determination that Aguilera submitted false and misleading documents as part of the application process.

On July 15, 2021, respondent issued a notice of intent to deny CC&E’s tow truck application and to revoke Aguilera’s tow truck driver’s license (NYSCEF Doc. No. 4 at 7). Respondent pointed out that as part of the application, Aguilera submitted registration information for a tow truck. It then asked to see an original copy of the registration sticker and

<sup>1</sup> Although this proceeding was transferred to the undersigned on March 4, 2024 the instant petition has been pending for nearly two years and so, on behalf of the court system, the Court apologizes for that delay.

petitioners submitted a registration sticker for a tow truck with the same VIN number but with a different license plate.

Respondent noted that “[A]t the time the documents were submitted to DCWP-May 26, 2021-New York State license plate number 26566TT was no longer the license plate associated with the vehicle. The records indicate that the new license plate number was in fact 11895TV” (*id.* at 8). It added that “Based on DMV records, the license plate number listed on Registration 1 was for a vehicle that once belonged to the previous owner of the vehicle on record with the DMV-85 Collision Corp. It appears that CC & E's name was superimposed over the name of 85 Collision Corp. on Registration 1. DCWP is also aware that 85 Collision Corp. was once located at the same address that CC & E intends to use as its premises” (*id.*).

Respondent concluded that “The Department concludes that Registration 1, with NYS License Plate number 26566TT was altered to appear as though it had been issued to CC & E, demonstrating an attempt to deceive the Department by providing a fabricated document with false information” (*id.*).

On August 4, 2021, the parties held a virtual meeting to discuss this issue. Apparently, Aguilera claimed that he used a third-party (someone named Carl Peterson) to prepare the application and that Mr. Peterson must have messed up the application (*id.* at 2). Aguilera allegedly claimed to have no idea how the first registration document came into existence (*id.*). He denied an intent to commit fraud.

In their final determination dated September 24, 2021, respondent observed that “Registration 2 was for the same vehicle as Registration 1, but included a license plate number of 11895TV, which is consistent with DMV records. The registration issue date, the date of expiration, and truck weight were different from Registration 1 to Registration 2. The

Department concludes that Registration 1, with NYS License Plate number 26566TT was altered to appear as though it had been issued to CC & E, demonstrating an attempt to deceive the Department by providing a fabricated document with false information” (*id.* at 3).

Respondent stressed that petitioners were “responsible for the materials submitted to DCWP even though its owner Paul Aguilera claims he relied on a third party's assistance in preparing the application documents that were submitted to the Department. As the owner of CC & E, Mr. Aguilera was responsible for the content of CC & E's Tow Truck Company license application and documents submitted with the application” (*id.*). It emphasized that Aguilera signed the application, affirmed that that he had reviewed the entire application and that the contents were true (*id.* at 4).

Petitioners acknowledges that there were discrepancies between the two registrations submitted to respondent. They insist, however, that they did not knowingly submit false vehicle registrations and that any discrepancies must have been caused by third parties. Petitioners contend that the 2018 Chevy tow truck was always registered lawfully with the relevant state agency. They argue that the decision to revoke Aguilera’s license and to deny CC&E’s application was arbitrary and capricious. Petitioners contend that respondent improperly held them to a strict liability standard for an errors or misstatements.

In opposition, respondent observes that petitioners do not contest any of the basic facts at issue, including that they submitted a registration that was altered. It contends that blaming a third-party is not sufficient particularly where nothing was submitted to substantiate those claims.

Petitioner did not submit a reply.

## 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]).

Under the Administrative Code, respondent must issue a license “only where an applicant meets all the requirements of sections 20-499, 20-500, 20-501, 20-502, any criteria in addition thereto established by the commissioner by regulation as he or she deems necessary to effectuate the purposes of this subchapter and satisfies the commissioner that such applicant possesses good moral character” (Administrative Code of City of New York § 20-498[a]). “The commissioner may refuse to issue to an applicant any license required under this subchapter based upon a determination made after due notice and opportunity to be heard that such applicant has engaged in conduct which would constitute a basis for license suspension or revocation as set forth in this subchapter” (Administrative Code of City of New York § 20-498[c]).

Respondent is permitted to revoke a license where “the person holding a tow truck operator's license, or the person holding a license to engage in towing or where applicable its officers, principals, directors or stockholders owning more than ten percent of the outstanding stock of the corporation have made a material false statement or concealed a material fact in

connection with the filing of any application pursuant to this subchapter or have engaged in fraud or misrepresentation in connection with the rendering of services” (Administrative Code of City of New York § 20-504[c]).

The central question in this proceeding is, essentially, the penalty imposed by respondent. Petitioners do not contest the fact that they submitted an inaccurate registration. Unfortunately for petitioners, they did not meet their burden to show that respondent’s denial of CC&E’s application and the revocation of Aguilera’s license were arbitrary or capricious. The Court observes, as an initial matter, that petitioners did not contest respondent’s assertion that the first registration (the false one) was altered such that it appeared that CC&E’s name was superimposed over another entity. Nor did petitioner disagree with respondent’s conclusion that the license plate submitted in connection with the first registration was not associated with the subject vehicle.


To be clear, this is not a situation in which petitioners’ application contained a few typos. Instead, respondent alleges (and petitioner do not contest) that a fake registration was sent in that altered the information presented to respondent. Instead, petitioners blame a third-party for these errors. That argument is insufficient because petitioners did not submit an affidavit from this third-party to explain how the fake registration was submitted on their behalf. In fact, they did not submit anything to substantiate that they actually hired this third-party to submit their application. In respondent’s final determination, it observes that Aguilera (at the August 4, 2021 virtual meeting) did not even know the name of the entity that he contracted with to prepare the application (NYSCEF Doc. No. 4 at 2 [“When asked the name of the company that Mr. Peterson works for, Mr. Aguilera said that it might be "NY Experts" or something of that nature”]).

And, most critically, respondent pointed the Court to the language of the license application itself. Petitioner Aguilera affirmed that “I am authorized to complete and submit this application and all attachments. . . I have reviewed the entire Application. To the best of my knowledge, this Application is true, correct, and complete” (NYSCEF Doc. No. 10 at 8). The application then details the criminal and civil penalties associated with making false statements (*id.*). Aguilera signed right below this information (*id.*). Simply put, the Court cannot overlook a signed statement in which petitioner Aguilera swore he read the entire application and that it is all true.

The Court recognizes that often, people may not adequately internalize the significance of signing such a statement. They may sign it without actually thinking about its consequences. But the circumstances here suggest that Aguilera should have taken this affirmation seriously. Because the result is that he signed and submitted an application that contained a suspicious registration that turned out to be false and possibly altered. And he offered no reasonable justification for submitting it. Instead, he attempted to blame a third-party despite not knowing the company he hired to fill out the application and not submitting any evidence to explain how the misleading registration was submitted on his behalf. The Court has no choice but to find that respondent’s determination was reasonable.

Accordingly, it is hereby

ADJUDGED that the petition is denied and this proceeding is dismissed without costs or disbursements upon presentation of proper papers therefor.

<u>3/5/2024</u> <b>DATE</b>			 <hr/> <b>ARLENE P. BLUTH, J.S.C.</b>	
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE