

Doerr v City of New York
2026 NY Slip Op 31252(U)
March 27, 2026
Supreme Court, New York County
Docket Number: Index No. 152633/2026
Judge: Sabrina Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS PART 57M

Justice

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WOLFGANG DOERR,

Petitioner,

- v -

THE CITY OF NEW YORK, THE NEW YORK POLICE
DEPARTMENT

Respondents.

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INDEX NO. 152633/2026

MOTION DATE 03/02/2026

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15

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

BACKGROUND

In this Article 78 proceeding, petitioner Wolfgang Duerr (“Petitioner”), a resident of New York County, seeks a writ of mandamus for Respondents to issue a decision on his application for a concealed carry license.

The Commissioner of the New York City Police Department (“NYPD”) is the statutory licensing officer for applications for pistols in New York City (Penal Law § 265.00(10)). On October 27, 2024, Petitioner submitted his Concealed Carry Handgun Application to NYPD (NYSCEF Doc No. 9). On October 27, 2024, an automatically generated email—which stated that it was signed by Inspector Hugh Bogle, the Commanding Officer of the Licensing Division—advised Petitioner that he would then be scheduled for a fingerprinting appointment (NYSCEF Doc No. 10). On December 4, 2024, a licensing officer contacted Petitioner via telephone and advised him that certain documents within his application were outstanding (NYSCEF Doc No. 12). On December 13, 2024, Petitioner provided Respondents with a pre-

interview questionnaire in which Respondent acknowledged that he had been informed that the following documents were missing from his application: his DMV Lifetime Abstract, four character references and proof of completion of an acceptable training course (NYSCEF Doc No. 13, at 3).

On March 2, 2026, Petitioner filed the petition herein seeking a writ of mandamus pursuant to CPLR § 7803(1) and Penal Law § 400.00(4-b) for Respondents to issue a decision on his application for a concealed carry license, or advise him of any missing required documents.

The Court denies the petition for the reasons set forth below.

DISCUSSION

In a CPLR article 78 proceeding seeking mandamus to compel the action of an administrative body or government officer, courts assess “whether the body or officer failed to perform a duty enjoined upon it by law” (CPLR § 7803(1)). A petitioner is entitled to specific performance of the duty when the petitioner demonstrates (1) a “clear legal right to the relief demanded” and (2) “a corresponding nondiscretionary duty on the part of the administrative agency to grant that relief” (*Scherbyn v Wayne-Finger Lakes Bd. of Coop. Educ. Servs.*, 77 NY2d 753, 757 [1991]). While mandamus is an appropriate remedy to enforce the performance of a purely “ministerial duty,” it is not appropriate where the body or officer “may exercise judgment or discretion” (*Gimprich v Board of Educ.*, 306 NY 401, 406 [1954]).

First, Penal Law § 400.00 “does not establish a clear legal right to a pistol license, and the statute does not require a licensing official to perform any ministerial act. Rather, the statute empowers a licensing official to exercise discretion to determine, inter alia, whether the applicant is of ‘good moral character’ and to review the results of a background investigation” such that Petitioner “is not entitled to mandamus relief pursuant to CPLR 7803(1)” (*Matter of Berisha v*

Fufido, 234 AD3d 685, 685–86 [2d Dept 2025]; *see also Matter of Husejnovic v DeProspero*, 225 AD3d 597, 598–99 [2d Dept 2024]). Mandamus is thus not an appropriate remedy for the branch of the petition seeking approval of his pistol license.

Regarding Petitioner’s arguments for the relief requested in the first and second branches of his petition, Petitioner argues that Respondents failed to consider his application for a pistol within six months and also failed provide him a reason for the delay as required by Penal Law § 400.00(4-b). Penal Law § 400.00(4-b) provides:

Applications for licenses shall be accepted for processing by the licensing officer at the time of presentment. Except upon written notice to the applicant specifically stating the reasons for any delay, in each case the licensing officer *shall act upon any application for a license pursuant to this section within six months of the date of presentment of such an application to the appropriate authority*. Such delay may only be for good cause and with respect to the applicant. In acting upon an application, the licensing officer shall either deny the application for reasons specifically and concisely stated in writing or grant the application and issue the license applied for. (*id.* [emphasis added]).

The duty imposed by Penal Law § 400.00(4-b) is nondiscretionary as it sets a fixed timetable requiring the licensing officer to take specific action (*see Matter of Jablecki v Board of Mgrs. of Harborview Condominium*, 220 AD3d 571, 572 [1st Dept 2023] [*holding that a board’s duty to conduct an annual meeting among condo unit owners was nondiscretionary*]).

Petitioner does not, however, demonstrate that he has a clear legal right to the relief requested. Penal Law § 400.00(1)(o) provides:

for a license issued under paragraph (f) of subdivision two of this section,¹ the applicant *shall meet in person with the licensing officer for an interview and shall, in addition to any other information or forms required by the license application submit to the licensing officer the following information:*

* * *

(ii) names and contact information of no less than four character references who can attest to the applicant's good moral character and that such applicant has not

¹ Paragraph (f) of Section 400.00(2) concerns applications for pistols “to have and carry concealed,” which Petitioner applies for here.

engaged in any acts, or made any statements that suggest they are likely to engage in conduct that would result in harm to themselves or others; [and]

* * *

(v) such other information required by the licensing officer that is reasonably necessary and related to the review of the licensing application.

(Penal Law § 400.00(1)(o) [emphasis added]). In opposition, Respondents cite Petitioner's Handgun License Interview Questionnaire dated December 13, 2024, wherein he checked off three boxes indicating that he had "been informed that the following documents [were] MISSING from [his] application": his DMV Lifetime Abstract, four character references and proof of completion of acceptable training course (NYSCEF Doc No. 13, at 3).

As of March 2, 2026, Petitioner uploaded his DMV lifetime abstract and the training certificate but not his character references (*see* NYSCEF Doc No. 14). Petitioner is also not entitled to the relief requested in the first or second branches of petition as he has now been given a reason as to why his application was not considered nor a decision rendered.

Petitioner's remedy is to submit the required documentation and complete his application.

CONCLUSION

Accordingly, it is hereby:

ADJUDGED that the application is denied and the petition is dismissed; and it is further ORDERED that, within twenty (20) days from entry of this order, respondent shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119, New York, NY 10007); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of this Court.



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3/27/2026

DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE