

Falquecee v New York City Dept. of Bldgs.

2024 NY Slip Op 32626(U)

July 26, 2024

Supreme Court, New York County

Docket Number: Index No. 152014/2024

Judge: Arthur F. Engoron

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART 37

Justice

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JUSTIN FALQUECEE,

Petitioner,

- v -

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

Respondent.

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INDEX NO. 152014/2024
MOTION DATE 03/05/2024
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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

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

Upon the foregoing documents, and for the reasons stated hereinbelow, the petition is granted in part and denied in part.

Background

Between October 1, 2018, and March 31, 2020, petitioner, Justin Falquecee, completed an 18-month on-the-job training program at non-party SafeNet Construction Corporation in anticipation of applying for a Site Safety Manager ("SSM") Certificate ("license") from respondent, The New York City Department of Buildings ("DOB"). NYSCEF Doc. No. 5.

On October 18, 2022, petitioner submitted his license application to the DOB. NYSCEF Doc. No. 4.

On June 26, 2023, DOB denied petitioner's license application because petitioner had completed his 18-month on-the-job training program more than two years before applying. DOB's denial letter cited 1 Rules of the City of New York ("RCNY") 104-08(a)(3) ("the Rule"), which, at the time, stated that

an acceptable 18 month on-the-job training program shall consist of successful completion within two years prior to application of an OSHA 30-hour safety course and the following...

and New York City Administrative Code § 28-402.2(4) which mandates that "Such on-the-job training program shall conform to rules promulgated by the department." NYSCEF Doc. No. 6.

On August 16, 2023, petitioner requested that DOB reconsider denying his application, arguing that he was not afforded proper notice that the 18-month on-the-job training program must be

completed two years prior to his license application. Petitioner cited the “Obtain a: Site Safety Manager Certification” guide that appeared on DOB’s website, which outlined the documents necessary to show that an applicant

Has completed a full time 18 month on-the-job training program working on major buildings (as defined in BC Chapter 33) under the direct and continuing supervision of a certified Site Safety Manager engaged in site safety work... AND within two years prior to application completed a 30 hour OSHA course in Construction Safety and Health or Hazard Recognition.

NYSCEF Doc. No. 8.

Petitioner also cited the Rule and argued that the meaning of these two sources is that, although the 30-hour OSHA course must be completed within two years of the application, the 18-month on-the-job training program has no such time limitation. NYSCEF Doc. No. 7.

On December 4, 2023, DOB issued a final application denial, interpreting the Rule to mean “each month of training must fall within a two-year timeframe.” NYSCEF Doc. No. 3.

On December 18, 2023, DOB published a Notice of Public Hearing and Opportunity to Comment on Proposed Rules, amending the Rule to read as follows:

For the purposes of satisfying the requirements of paragraph 3.8 of section 28-402.2, an acceptable 18 month on-the-job training program must be completed within two years prior to application and must meet the following criteria.

NYSCEF Doc. No. 9.

On March 5, 2024, petitioner filed the instant Article 78 special proceeding, challenging DOB’s denial of his license application, and requesting that the Court direct DOB to grant petitioner the license. NYSCEF Doc. No. 1.

Petitioner argues, inter alia, that the plain reading of the Rule is that the OSHA 30-hour safety course must be completed within two years of the application, no such time requirement exists for the 18-month on-the-job training program, and that the guide that appears on DOB’s website supports this. Further, petitioner argues that, by changing the language of the Rule, DOB implicitly agrees with petitioner’s interpretation of the original rule. Having argued that the Rule does not impose a time limitation for the 18-month on-the-job training program, petitioner asks the Court to overrule the DOB’s final denial letter as arbitrary and capricious. NYSCEF Doc. No. 1.

On June 18, 2024, DOB answered, arguing, inter alia, that the Court must defer to their reading of the Rule: that “successful completion within two years prior to application of” does not modify the phrase that follows it, “an OSHA 30-hour safety course and the following;” but

rather, it modifies the phrase that precedes it, “acceptable 18 month on-the-job training program.” DOB also asks that, if the Court were to determine that petitioner’s interpretation must be followed, the Court remand the application to the DOB to confirm that petitioner met the other eligibility criteria for the license. NYSCEF Doc. No. 16.

