

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

PRESENT. Lewis Bart Stone

PART 525

0101905/2003

QUARTERMAN, CHARLES

VS

KELLY, RAYMOND

SEQ 1

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

SCANNED

JUN 24 2003

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion

*is decided in accordance with
the annexed decision & order.*

Dated: 18 June '03

Lewis Bart Stone

J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

MOTION/CASE IS RESPECTFULLY REFERRED TO
JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 50S

-----X

In the Matter of the Application of
CHARLES QUARTERMAN

Petitioner,

DECISION AND
ORDER

For a Judgment pursuant to Article 78
of the Civil Practice Law and Rules

: Index Number
101905/03

-against-

RAYMOND KELLY, Police Commissioner of
the City of New York

Respondent.

:

-----X

Justice Lewis Bart Stone:

Petitioner moves for a judgment pursuant to Article 78 of the Civil Practice Law and Rules annulling and reversing the determination of Respondent which disapproved Petitioner’s application for a pistol license, mandating that Respondent issue said license. The Respondent opposes petitioner’s application.

STATEMENT OF FACTS

Section 10-131 of the New York City Administrative Code (“Administrative Code”) gives the Police Commissioner the authority to grant licenses for keeping or carrying pistols within the City of New York. Penal Law Section 400.00 sets forth the requirements that must be met for an applicant to be issued a license to keep or

carry a pistol and describes the various types of licenses that can be issued.

The Police Department Rules are codified in the Rules of the City of New York (“RCNY”), Title 38. Section 5-01 provides for three types of licenses that allow the licensee to carry a hand gun concealed on the person, carry business, limited carry business and carry guard. Section 5-01 provides, in pertinent part, that a license with a carry guard permit may carry a registered hand gun which is concealed when the holder of the license is engaged as a security guard or gun custodian. Section 5-02 of the RCNY set forth the requirements to be met by holders of a carry guard license and provide in pertinent part, that the applicant be of good moral character, “have no prior conviction for a felony or other serious offense...or of a misdemeanor crime of domestic violence...[and] be free of any disability or condition that may affect the ability to safely possess or use a handgun.” RCNY §5-02.

Petitioner is thirty-six years old and is currently employed by the United Nations as a Security Guard. From 1984 through 1988, he was a Senior Airman in the United States Air Force from which he was honorably discharged. After leaving the Air Force he began working for the United Nations (“UN”) in 1989 where he has continued to work for over thirteen years. Petitioner seeks this “carry guard” permit as a result of a recent change in UN policy which now require all UN security personnel to be licensed to carry a handgun. Petitioner states, as is confirmed by

Chief Michael McCann, UN Chief of Security and Safety, that Petitioner will carry a firearm only when actually engaged in the performance of the duties of protecting delegates, staff members and visitors and UN property. Petitioner will be required to turn in the firearm at the end of the working day to a gun custodian at the UN and will not be allowed to bring it to his home. Petitioner has also successfully completed the “United Nations Firearms Training Program.”

Petitioner submitted a completed application for a carry guard pistol permit to the New York City Police Department License Division (“License Division”), fully disclosing that he had been arrested on February 14, 1999 in the Bronx for Driving While Intoxicated (New York Vehicle and Traffic Law § 1192.2) and certain other misdemeanors and violations. In the petition, Petitioner explained that many of the charges arose out of a confrontation with the arresting officers over a highly publicized police shooting of an African man which had occurred ten days earlier, also in the Bronx. This explanation is not disputed by the License Division. Although Petitioner’s denies his guilt in all of those offenses, he plead guilty to Driving While Impaired, VTL § 1192.2, a violation. No other charges were prosecuted. The record shows that other than this incident, Petitioner had never been arrested or convicted of a crime, misdemeanor or any offense other than a parking violation in any State, Federal or Foreign jurisdiction, other than three “red light”

violations.

Petitioner applied for the carry guard permit on August 18, 2002. At the conclusion of the License Division investigation, Petitioner was informed it was disapproved due to “the circumstances of the above arrest with convictions. Applicant’s offenses committed cast grave doubt of [sic] his moral character to possess a firearm.” On or about September 23, 2002, Petitioner filed an administrative appeal.

In Petitioner’s appeal to the License Division, he included letters of recommendations from members of the UN his church and Michael McCann, the UN Chief of Security.¹

By letter dated October 23, 2002, Petitioner’s appeal was denied by Thomas Prasso, Director of the License Division based upon review of the “entire record.”

Petitioner commenced the instant Article 78 proceeding in a timely manner to challenge the License Division’s determination as unreasonable, arbitrary and capricious.

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The record shows that Chief McCann was informed of Petitioner’s arrest shortly after his plea. The conviction seems to have had no effect on either Petitioner’s employment by the UN or the UN’s support of Petitioner’s application for a carry permit.

CONCLUSIONS OF LAW

The sole issue this Court may consider is whether the administrative decision to deny Petitioner's application for a pistol license was arbitrary and capricious or an abuse of discretion. See Matter of Pell v. Board of Education, 34 NY2d 222, 230 (1974); Matter of Lipton v. Ward, 116 AD2d 474 (1st Dept. 1986). The judicial function is limited to ascertaining whether there is a rational basis for the agency's determination. Sewell v. City of New York, 182 AD2d 469, 473 (1st Dept. 1992). A rational basis exists for denying an application for a carry/guard gun permit when the evidence adduced is adequate to support the Commissioner's action. See Sewell v. City of New York, 182 AD2d at 473.

A court may only overturn an administrative action only if the record reveals no rational basis for it. See Matter of Pell v. Board of Education, 34 NY2d at 230. The court may not substitute its own judgment of the evidence for that of the administrative agency, but should review the whole record to determine whether there exists a rational basis to support the findings upon which the agency's determination is predicated. Purdy v. Kreisberg, 47 NY2d 354, 358 (1979).

The issuance of a license to carry a gun is a privilege, not a right. See In re Williams v. Bratton, 238 AD2d 269 (1st Dept. 1997); Sewell v. City of New York, 182 AD2d at 472. The License Division has broad discretion to grant licenses in

accordance with Penal Law §400.00 and Administrative Code of the City of New York (10-131[1]). Ordinarily the court would defer to the License Division in its exercise of administrative discretion in evaluating a pistol permit application, especially since public safety and general welfare is at issue. However, upon the record, this Court believes that the License Division's decision to disapprove Petitioner's application for a pistol license was, under the circumstances, considering the full record, arbitrary and capricious.

It appears that the grounds on which the License Division, Title 38, denied the permit was Petitioner's arrest and his conviction for a violation; this conviction appears to be the sole basis for the conclusion that there is "grave doubt" about Petitioner's "moral character." While it is true that Petitioner does have this one conviction, the License Division's decision still must be rational, and the reasons articulated must be appropriate considering Petitioner's overall history. See Matter of Foster, Index No. 127701/04 (Sup. Ct. N.Y. 1995, Freedman, J.), Ferrara v. Kelly, Index No. 13075-93 (Sup. Ct. N.Y. 1994, Parness, J.).

Moreover, Petitioner is a UN Security Officer. Due to the events of September 11, 2001, these officers are now required to carry a gun as a condition of continued employment in that capacity. Petitioner submitted to the License Division certificates of accomplishment related to Petitioner's employment and letters attesting to his good

of accomplishment related to Petitioner's employment and letters attesting to his good character. Therefore, a business need underlies Petitioner's request for a pistol license. See Matter of Bobrick v. Leggett, 71 AD2d 869, 870 (2d Dept. 1979); Matter of Hanley v. Bratton, Index Num 129682-94, (Sup. Ct. N.Y. Co., 1996, Cahn, J).


Numerous courts in similar situations have found the License Division to have acted arbitrarily and capriciously in denying a pistol permit to an individual who had been convicted of minor offenses. Furthermore, the License Division has failed to take into account the underlying circumstances, remoteness in time and Petitioner's societal behavior thereafter. See Schelker v. Safir, Index Number 117069-97 (Sup. Ct. N.Y. Co., 1998, Abdus-Salaam, J.); Ferrara v. Kelly, *supra*.

In both the initial decision and appeal denial, the License Division failed to furnish any support for the denial. See Falk v. City of New York, 41 AD2d 530 (1st Dept. 1973). In their response to the instant petitioner, they merely state that their decision was not arbitrary and capricious and it was rationally based. They fail to explain how this single conviction impacts on Petitioner's moral character; neither do they address in their papers the circumstances surrounding Petitioner's conviction or any mitigating factors that Petitioner has presented.

The rejection of Petitioner's application because Petitioner was convicted for a violation two years ago without considering his prior and subsequent societal behavior or the reason why he needs the license results in the determination being arbitrary and capricious and it is hereby vacated. Accordingly, the petition is granted. This Court reverses the determination of the License Division and Petitioner's application for a carry pistol license and directs the License Division is directed to issue a carry guard permit to Petitioner.

This constitutes the Decision and Order of this Court.

DATED: JUNE 18, 2003
NEW YORK, NEW YORK



Hon. Lewis Bart Stone
Justice of the Supreme Court