

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART IAS MOTION 37EFM

Justice

JONATHAN ZERON,
Petitioner,

INDEX NO. 154821/2020
MOTION DATE 06/29/2020
MOTION SEQ. NO. 001

- v -

DERMOT SHEA, JONATHAN DAVID, NEW YORK CITY
POLICE DEPARTMENT, NEW YORK CITY POLICE
DEPARTMENT LICENSE DIVISION,

DECISION + ORDER ON
MOTION

Respondents.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36

were read on this motion for CPLR ARTICLE 78 RELIEF

Upon the foregoing documents, it is hereby ordered that that petition is denied and dismissed.

In this CPLR Article 78 special proceeding, petitioner seeks to overturn the final determination of respondents that denied petitioner's application for a Special Carry handgun license.

Petitioner is a Federal Firearms Licensed Dealer who buys, sells, transports, and transfers firearms, along with corresponding ammunition. Petitioner is licensed to carry a concealed firearm in Utah, Florida, Maine, Arizona, New Hampshire, Massachusetts, Rhode Island, Connecticut, Pennsylvania, and New Jersey.

On February 19, 2019, petitioner submitted his application for a Special Carry Handgun License. After receiving petitioner's application, the New York City Police Department ("NYPD") License Division conducted an investigation into whether petitioner has demonstrated "proper cause" for the issuance of a Special Carry Business License.

The License Division's investigation revealed the following: (1) petitioner had been arrested on charges of Grand Larceny on November 2, 1999; (2) petitioner's New York State Driver's License had been twice suspended for failure to pay child support; and (3) petitioner had been involved in four domestic incidents from 2008 to 2014 surrounding petitioner's relationship with the mother of his child. On November 15, 2019, the License Division denied petitioner's application for a Special Carry Business License. In so doing, it cited petitioner's failure to demonstrate necessity as well as the aforementioned infractions as reasons for its denial.

On November 15, 2019, petitioner appealed the denial, which the License Division denied on February 27, 2020.

Petitioner then commenced the instant special proceeding, seeking to overturn the final determination of the License Division, arguing that the denial was arbitrary and capricious, irrational, and affected by multiple errors of law.

As an initial matter, petitioner seeks relief in the nature of mandamus as he requests that the Court issue an order directing respondents to issue petitioner a Special Carry Business License. However, as the determination to issue a license is discretionary and not ministerial, mandamus relief is not available. Brusco v Braun, 84 NY2d 674, 679 (1994) (holding that “[i]t is well settled that the remedy of mandamus is available to compel a governmental entity or officer to perform a ministerial duty, but does not lie to compel an act which involves an exercise of judgment or discretion”).

Further, the issuance of a handgun license is not a right, but a privilege subject to reasonable regulation. Parker v Nastasi, 97 AD2d 547, 467 (2d Dep’t 1983), *aff’d* 62 NY2d 714 (1984). Pursuant to Administrative Code § 10-131 and Penal Law § 400.00, the Police Commissioner is vested with broad discretion to regulate the possession of firearms within the City of New York.

Petitioner’s argument that he was denied due process and an opportunity to be heard at a hearing is without merit, as due process requires notice and an opportunity to be heard to protect the “security of interests that a person has already acquired in specific benefits.” Bd. of Regents of State Colleges v Roth, 408 US 564, 576 (1972). Petitioner has no vested right to a license to carry a concealed firearm. Moreover, “[b]ecause the issuance of a license is an exercise of discretion, there is no property interest in the renewal of an expired license and no constitutional due process right to a hearing.” Testwell, Inc. v. New York City Dep’t of Bldgs., 80 AD3d 266, 274 (1st Dep’t 2010).

In an Article 78 proceeding, the scope of judicial review is limited to the issue of whether the administrative action is rationally based. Matter of Pell v Board of Educ., 34 NY2d 222, 230-31 (1974). It is well settled that “a court may not substitute its judgment for that of the board or body it reviews *unless* the decision under review is arbitrary and unreasonable and constitutes an abuse of discretion.” Id. at 232 (internal citation omitted). The denial of petitioner’s application for a Special Carry Business License on the basis of his previous infractions and his failure to establish necessity is not arbitrary, capricious, or irrational.

The Court has considered petitioner’s other arguments, including those asserting violations of his Second Amendment rights and federal law preemption, and finds them to be unavailing and/or non-dispositive.

5/3/2021

DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT
OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: