Cruz-Rivas v. City of New York

Supreme Court of New York, New York County

December 17, 2021, Decided

INDEX NO. 155982/2021

Reporter

2021 N.Y. Misc. LEXIS 6517 *; 2021 NY Slip Op 32693(U) **

[**1] TYLER CRUZ-RIVAS, Petitioner, - v - THE CITY OF NEW YORK, THE NEW YORK CITY FIRE DEPARTMENT, Respondents.

Notice: THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

Judges: [*1] PRESENT: HON. ARLENE BLUTH, J.S.C.

Opinion by: ARLENE BLUTH

Opinion

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1-10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 were read on this motion to/for ARTICLE 78.

The cross-motion by respondents to dismiss the instant petition is granted.

Background

Petitioner claims that the denial of his application to become a firefighter for the FDNY was arbitrary and capricious. He contends that he successfully passed the exam and that issues only arose with respect to the residency requirement (petitioner had to live in New York City for certain years prior to taking the test). Apparently, petitioner went to a private high school in Orange County, New York and his address was listed at his mother's house in Orange County. He claims that after respondents inquired about this issue, he sent in evidence showing that he lived with his father in Manhattan and commuted to high school every day. He points to E-Z Pass records that purportedly support this claim. Petitioner also claims he sent in a tax return which showed he was a Manhattan resident during the applicable time period.

[**2] In support of their cross-motion to dismiss, [*2] respondents point out that petitioner took the firefighter exam in 2017, and the particular test required that he show he lived in New York City in 2014 and 2015. Respondents point to a letter (submitted by petitioner) from the FDNY's Candidate Investigation Division that insisted he had failed to provide satisfactory documentation to document his proof of residency (NYSCEF Doc. No. 7). This letter was dated May 9, 2019.

Respondents argue that the evidence petitioner now attempts to provide is simply too late and that this proceeding is time-barred. They claim that the respondents told petitioner he was ineligible in October 2019 and that petitioner's attorney drafted a letter about the residency issue in March 2021, well after the applicable limitations period had expired. Respondents

argue that the statute of limitations began to run on May 9, 2019 when they issued a determination that petitioner was not eligible based on the residency requirement. In the alternative, they claim it began to run in August 2019 (when the test results were revealed) or in October 2019 when a FDNY Deputy Commissioner reaffirmed petitioner's failure to meet the residency requirement.

In reply, petitioner [*3] claims that the determination did not become final and binding until March 3, 2021 when another FDNY commissioner rejected the information submitted by petitioner.

Respondents argue in their reply that petitioner's efforts were simply too late.

Discussion

The Court grants respondents' cross-motion and finds that the instant proceeding is time-barred. As an initial matter, the Court finds that the statute of limitations began to run on May 9, 2019 when the Candidate Investigation Division sent petitioner a letter stating he had not met the residency requirement (NYSCEF Doc. No. 7). Petitioner's email request that the FDNY [**3] reevaluate his application is dated October 2019, more than four months after he received the notice that he was not eligible (NYSCEF Doc. No. 4). Even assuming that the email response to petitioner on October 21, 2019 (*id.*) restarted the limitations period (rather than merely clarified the reasons for the denial), this case was not commenced until June 10, 2021.

The Court recognizes that the email from the FDNY in October 2019 states that "We await receipt of the requested information" (*id.*), but that does not compel a different result. The rest of that email explains [*4] why petitioner's application was denied and identified what he would need to do. It did not provide a new deadline by which petitioner had to submit information or represent that his application was still under consideration.

Moreover, this is not a case where petitioner sent in the requisite information right away or even within four months of that email. Instead, petitioner's counsel sent a letter on March 1, 2021 (NYSCEF Doc. No. 8). The Court cannot embrace petitioner's reading of the October 2019 email from respondents, which essentially asks the Court to view it as an open-ended invitation to send in information at petitioner's convenience. The letter from respondents on March 3, 2021 makes that clear (NYSCEF Doc. No. 9). It states that the documentation petitioner provided "was not timely filed and cannot be used to determine his residence" (*id.*).

It may be that petitioner could have established that he lived in Manhattan during the applicable time period had he timely submitted the evidence upon which he now relies. But, for some reason, he failed to submit the appropriate documentation along with his initial application or in response to respondents' October 2019 email. He waited [*5] over a year and half to contact respondents again in March 2021 and then waited to file the instant action in June 2021. While the language from respondents in the October 2019 email could have been clearer regarding the [**4] denial of petitioner's application, there is no basis to find that petitioner could wait more than a year to send in the required documentation.

The extent to which petitioner points to the ongoing pandemic and various executive orders does not save this proceeding. The earliest executive order from the governor tolling applicable deadlines was on March 20, 2020, long after the limitations period at issue here expired (even assuming it started on October 21, 2019- the date of respondents' email).

Accordingly, it is hereby

ADJUDGED that the cross-motion by respondents to dismiss the petition is granted, the petition is denied in its entirety and the Clerk is directed to enter judgment accordingly along with costs and disbursements upon presentation of proper papers therefor.

12/17/2021

DATE

/s/ Arlene Bluth

ARLENE BLUTH, J.S.C.