Discussion

“The rules of an administrative agency, duly promulgated, are binding upon the agency.” Frick v Bahou, 56 NY2d 777 (1982). An agency’s decision “to ignore its own published interpretation of the relevant regulations . . . constitutes arbitrary and capricious action.” Matter of Sabol v Perales, 82 NY2d 685 (1993).

This case hinges on the construction of the Rule, duly promulgated and binding upon DOB, and what the meaning of “of” is.

Courts have “long applied the well-respected plain meaning doctrine in fulfillment of [their] judicial role in deciding statutory construction appeals.” Matter of Raritan Dev. Corp. v Silva, 91 NY2d 98 (1997). If the language the Court is interpreting “is clear and unambiguous, the court should construe it so as to give effect to the plain meaning of the words used.” Id., citing Patrolmen’s Benev. Ass’n of City of New York v City of New York, 41 NY2d 205 (1976).

Questions of pure legal interpretation of statutory language do not warrant judicial deference to administrative expertise unless such language is not altogether clear and unambiguous. Thus, courts will defer to an agency’s construction where statutory language is special or technical and does not consist of common words of clear import, or where it suffers from some fundamental ambiguity.

Beekman Hill Ass’n, Inc. v Chin, 274 AD2d 161 (1st Dept 2000) (internal citations and quotations omitted).

There is no special or technical language in the Rule. A plain reading of the Rule is clear and unambiguous: the two-year requirement modifies the OSHA 30-hour safety course, not the 18-month on-the-job training program.

The Rule is made up of three clauses, each connected by the word “of.” In the English language, the word or phrase immediately following the word “of” modifies the word or phrase immediately preceding it. Of, <https://dictionary.cambridge.org/us/grammar/british-grammar/of> (accessed Jul. 25, 2024). For example, in the phrases “court of appeals” or “State of New York,” “appeals” modifies “court” and “New York” modifies “State.” When the word “of” appears multiple times in a sequence, it only modifies the word that immediately precedes it, read back to front. For example, “celebration of the 4th of July” means an event honoring a specific date, American Independence Day, and “a recipe consisting of a cup of milk” means that a dish contains a specific measurement of an ingredient. The second and third words or phrases are combined as a unit, and are only then read in conjunction with the first.

Under this immutable rule of grammar, the Rule is unambiguous. The two clauses at the end of the sequence, "successful completion within two years prior to application of an OSHA 30-hour safety course" should be read as a unit (like "the 4th of July" or "cup of milk"). That unit is only then read in conjunction with the initial clause, "an acceptable 18 month on-the-job training program shall consist of [...]." The second clause, the two-year requirement, cannot modify the first clause, the on-the-job training program, because it is already modifying the third clause, the OSHA safety course. Any other reading, including the one DOB proposes, is grammatically incorrect. Therefore, the Court must find DOB's rejection of petitioner's application arbitrary and capricious.

It is unclear from DOB's June 26, 2023 application rejection letter whether the timing of petitioner's completion of the 18-month on-the-job training program was the only factor that lead DOB to reject his application, or only a sufficient factor.

Therefore, this Court must remand the application to the DOB to confirm that petitioner met the other SSM eligibility criteria, as they were written at the time petitioner submitted his license application, and given that petitioner satisfied the 18 month on-the-job training program of the Rule. See, Ansonia Assoc. v State Div. of Hous. and Community Renewal, 147 AD2d 420 (1st Dept 1989).

This Court has considered the parties other arguments and finds them to be unavailing and/or non-dispositive.

Conclusion

Thus the petition is granted in part and denied in part and the Court hereby remands the Site Safety Manager Certificate application of petitioner, Justin Falquecee, to respondent, The New York City Department of Buildings, to determine whether petitioner met the eligibility criteria (as they were written at the time petitioner submitted his application, and given that petitioner satisfied the 18 month on-the-job training program of 1 RCNY 104-08(a)(3)); and the Clerk is hereby directed to enter judgment accordingly.

HON. ARTHUR F. ENGORON


<u>7/26/2024</u> DATE					ARTHUR F. ENGORON, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED		<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED			<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER			<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE