

Matter of Guttman v City of New York

2026 NY Slip Op 30288(U)

January 14, 2026

Supreme Court, Kings County

Docket Number: Index No. 505505/2025

Judge: Lisa Lewis

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At City Part 25 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York, on the 14th day of January, 2026

P R E S E N T :
HON. LISA LEWIS

Justice

In the Matter of the Application of Jack Guttman,

Petitioner,

-against-

City of New York, NYC Department of Buildings
and CPS HR Consulting,

Respondents.

Cal No. 27

Index No.: 505505/2025

DECISION AND ORDER

Motion Sequence 1

The following papers numbered 1 to read herein

Papers Numbered

Notice of Motion/Order to Show Cause/
and Affidavits (Affirmations) Annexed
Cross Motion and Affidavits (Affirmation) Annexed
Answers/Opposing Affidavits (Affirmations)
Reply Affidavits (Affirmations)
Other Papers

1-4, 9-12

29-39

43-45

In this Article 78 proceeding, petitioner seeks to compel respondents City of New York (“CITY”), NYC Department of Buildings (“DOB”) and CPS HR Consulting (“CPS”) (1) to consider the appeal submitted by petitioner, (2) compel respondents CPR and DOB to change the grade of petitioner’s practical copper portion and black steel portion from fail to pass, (3) establish a class of petitioners similarly situated who have been similarly harmed by the known faulty rating of the instant practical exam and direct further proceedings for a trial on the issue of damages and losses arising from the exam for petitioner and others similarly situated. For the reasons which follow, the petition is denied.

BACKGROUND

Petitioner applied for a New York City Master Plumbers license and took the New York City Plumber Practical Examination twice. The rating of his first examination was appealed under separate Index No. 525553/2024. On September 30, 2024, petitioner took the examination for the second time. On October 16, 2024, respondent CPS, an examination vendor retained by the DOB to conduct the examination, mailed the result of the second practical examination to petitioner, to which he received on October 29, 2025. The examination involves a Copper Sweat Exercise (“Copper Project”) and the Black Steel Piping Exercise (“Black Steel Project”), which petitioner received a failing grade for each. On November 15, 2024, petitioner appealed the failing grades. result. On January 10, 2025, petitioner received notice via email from CPS that he is ineligible to appeal. Thereafter, petitioner commenced this Article 78 proceeding and moved for the relief requested herein.

PARTIES CONTENTIONS

Petitioner’s Argument

Petitioner argues the rating is arbitrary, the conduct of the examiners in rating the project is capricious and respondents’ refusal to review on appeal was in bad faith. Petitioner argues there was no material difference between his copper and steel project than those of passing examinees. Petitioner notes the appeal response indicated respondents did not have to review the project and declined to review the rating. Petitioner argues the exam is flawed. As to the Copper Project, petitioner argues, *inter alia*, he has completed many projects without blemish and has acquired the necessary skill to complete same. As to the Steel Project, petitioner argues, *inter alia*, same can be disassembled and moved, and the rating for this was arbitrary. Petitioner alleges respondents changed the website and terms of the examination including rating schemes reciting tolerances.

Respondents' Response/Opposition

In opposition, respondents argue, *inter alia*, petitioner is ineligible to appeal the failing score for a Master Plumber license because he failed more than one criteria of the examination. With respect to the Copper Project, respondents argue petitioner's test project had solder drips beyond the tolerance of a quarter (%) of an inch from the joint pursuant to the Rating Guide Report. With respect to the Black Steel Project, respondents argue the raters had noted petitioner failed the Alignment Criteria Exercise because a ¼ inch dowel slid clearly below a ¾ 45-degree fitting. Since petitioner did not pass all categories of the two-part Practical Exam, he failed the Master Plumber Practical Examination.

Moreover, respondents argue petitioner failed to provide for grounds for an administrative appeal, including identifying any actual mistakes in the conduct of his practical examination, the grading of the test projects or CPS's review of the test records and photographs in response to the appeal request. Further, respondents argue the criteria and the method of determining compliance are described in the Rating Guides for both exercises and rely on specific measurements and not subject to a rater's subjective view. Respondents argue the administrative record supports petitioner is ineligible to appeal, as the determination was in accordance with the procedures set by DOB and detailed in the Candidate Information Bulletin, and therefore there is no need for judicial review of petitioner's test projects and the mandamus to compel fails as a matter of law.

In support, respondents submit, *inter alia*, a copy of the NYC Building Candidate Information Bulletin for Master Plumber License Examinations ("Candidate Information Bulletin"). It provides in pertinent part, "[i]f you fail the practical examination . . . by no more than one (1) exam section, you may submit an appeal" (NYSCEF Doc. No. 37, page 18).

Petitioner's Reply

In reply, petitioner maintains both projects were of ideal quality, the alignment component of the examination was without fault and the rating of the projects must be deficient in some way. With respect to the Black Steel Project, petitioner argues he only received one photo and contrary to the rater's instructions, the steel rod passed under the narrower portion of the elbow. The photos are not clear if the dowel slides are under the band or touches it. Thus, necessitating an inspection of the project. With respect to the Copper Project, petitioner argues there were multiple photos produced and showed a small mark remote from the soldered joint and a diagonal mark rising from a different joint. Petitioner asserts the remote mark appears to be dirt or oil and does not have the qualities of solder.

DISCUSSION

“In this CPLR article 78 proceeding, where no administrative hearing was required, judicial review is limited to whether the determination was irrational, arbitrary and capricious or contrary to law. Administrative action is irrational or arbitrary and capricious if ‘it is taken without sound basis in reason or regard to the facts. If a determination is rational it must be sustained even if the court concludes that another result would also have been rational’ (*Orange County Partnership, Inc. v Authorities Budget Office*, 226 AD3d 791, 792–793, leave to appeal denied, 42 NY3d 906 [2d Dept 2024]).

Here, the petitioner failed to bring forth any rebuttal as to how the Black Steel project or the Copper Project are graded. The Court finds petitioner failed to acknowledge the governing procedure limits pursuant to the Candidate Information Bulletin regarding administrative appeals to applicants who fail no more than one practical examination. Since petitioner has failed two practical examinations, the Court finds respondents properly determined petitioner's appeal.

The parties' remaining contentions, to the extent not expressly set forth herein, have been

considered and are denied.

Accordingly, it is hereby

ORDERED that petitioner's Article 78 proceeding (Seq. 1) is denied in its entirety.

This constitutes the decision and order of the court.

E N T E R



J. S. C.

Hon. Lisa Lewis

FILED

JAN 22 2026

KINGS COUNTY CLERK'S OFFICE