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AUG 17 1998

LOS ANGELES
SUPERIOR COURT

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES
10

11 ANTHONY MARIO ASSENZA,)	CASE NO. BC 115813
et al.,)	
12 Plaintiffs/Petitioners,)	PLAINTIFFS AND/OR APPLICANTS'
13 vs.)	OPENING BRIEF AS PER COURT
14 CITY OF LOS ANGELES, et al.,)	ORDER OF JULY 27, 1998.
15 Defendants/Respondents,)	Date: Sept 25, 1998
16)	Time: 8:30 a.m.
17)	Dept: 14

18 Additional Attorneys for Plaintiffs:

19 Don B. Kates, Jr.
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22 COME NOW PLAINTIFFS who submit the following Opening Brief
23 pursuant to this Court's Order of July 27, 1998 regarding the
24 issue of appointment of experts and the standard for review.

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1 1. INTRODUCTION

2 Plaintiffs' agree that the Court has the plenary power to
3 appoint an expert to assist the Court as to whether a new
4 applicant has "good cause."

5 The Court has further expressed concern regarding the
6 precedential effect that any ruling in the instant matter may have
7 for the community at large. In the large sense, when plaintiffs
8 renewal applicants, non-plaintiffs renewal applicants, defendants'
9 denied first-time applicants, and future applicants are
10 considered, this may be true. As the Court stated, "One would be
11 naive, indeed to think that this case, and the decision which
12 flows from it, will not set some sort of a precedent in this
13 community." (Reporter's Transcript of Proceedings, Monday, July
14 27, 1998 at page 30, lines 8 through 11.) However, now that the
15 field of parties involved in the instant action has narrowed to
16 only five original plaintiffs renewal applicants, that
17 precedential effect has already occurred.

18 As set forth below, with regard to the standard of review and
19 whether an expert is needed, those questions were answered for
20 those persons presently involved, approximately four years ago and
21 are now res judicata, the time for appeal having long since run.
22 Plaintiffs strongly assert that it would be inappropriate for the
23 Court to now revisit issues, in the instant case, which have been
24 decided by final judgment.

25 2. RES JUDICATA

26 The only issue the City is contesting is that of the "good
27 cause" of the plaintiffs renewal applicants.

28 The following colloquy occurred between the Court and Mr.

1 Boeckman, at the hearing on July 27, 1998:

2 "The Court: Very well. Who then, sir, will testify on
3 behalf of the defendants on the issue of what the plaintiff
4 applicants claim to be a lack of good cause for the denial?

5 Mr. Boeckman: Your honor, we don't claim that there is a
6 lack of good cause in this proceeding. What we are claiming in
7 this proceeding is that the plaintiffs have a burden under Code of
8 Civil Procedure Section 1085 to come forward and establish good
9 cause.

10 The Court: Other than in their declarations?

11 Mr. Boeckman: No, your Honor. What I am saying is that we
12 are not challenging what is said in their declaration. ..."

13 (Reporter's Transcript at page 11, lines 7-20).

14 The Judgment before the Court for enforcement, contains the
15 following provisions, which are now res judicata:

16 "The allegations of the complaint showed good cause as to all
17 of the plaintiffs who sought to be issued licenses." (Amended
18 Judgment, Exhibit 3 of Exhibits in Support of Order to Show Cause
19 at page 2 lines 26-27).

20 The allegations referred to above are contained in the
21 complaint in this action at paragraph 3 thereof: "3. Each of the
22 plaintiffs has submitted an application to the defendant for a
23 Concealed Weapons Permit. Each of the plaintiffs is, as above
24 stated, a person who is entitled a permit and has completed the
25 requisites of California Penal Code Section 12050, i.e., they are
26 residents of the County of Los Angeles, of good moral character,
27 and in their application have exhibited the facts that good cause
28 exists for the issuance of the license/permit." Therefore, the

1 "good cause" as stated by the plaintiffs in their original
2 applications prior to suit has been adjudged, decreed and entered
3 and is a final judgment in this action. As long as the facts
4 giving rise to that "good cause" have not changed materially, the
5 plaintiffs still have "good cause." The five plaintiffs at issue
6 in the present proceeding were among the original plaintiffs and
7 have submitted evidence in a declaration, as provided for in the
8 Judgment, of their continued "good cause." Expert testimony
9 cannot change that which is res judicata. Particularly, where the
10 Judgment was a stipulated judgment, as in the instant case.

11

12 3. ADDITIONAL PROVISIONS ARE ALSO RES JUDICATA

13 Paragraph "E" of the Judgment is, as the Court correctly
14 noted, ambiguous at best. This is understandable where a complex
15 policy is reduced to a paragraph of approximately 74 words. That
16 is why paragraph "F" was included for "interpretation and
17 implementation" and constitutes approximately 1412 words. It is
18 exceedingly important for the Court to note that paragraph "E"
19 cannot be interpreted or implemented without "F". In other words,
20 "E" is unintelligible without "F."

21 4. STANDARD FOR REVIEW

22 The standard for review in this action, as well as for
23 similar cases, is that of independent judgment on the basis of a
24 limited trial "de novo" because a fundamental right is involved.

25 A fundamental right is involved here. The California
26 Constitution, Article 1, §1 states:

27 "All people are by nature free and independent and have
28 inalienable rights. Among these are enjoying and defending life

1 and liberty, acquiring, possessing and protecting property, and
2 pursuing and obtaining safety, happiness and privacy."

3 California Constitution, Article 1, Section 1.

4 "Constitutional provisions should be construed according to
5 natural and ordinary meaning of its words." City and County of
6 San Francisco v. County of San Mateo (1995) 10 Cal. 4th 554.

7 9 Witkin California Procedure, 4th Edition, Section 122 at
8 page 1166, states as follows:

9 "In reviewing factual determinations by an agency without
10 judicial power under the California Constitution, courts exercises
11 independent judgment and weigh the evidence if the proceeding
12 substantially deprives a party of fundamental vested right"
13 (emphasis added). See also, Bixby v. Pierno (1971) 4 Cal. 3d 130.

14 In Fukuda v. City of Angeles Camp, (1998) 63 Cal. App. 4th
15 1426 the court stated, at page 1430, as follows:

16 "The scope of review in mandamus proceedings defines the
17 deference to be accorded administrative decisions or the degree to
18 which the correctness of the administrative determination is to be
19 presumed. When a decision substantially affects a fundamental
20 right, courts consistently have held that the judiciary is to
21 exercise a vigilant and expansive role in reviewing the
22 administrative decision. (Webster v. Trustees of Cal. State
23 University (1993) 19 Cal. App. 4th 1456, 1462 . . .; McMillen v.
24 Civil Service Comm., supra, 6 Cal. App. 4th at p. 129, 301; Ocean
25 Ave. Corp. v. Santa Monica Rent Control Bd., supra 228 Cal. App.
26 3d at p. 1555; San Dieguito Union High School Dist. v. Commission
27 On Professional Competence, supra, 174 Cal. App. 3d at p. 1180).

28 The court must exercise its independent judgment on the evidence

1 and the administrative decision is entitled to less deference when
2 a fundamental right is implicated.

3 In this context, the trial court supplants the administrative
4 agency as the ultimate finder of fact. [cite omitted] It is at
5 liberty to independently assess credibility. [cites omitted]"

6 The court in Fukuda, supra, at page 1431, went on to note
7 that ". . . burden of proof as the burden producing evidence
8 rarely applies in mandamus proceedings because evidence is rarely
9 produced in superior court."

10 5. CONCLUSION

11 In the case at bar, the only evidence before the court is the
12 uncontradicted and uncontroverted and admittedly credible evidence
13 presented by plaintiffs in their renewal applications and
14 declarations in support thereof. These declarations and
15 applications establish that the plaintiffs were issued permits
16 based upon the "good cause" enunciated by the five categories of
17 criteria for licensure contained in the Judgment as was correctly
18 stated by the court at page 20 of the Reporters Transcript of
19 Proceedings before this Court on July 27, 1998; further that the
20 plaintiffs' circumstances giving rise to that "good cause" remain
21 the same or are now greater. Those circumstances were agreed by
22 stipulation and judgment. Defendants have produced no evidence
23 controverting the facts contained in plaintiffs applications and
24 declarations. Therefore, plaintiffs' evidence contained therein
25 must be considered proved.

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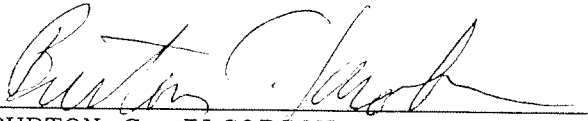
1 Based on the current record in the case at bar, and the above
2 stated authorities, it is respectfully requested that this Court
3 order the defendants to immediately issue the permits to the five
4 plaintiffs.

5 Dated: August 14, 1998

Respectfully submitted,

BURTON C. JACOBSON
WILLIAM A. CRAWFORD

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9 By:


BURTON C. JACOBSON
Attorneys for
Plaintiffs/Petitioners

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STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)


I, JENNIFER HANSEN, declare:

I am over the age of 18 years, employed in the county of Los Angeles, and am not a party to the within action; my business address is 424 South Beverly Drive, Beverly Hills, California 90212.

On August 14, 1998, I served the foregoing document described as PLAINTIFFS AND/OR APPLICANTS' OPENING BRIEF AS PER COURT ORDER OF JULY 27, 1998 on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope, with postage fully prepaid, in the United States mail at Beverly Hills, California 90212, addressed as follows:

James K. Hahn, City Attorney
Frederick N. Merkin, Senior Assistant City Attorney
Byron Boeckman, Assistant City Attorney
1800 City Hall East
200 North Main Street
Los Angeles, CA 90012

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on August 14, 1998, at Beverly Hills, California.



JENNIFER HANSEN