

**Wachsman v New York State Dept. of State Div. of  
Licensing Servs.**

2025 NY Slip Op 32910(U)

August 14, 2025

Supreme Court, New York County

Docket Number: Index No. 154618/2025

Judge: Emily Morales-Minerva

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

**PRESENT: HON. EMILY MORALES-MINERVA PART 42M**

*Justice*

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ROBERT WACHSMAN,

Petitioner,

- v -

NEW YORK STATE DEPARTMENT OF STATE DIVISION  
OF LICENSING SERVICES,

Respondent.

-----X

INDEX NO. 154618/2025

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 17, 18, 22  
were read on this motion to/for REINSTATE.

**APPEARANCES:**

Robert Wachsman, self-represented.

Office of the New York State Attorney General, New York, NY  
(Shelbi Joubert Molin, Esq., of counsel), for respondent.

EMILY MORALES-MINERVA, J.S.C.

In this proceeding commenced under Article 78 of the CPLR  
by petition and order to show cause (motion sequence number  
001), petitioner ROBERT WACHSMAN requests a review of the  
Decision and Order of Administrative Law Judge Michael  
Guttentag, dated September 09, 2024, wherein petitioner's real  
estate broker's license was revoked.

Respondent NEW YORK STATE DEPARTMENT OF STATE DIVISION OF  
LICENSING SERVICES appears and submits written opposition.

## BACKGROUND

Petitioner ROBERT WACHSMAN (petitioner) was a licensed corporate and associate real estate broker for approximately 26 years, most recently licensed for the license term commencing in July of 2024, and ending in July of 2026 (see New York State Court Electronic Filing System [NYSCEF] Doc. No. 001, Petition, dated April 08, 2025). At one point during petitioner's brokerage career, petitioner's real estate broker's license had expired, from approximately October 2017 through April 2018.

On or around May 22, 2018, non-party Synthia Steinacher, petitioner's former spouse, filed a complaint with respondent NEW YORK STATE DEPARTMENT OF STATE DIVISION OF LICENSING SERVICES (DLS), alleging, among other things, that petitioner listed real estate for rent after his license had expired in October of 2017, and that petitioner owed child support (see NYSCEF Doc. No. 004, Memorandum of Law in Support of Petitioner's Order to Show Cause, dated April 08, 2025). Based on these allegations, DLS investigated the complaint, and located a warrant for child support entered against petitioner on the Child Support Enforcement Warrant Notice System (see id.; see also NYSCEF Doc. No. 23, DLS' Answer).

Thereafter, on January 23, 2024, DLS commenced an administrative disciplinary proceeding against petitioner,

pursuant to Complaint No. 2018-0681. Among other things, the complaint alleged that (1) petitioner engaged in unlicensed real estate activity in violation of RPL § 440-a<sup>1</sup>, and that (2) petitioner intentionally made a material misstatement on his

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<sup>1</sup>Section 440-a of the Real Property Law provides, as relevant here: "No person, co-partnership, limited liability company or corporation shall engage in or follow the business or occupation of, or hold themselves or itself out or act temporarily or otherwise as a real estate broker or real estate salesperson in this state without first procuring a license therefor as provided in this article. [] No person shall be entitled to a license as a real estate broker or real estate salesperson under this article who does not meet the requirements of section 3-503 of the general obligations law."

Section 3-503 of the General Obligations Law provides, as relevant here: "2. Every applicant for a license or renewal thereof shall . . . certify in the application in a written statement under oath, duly sworn and subscribed, that as of the date the application is filed he or she is (or is not) under obligation to pay child support and that if he or she is under such an obligation, that he or she does (or does not) meet one of the following requirements:

- a. he or she is not four months or more in arrears in the payment of child support; or
- b. he or she is making payments by income execution or by court agreed payment or repayment plan or by plan agreed to by the parties; or
- c. the child support obligation is the subject of a pending court proceeding; or
- d. he or she is receiving public assistance or supplemental security income.

"3. If the applicant is not under an obligation to pay child support, the agency may issue or renew such license. If the applicant is under an obligation to pay child support and is not four months or more in arrears in the payment of child support, or meets the conditions of paragraphs b, c and d of this subdivision, the agency may issue or renew such license. If the applicant does not meet one of the above requirements, the agency may issue or renew such license but such license shall expire in six months unless before that time the applicant submits a written certification under oath, duly sworn and subscribed that he or she:

- a. is no longer in arrears in the payment of child support; or
- b. is making payments by income execution or by court agreed payment or repayment plan or by plan agreed to by the parties or repayment plan with the appropriate support collection unit; or
- c. the child support obligation is the subject of a pending court proceeding; or
- d. he or she is receiving public assistance or supplemental security income.

"4. Every application shall state in bold face that persons who are four months or more in arrears in child support or who have failed to comply with a summons, subpoena or warrant relating to a paternity or child support proceeding may be subject to suspension of their business, professional, drivers and/or recreational licenses and permits . . ."

real estate broker's license renewal application for the license term of July 03, 2020 through July 02, 2022 in violation of RPL § 441-c (1); the complaint alleged that petitioner purposefully affirmed that he was not more than four months in child support arrears when he submitted his renewal application (see NYSCEF Doc. No. 21, Certified Transcript of Administrative Proceedings, Complaint, p 356).<sup>2</sup> The matter was assigned to Michael

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<sup>2</sup> Section 441-c (1) of the Real Property Law provides, as relevant here:

"(a) The department of state may revoke the license of a real estate broker or salesperson or suspend the same, for such period as the department may deem proper, [] or for a material misstatement in the application for such license, [] or has demonstrated untrustworthiness or incompetency to act as a real estate broker or salesperson.

"(b) (i) The provisions of this paragraph shall apply in all cases of licensed broker or licensed salesperson who have failed, after receiving appropriate notice, to comply with a summons, subpoena or warrant relating to a paternity or child support proceeding or is in arrears in payment of child support [].

"(ii) Upon receipt of an order from the court pursuant to one of the foregoing provisions of law based on arrears in payment of child support or combined child and spousal support, the department, if it finds such person to be so licensed, shall within thirty days of receipt of such order from the court, provide notice to the licensee of, and initiate, a hearing which shall be held by it at least twenty days and no more than thirty days after the sending of such notice to the licensee. The hearing shall be held solely for the purpose of determining whether there exists as of the date of the hearing proof that full payment of all arrears of support established by the order of the court to be due from the licensee have been paid. Proof of such payment shall be a certified check showing full payment of established arrears or a notice issued by the court, or the support collection unit where the order is payable to the support collection unit designated by the appropriate social services district. Such notice shall state that full payment of all arrears of support established by the order of the court to be due have been paid. The licensee shall be given full opportunity to present such proof of payment from the court or support collection unit at the hearing in person or by counsel. The only issue to be determined by the department as a result of the hearing is whether the arrears have been paid. No evidence with respect to the appropriateness of the court order or ability of the respondent party in arrears to comply with such order shall be received or considered by the department.

"(iv) Notwithstanding any inconsistent provision of this article or of any other provision of law to the contrary, the license of a real estate broker or salesperson shall be suspended if at the hearing, provided for by subparagraph (ii) of this paragraph, the licensee fails to present proof of payment as required by such subdivision. Such suspension shall not be lifted unless the court or the support collection unit, where the court order is payable to the support collection unit designated by the appropriate social

Guttentag, Administrative Law Judge (ALJ), and scheduled for a hearing on May 08, 2024 (see id., Notice of Hearing, p 353).

The hearing commenced on May 08, 2024, and concluded on July 31, 2024. During said hearing, petitioner testified and DLS called two witnesses to testify. These witnesses included Synthia Steinacher, petitioner's former spouse and Jack Bilello, Deputy Chief Investigator of DLS (see NYSCEF Doc. No. 21, Certified Transcript of Administrative Proceedings, Decision of ALJ Michael Guttentag, dated September 09, 2024, p 286).

The parties also submitted documentary evidence, including, among other things, petitioner's 2020 renewal application, with a submission date of April 03, 2020 (NYSCEF Doc. No. 21, Certified Transcript of Administrative Proceedings, p 363, 412-418); petitioner's approved 2020 renewal application, with an approval date of July 06, 2020 (id., at p 363, 419); and the New York State Department of State, Child Support Enforcement Warrant Notices for petitioner (id., at p 409-410).

During said hearing, in response to the question "were you aware that you were in any [child support] arrears when you completed your renewal application", petitioner testified "I'm not going to deny that there was money owed" (NYSCEF Doc. No. 21, Certified Transcript of Administrative Proceedings, p 686).

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services district, issues notice to the department that full payment of all arrears of support established by the order of the court to be due have been paid."

Petitioner further testified that at the time he submitted his renewal application, he "had an ongoing case disputing the arrears", and acknowledged that he did not provide DLS with any documentation to support this contention (id., at p 687).

Following the hearing, ALJ Guttentag issued a decision and order, determining petitioner violated RPL §§ 440-a and 441-c (1) (see id., at p 294). ALJ Guttentag found that (1) petitioner's testimony was self-serving, inconsistent, and not supported by any corroborating evidence; that (2) DLS demonstrated, by documentary evidence and witness testimony, that petitioner's broker's license had expired in October of 2017, but petitioner advertised real estate for rent in November and December of 2017, as well as in February of 2018, in violation of RPL § 440-a [governing unlicensed real estate activity]; that (3) the documentary evidence, as well as petitioner's own testimony, demonstrated that petitioner was more than 4 months in child support arrears when he submitted his 2020 real estate license renewal application; and that (4) petitioner's failure to disclose his child support arrears on his 2020 real estate license renewal application constituted a material misstatement "deliberately made [] to deceive [DLS]", because the explanation provided -- that petitioner contested his child support obligations at the time he submitted his 2020

application -- was belied by the documentary evidence (see id., at p 292-293).

Upon such findings, ALJ Guttentag revoked petitioner's real estate broker's license. The Administrative Law Judge reasoned that, as petitioner refused to take responsibility for his actions, he cannot be "trusted to fulfill the fiduciary duties and obligations of a real estate broker in a manner which will not endanger the welfare of the public" (id., at p 293).

On October 25, 2024, petitioner appealed ALJ Guttentag's decision and order (see NYSCEF Doc. No. 001, Complaint). In a decision and order, dated December 09, 2024, Special Deputy Daniel E. Shapiro modified the decision of ALJ Guttentag to dismiss the charge of unlicensed real estate practice, but affirmed the decision in all other respects, including the revocation of petitioner's license (see NYSCEF Doc. No. 006, Decision and Order of Special Deputy Daniel E. Shapiro, dated December 09, 2024).

Special Deputy Shapiro opined that ALJ Guttentag appropriately determined that, based on the testimonial and documentary evidence presented, petitioner was four or more months in child support arrears when he submitted his 2020 real estate license renewal application; therefore, petitioner's failure to disclose the same constituted a material misstatement (id.). As to the penalty, Special Deputy Shapiro agreed that "a

knowing material misrepresentation on an application for licensure, standing alone, constitutes a sufficient basis for revocation" of the license (id., citing Nagi v DLS, 79 DOS APP 19).

Now, petitioner moves, by petition and order to show cause (mot. seq. no. 001), for injunctive and declaratory relief "modifying the penalty imposed [by ALJ Guttentag in the September 09, 2024, decision] and reinstat[ing] [petitioner] as a real estate broker" (NYSCEF Doc. No. 001, Complaint). Specifically, petitioner notes that he is "challenging the procedural, factual, and legal findings of the ALJ" (NYSCEF Doc. No. 004, Petitioner's Memorandum of Law).

DLS answers, and opposes the application (see NYSCEF Doc. No. 23, Answer).

#### ANALYSIS

The Supreme Court's role in Article 78 proceedings is limited to whether a challenged agency determination "was made in violation of lawful procedure, was affected by an error of law or was arbitrary or capricious or an abuse of direction, including abuse of discretion as to the measure or mode of penalty or discipline imposed" (CPLR § 7803 [3]; see e.g. 197 Madison Holdings LLC v New York State Div. of Hous. and

Community Renewal, 237 AD3d 593 [1st Dept 2025]; 8 Ave. Holdings LLC v NYS Div. of Hous. and Community Renewal, 234 AD3d 568 [1st Dept 2025]). It is well settled that "an action is arbitrary and capricious when it is without sound basis in reason or regard to the facts" (Matter of Murphy v New York State Div. of Hous. and Community Renewal, 21 NY3d 649, 652 [2013], citing Matter of Pell v Board of Educ., 34 NY2d 222, 231 [1974]).

In a proceeding seeking judicial review of an administrative action, "a court may not substitute its judgment for that of the agency responsible for making the determination but must ascertain only whether there is a rational basis for the decision or whether it is arbitrary or capricious" (Awl Indus., Inc. v Triborough Bridge and Tunnel Auth., 41 AD3d 141, 142 [1st Dept 2007], quoting Flacke v Onondaga Landfill Sys., 69 NY2d 355, 363 [1987]). "Where the judgment of an agency involves actual evaluations in the area of that agency's expertise and is supported by the record, such judgment must be accorded great weight and judicial deference" (Awl Indus., Inc., 41 AD3d at 142, quoting Flacke, 69 NY2d at 363; see Chin v new York City Bd. of Standards and Appeals, 97 AD3d 485, 487 [1st Dept 2012]). "The question is not whether [the court] might have imposed another or different penalty, but whether the agency charged with disciplinary responsibility reasonably acted within the scope of its powers" (Matter of Pell, 34 NY2d at

238). In that regard, "the sanction must be upheld unless it shocks the judicial conscience" (Featherstone v Franco, 95 NY2d 550, 554 [2000]).

Further, "an agency is to be afforded wide deference in the interpretation of its regulations and, to a lesser extent, in its construction of the governing statutory law" (Vink v New York State Div. of Housing and Community Renewal, 285 AD2d 203, 210 [1st Dept 2001]). "However, an agency cannot engraft additional requirements or assume additional powers not contained in the enabling legislation" (id.).

Pursuant to Section 440-a of the Real Property Law, an applicant is not entitled to a real estate license unless said applicant meets the requirements of section 3-503 of the General Obligations Law (see Real Property Law § 440-a). Section 3-503 of the General Obligations Law provides that, every applicant for renewal of a license, including a real estate broker's license, "shall certify in the application in a written statement under oath, duly sworn and subscribed, that as of the date of the application is filed, he or she is (or is not) under obligation to pay child support" (General Obligations Law § 3-503) (emphasis added). If an applicant is under such an obligation, then the applicant must certify that he or she does, or does not, meet one of the following requirements: "(a) he or she is not four months or more in arrears in the payment of

child support; or (b) he or she is making payments by income execution or by court agreed payment or repayment plan or by plan agreed to by the parties; or (c) the child support obligation is the subject of a pending court proceeding; or (d) he or she is receiving public assistance or supplemental security income" (id.). If the applicant is under an obligation to pay child support and is not four months or more in arrears in the payment of child support, or meets the conditions of paragraphs b, c or d, "the agency may issue or renew such license" (id.).

However, if the applicant does not meet one of the above requirements, the agency is still permitted to renew the applicant's license, but "such license shall expire in six months unless before that time the applicant submits a written certification under oath, duly sworn and subscribed that he or she: (a) is no longer in arrears in the payment of child support; or (b) is making payments by income execution or by court agreed payment or repayment plan or by plan agreed to by the parties or repayment plan with the appropriate support collection unit; or (c) the child support obligation is the subject of a pending court proceeding; or (d) he or she is receiving public assistance or supplemental security income" (id.) (emphasis added).

Further, every application must warn applicants, on its face, that applicants who are four or more months in child support arrears, or who have failed to comply with a warrant relating to a child support proceeding, may be subject to suspension of their license (id.). The procedure relative to the suspension of real estate licenses is set forth in Real Property Law § 441-c.

Section 441-c of the Real Property Law provides that the Department of State may revoke or suspend the license of a real estate broker upon several grounds, including "a material misstatement in the application for a license" or "for demonstrated untrustworthiness or incompetency to act as a broker" (Real Property Law § 441-c [1]). These provisions apply in cases of licensed brokers who are in arrears in the payment of child support (see Real Property Law § 441-c [1][b][i]).

Here, the court denies the relief requested in petitioner's petition and motion, by order to show cause (mot seq. no. 001), and dismisses the action in its entirety. The documentary and testimonial evidence presented by DLS at the administrative hearing demonstrates that petitioner owed more than four months in child support arrears when he completed his 2020 renewal application, and had knowledge of the same (see NYSCEF Doc. No. 21, Certified Transcript of Administrative Proceedings, p 686 [petitioner testified that he knew "there was money owed" when

he submitted his 2020 license renewal application]; and p 409-410). Despite this, petitioner affirmed, under oath, that he was not more than four months behind in his child support payment on his 2020 license renewal application.

Based on petitioner's representation, DLS approved petitioner's application and renewed his license for two years. Had petitioner disclosed this to DLS, DLS would have been constrained to renew petitioner's license for a period of only six months, unless by the end of those six months petitioner submitted a written certification, under oath, that he was no longer in arrears in the payment of his child support (see General Obligations Law § 3-503; see also Matter of Bell v New York State Dept. of State, Div. of Licensing Services, 34 AD3d 1022, 1023 [3d Dept 2022] [holding that "inasmuch as the reviewing entity was deprived of information that may have affected its decision to renew petitioner's license, its determination to revoke such license is supported by substantial evidence"]).

Given petitioner violated the provisions of Section 3-503 of the General Obligations Law, the ALJ acted well within its authority in crafting a penalty pursuant to Real Property Law § 441-c, and its decision to revoke petitioner's license was not arbitrary or capricious (see Arbuiso v New York City Dept. of Bides., 64 AD3d 520, 522 [1st Dept 2009]). It cannot be said

that the ALJ's decision "was without sound basis in reason or regard to the facts" where, as here, petitioner failed to truthfully respond to questions on his license renewal application, such failure resulting in the outright renewal of a license that should only have been renewed conditionally for six months (Matter of Murphy, 21 NY3d at 652). Therefore, the court does not find that the penalty of revocation is so grossly unfair or disproportionate to petitioner's conduct that it shocks the conscience (Ellis v Mahon, 11 NY3d 754, 755 [2008], citing Matter of Pell, 34 NY2d at 233-234).

Further, given administrative agencies are "vested with wide discretion in determining what should be deemed untrustworthy conduct", the ALJ's determination that petitioner's violations of the General Obligations Law and Real Property Law demonstrates untrustworthiness and incompetency is also not arbitrary or capricious (Dickerson v New York Dept. of State, Div. of Licensing Services, 201 AD3d 460, 461 [1st Dept 2022]). Nor is the ALJ's emphasis on the fact that petitioner failed to take responsibility for his actions (see Wilner v New York Dept. of State, Div. of Licensing Services, 199 AD3d 503, 503 [1st Dept 2021], citing Celestin v Novello, 43 AD3d 545, 546 [3d Dept 2007] [holding that "the refusal to accept responsibility for prior wrongful conduct is a significant factor in assessing an appropriate penalty"]).

Lastly, the revocation of petitioner's brokers' license is not indefinite -- petitioner may reapply for his license "after the expiration of a period of one year from the date of revocation" (Real Property Law § 441-c [4]).

Accordingly, it is hereby

ORDERED that petitioner's motion, by order to show cause, is denied; it is further

ORDERED that the petition is dismissed; and it is further

ORDERED that the Clerk of Court shall mark the file accordingly.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

8/14/2025  
DATE

Emily Morales-Minerva  
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENC  
F

APPLICATION:

CHECK IF APPROPRIATE: