

**Kononenko v New York City Dept. of Bldgs.**

2025 NY Slip Op 30478(U)

February 7, 2025

Supreme Court, New York County

Docket Number: Index No. 157426/2024

Judge: Lyle E. Frank

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

PRESENT: HON. LYLE E. FRANK PART 11M

*Justice*

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ALEXEY KONONENKO,

Petitioner,

- v -

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

Respondent.

-----X

INDEX NO. 157426/2024

MOTION DATE 08/13/2024

MOTION SEQ. NO. 001

## DECISION + ORDER ON MOTION

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

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

Upon the foregoing documents, the petition is granted.

### **Background**

Alexey Kononenko (“Petitioner”) applied for a High-Pressure Boiler Operating Engineer License (the “License”) from the New York City Department of Buildings (collectively with The City of New York, “Respondents”). Along with his application, he submitted his relevant credentials, including an “Engineer’s License” issued by the state of New Jersey. He was denied the License, on the grounds that he had not satisfied the relevant requirements of the Administrative Code of the City of New York § 28-401.6. Petitioner sought reconsideration of the denial, which received a final determination confirming the denial. Petitioner then timely brought the present Article 78 petition, seeking to have the denial of his license deemed arbitrary and capricious.

### **Standard of Review**

A party may bring an Article 78 petition to challenge the final determination of an administrative agency. CPLR § 7801(1). A court must give great deference to the agency's decision and cannot "interfere unless there is no rational basis for the exercise of discretion or the action complained of is arbitrary and capricious." *Pell v. Board of Education*, 34 N.Y.2d 222, 231 (1974). Judicial review is also available if the agency's determination was "contrary to law or procedure." *Barrett Japaning, Inc. v. Bialobroda*, 190 A.D.3d 544, 545 (1st Dept. 2021). An action is irrational or arbitrary and capricious if "it is taken without sound basis in reason or regard to the facts." *Matter of A.Z. v. City Univ. of N.Y., Hunter Coll.*, 197 A.D.3d 1027, 1027 (1st Dept. 2021).

### **Discussion**

This dispute largely rests on the nature of Petitioner's credentials and the Respondents' interpretation of the relevant statute. New York City Administrative Code § 28-413.2 lays out seven different pathways for obtaining a high-pressure boiler operating engineer license. Relevant to this petition is pathway 3, which states that "[a]pplicant has held, for a minimum of four (4) years, either a certificate as an engineer issued by a board of examining engineers duly established and qualified pursuant to the laws of the United States or any state or territory thereof" as well as a minimum of one year of relevant experience. NYC Admin. Code. § 28-413.2(3). The other relevant pathway applies when "[a]pplicant has held a high-pressure certification/high-pressure license for a period of five (5) years from other jurisdictions acceptable to the commissioner, provided such jurisdiction follows the ASME Boiler and Pressure Vessel Code" and has five years of relevant experience. NYC Admin. Code. § 28-413.2(3).

Petitioner's years of applicable experience is not disputed. What the parties disagree on is whether his New Jersey's engineer's license qualifies as an engineer's license from another state under the third pathway, or a high-pressure license under the seventh pathway. The certification in question is titled "Engineer's License" and states that the Petitioner "having been found qualified to be entrusted with the duties of Engineer is hereby granted License for that purpose" and has the signature of the examining board. It further states that the applicable purposes are "2nd Class Refrigeration; 3rd Class Stationary." In their letter to Petitioner denying his license, the Respondents refer to the license as "a New Jersey 3rd Class Stationary Engineer's license, also known as a high pressure license." Petitioner was denied for not having sufficient years of relevant experience under pathway seven.

Respondents' rationale for determining that the New Jersey Engineer's License is not, in fact, an Engineer's License but rather solely a high pressure license is twofold: 1) that by "engineer" the legislation meant specifically a "professional engineer" as the term is understood in New York; and 2) by adding subsection seven, the City Council was attempting to distinguish professional engineers from those with special licenses for high-pressure systems. New York City's Administrative Code defines "engineer" as "a person licensed and registered to practice the profession of engineering under the education law of the state of New York." NYC Admin. Code § 28-101.5. This refers to how New York's education law distinguishes between a stationary engineer (dealing with high pressure systems) and a professional engineer. But there is no indication that every state does so, nor that the City Council intended the agency to examine each state's licensure procedures to see how they compare to the New York specific definition of a professional engineer.

“An agency’s interpretation of the statutes it administers, if not unreasonable or irrational, is entitled to judicial deference.” *Blatt v. N.Y. City Dep’t of Citywide Admin. Servs.*, 12 A.D.3d 164, 164 (1st Dept. 2004). But when the standards for licensure “are set not by the [agency] but by statute, [if the agency] goes beyond that standard his action is arbitrary.” *Hammerl v. Mavis*, 41 A.D.2d 724, 724 (1st Dept. 1973). On an Article 78 petition involving statutory interpretation, a court must construe the law to “give effect to the plain meaning of the words used. 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 [... and] does not consist of common words of clear import.” *Beekman Hill Ass’n v. Chin*, 274 A.D.2d 161, 166-67 (1st Dept. 2000).

Here, the standard was very clearly set as a) a “certificate as an engineer”, that was issued by b) a board of examining engineers duly established and qualified by any U.S. state. Petitioner’s license explicitly meets that definition. A state qualified board of engineers certified Petitioner as an “engineer.” By the clear and plain reading of the relevant statute, Petitioner has met the necessary qualifications. Respondents wish to read into the statute an additional qualification that such an engineer’s license must *also* meet the standards of a New York State professional engineer, as opposed to other forms of engineers in the state. But that is not what the plain language of the statute says, and is an additional requirement imposed by the agency. The City Council surely contemplated that other states would have definitions of “engineer” that might not entirely comport with the definition of a New York professional engineer. As they declined to add any qualifying language to the statute addressing that issue, such an additional requirement should not be read into the statute.

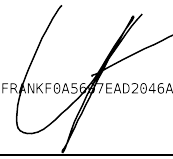
A New Jersey engineer may, in training and education, at times resemble a New York certified high-pressure system worker more than a New York professional engineer, but such a discrepancy does not give grounds to contradict the plain language provided by City Council. Nor does a plain language interpretation of subsection 3 render subsection 7 superfluous. Should an applicant have a “high pressure certification” or a “high pressure license” from another jurisdiction, by a clear reading of the Code they will need to satisfy the relevant experience requirements for pathway 7. If in adding subsection 7, the City Council wished to also add an additional requirement for subsection 3 that such a state’s licensure must be the equivalent of a New York state professional engineer in education and training, they could easily have done so by adding the requisite qualifying language to subsection 3. Because Respondents’ denial of Petitioner’s license application was based on a contrary reading of the clear language of NYC Admin. Code § 28-413.2, going beyond the explicit requirements of subsection 3, it was arbitrary and capricious. Accordingly, it is hereby

ADJUDGED that the petition is granted; and it is further

ORDERED that the respondent New York City Department of Buildings’ denial of petitioner Alexey Kononenko’s application for a High Pressure Boiler Operating Engineer License is reversed, annulled, and set aside; and it is further

ORDERED that the matter is remanded back to the New York City Department of Buildings in order that such license be granted in accordance with this Order not more than 7 days following the date of service of this Order with notice of entry.

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2/7/2025

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED  DENIED

APPLICATION:

SETTLE ORDER

NON-FINAL DISPOSITION

GRANTED IN PART  OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT  REFERENCE