

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

In the Matter of the Application of JIANA BOONE,

Index No. _____

Petitioner,

For a Judgment Pursuant to CPLR Article 78

VERIFIED PETITION

— against —

THE NEW YORK CITY DEPARTMENT OF
EDUCATION; CARMEN FARINA, as Chancellor
of the New York City Department of Education,

Respondents.

X

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

INTRODUCTORY STATEMENT

This Article 78 proceeding is brought to challenge and reverse the New York City Department of Education’s (“DOE”) discriminatory decision denying Petitioner Jiana Boone’s eligibility for employment as a School Bus Attendant. Respondents DOE and Carmen Farina (collectively, “Respondents”) have barred Petitioner from employment solely because of a four-and-a-half year old petit larceny misdemeanor conviction that has no bearing on her ability to perform her duties as School Bus Attendant. Granting Ms. Boone employment as a School Bus Attendant would not impose an unreasonable risk to the safety and welfare of the school community, nor does it bear a direct relationship between the conviction and the license. There is simply nothing in the record that would support such a finding.

Accordingly, Petitioner challenges Respondents’ actions on the grounds that they were arbitrary and capricious, constituted an abuse of discretion, and were taken in violation of Article 23-A of the Correction Law (N.Y. Correction Law §§ 750, et seq.), the “New York State Human

Rights Law” (N.Y. Executive Law § 296(15)), and the “New York City Human Rights Law” (N.Y.C. Administrative Code § 8-107(10)). These laws were enacted to ensure that persons previously convicted of criminal offenses are considered fairly for employment. Respondents’ failure to make an individualized determination, their improper weighing of the eight factors listed in Correction Law § 753(1), and their subsequent pro forma denial of Ms. Boone’s employment application was arbitrary and capricious, an abuse of discretion, unlawful, and contrary to the legislative purpose of Correction Law Article 23-A.

JURISDICTION, VENUE, AND PARTIES

1. This Court has jurisdiction in this matter pursuant to § 7801, et seq. of the Civil Practice Law and Rules (“CPLR”), § 755 of New York Correction Law, and § 3001 of the CPLR.

2. Venue is properly set in New York County pursuant to CPLR §§ 7804(b) and 506(b) because Respondents’ principal office is located at 52 Chambers Street, New York, New York, within this judicial district.

3. Petitioner, Jiana Boone, resides at 484 East Houston Street Apt. 10G, New York NY 10002.

4. Respondent New York City Department of Education is located at 52 Chambers Street, New York, New York.

5. Respondent Carmen Farina is Chancellor of the DOE; her office is located at 52 Chambers Street, New York, New York.

STATEMENT OF FACTS

6. Ms. Boone is currently 25 years old.

7. Ms. Boone presently maintains two jobs. First, Ms. Boone is employed at Ricky's NYC as a sales representative where she assists customers and handles cash. This position started as seasonal and she was subsequently hired as a full-time employee. Additionally, Ms. Boone works part-time as a receptionist for the cardiology medical offices of Drs. Michael and Geraldo Zullo where she handles individuals with medical needs and sensitive medical data. These jobs require Ms. Boone to be working every day of the week. While both jobs assist Ms. Boone in paying her bills, her dream is to have a career where she can assist special needs children.

DOE Certified Training Program

8. On or around July 2014, Ms. Boone heard about a training program for a company called "Bus Drivers R Us," a New York City DOE approved Office of Pupil Transportation training center, where she could be trained and certified as a "School Bus Attendant" to work with special needs children with the DOE. The position would allow Ms. Boone to assist special needs children going to and from school. DOE's website describes the position as follows: "every special education vehicle must have an attendant responsible for assisting special education children during their ride to and from school. An attendant is also required to assist each child from the bus to the front door of the school."¹ Importantly, the job description and duties does not require sales transitions or handling of money.

9. Ms. Boone excitedly set up an appointment to start the training. When talking with the program staff at Bus Drivers R Us, Ms. Boone immediately disclosed that she had a

¹ See <http://schools.nyc.gov/Offices/Transportation/VendorResources/AttendantInformation/default.htm>.

misdeemeanor conviction for petit larceny. She was was informed by Bus Drivers R Us that it should not cause a problem. At \$470, the cost for the program and certification was steep for Ms. Boone and so she borrowed money from her mother to sign up.

10. Certification to be a School Bus Attendant requires a number of paid training courses and certifications. Ms. Boone completed all required trainings and obtained all required certifications. On August 18, 2014, Ms. Boone successfully completed the requirements for Adult and Pediatric First Aid/CPR/AED (exhibit A). On August 19, 2014, Ms. Boone completed the required 2-hour Refresher Course for school bus safety as mandated by DOE Regulations (exhibit B). Later that same day, Ms. Boone completed the two hours of Pre-Service Instruction also required by DOE Regulations (exhibit C). On August 20, 2014, Ms. Boone completed the required five sessions of basic instruction in School Bus Attendant Basic Training Program (exhibit D). Next, Ms. Boone completed all three standards of the Physical Performance Test (exhibit E). Additionally, Ms. Boone successfully completed the Bus Attendant “30 hrs. Course” on August 22, 2014 (exhibit F). Finally, Ms. Boone successfully completed an American Red Cross approved class in the field of Blood borne Pathogens (exhibit G).

11. While it was training the participants, Bus Drivers R Us was preparing individuals for September 2014 hire dates to accommodate the new school season. Specifically, Ms. Boone was preparing for a position with the bus company “Happy Child” and had obtained all requirements for hire other than the last step of obtaining approval from the DOE.

12. Ms. Boone applied for her employment through the DOE and disclosed her sole conviction for petit larceny.

Ms. Boone’s Criminal Conviction History

13. In early 2010, Ms. Boone was employed at Best Buy as a Sales Operator. She assisted customers over the phone and in person with orders and returns. During the course of her employment, Ms. Boone was approached by another employee and was informed that, if she made copies of the receipts for some of the orders being placed for in-store pickup and provide the receipts to this employee, she could make some extra cash. Ms. Boone made the mistake of taking the opportunity.

14. On May 11, 2010, Ms. Boone was called into the Best Buy security office in which Best Buy asked her if she participated in the above actions. She immediately admitted that she had participated, had made a mistake, and would pay back any restitution. The police were called and arrested Ms. Boone.

15. This was Ms. Boone's first arrest in her life.

16. Ms. Boone was only 20 years old.

17. The single charge against Ms. Boone was the misdemeanor of Petit Larceny, PL § 155.25. The court released Ms. Boone on her own recognizance with a court date scheduled for December 16, 2010.

18. PL § 155.25 defines Petit Larceny simply by stating that "a person is guilty of petit larceny when he steals property." It is the lowest level theft charge, and is a non-violent, non-drug related misdemeanor.

19. On her second court date, Ms. Boone entered a plea of guilty to the sole charge of Petit Larceny, PL § 155.25 (exhibit H). Ms. Boone was sentenced to ten days of community service and restitution. Ms. Boone completed the community service and, with the help of mother, was able to complete her restitution payments. *Id.*

20. This is the extent of Ms. Boone's criminal conviction history.

21. On July 30, 2014, Ms. Boone was granted a Certificate of Relief for her sole misdemeanor conviction. The Honorable Tamiko Amaker issued Ms. Boone's certificate to "relieve [Ms. Boone] of all disabilities and bars to employment, excluding the right to be eligible for public office." (exhibit I).

Ms. Boone's DOE Employment License Application Process

22. At the completion of all required trainings and certifications, Ms. Boone applied for her employment license through the DOE. Ms. Boone disclosed her misdemeanor petit larceny criminal conviction and was scheduled for an interview with the DOE Office of Personnel Investigation on or about September 2014.

23. Ms. Boone interviewed with Ms. Toure Kisha. At the interview, Petitioner informed Ms. Kisha about the facts and details of Ms. Boone's conviction, and provided a copy of her Certificate of Disposition (exhibit H), Certificate of Relief (exhibit I), resume, a letter of recommendation from Henry Street Settlement, a letter of recommendation from a neighbor, a list of three references (exhibit J), the Happy Child application letter, and other documents. Ms. Boone explained that she learned from her youthful mistake that that everyone should get a second chance. The complete file, and copies of all the above material, is within the exclusive possession of the DOE, has been requested on numerous occasions via the New York Freedom of Information Law, and has not been provided to Petitioner as of the filing date. (*see* ¶ 29 and exhibit N).

24. Ms. Boone further explained that, over the following four-and-a-half years since the conviction, she has led a successful and productive life. Ms. Boone has held a number of employment positions: Ms. Boone worked for Uptown Chevy as a full time receptionist, a job requiring her to independently handle money. When the Chevy dealership foreclosed, Ms. Boone

attended LaGuardia Community College where she was majoring in Liberal Arts and Social Sciences. Unfortunately, she had to stop attending college due to the inability to meet the tuition payments. Finally, Ms. Boone explained that she received a Certificate of Relief for the conviction.

25. In an unsigned letter dated October 6, 2014, the DOE denied Ms. Boone's application for license (exhibit K). The letter first states very general, template language outlining the law found within Correction Law §750. The only unique language was as follows: Ms. Boone's "recent Misdemeanor conviction for Petit Larceny demonstrates illegal behavior during the court of employment, poor judgment, and lack of moral character . . . in addition, as a result of your criminal conviction, you were terminated from your position at Best Buy." Id. The letter denies Ms. Boone on two grounds. First, it states there is a direct relationship between Ms. Boone's misdemeanor conviction for Petit Larceny and the non-money handling job of School Bus Attendant. Second, the letter states that this same Petit Larceny conviction creates an unreasonable risk to the safety and welfare to the school community.

26. Upon receiving the letter, Ms. Boone was shocked that she was denied solely on a four-and-a-half year old misdemeanor conviction unrelated to her potential position as a School Bus Attendant. Ms. Boone spoke with the DOE on or about October 10, 2014, and was informed that the determination was not final, as she had the right to file a "Letter of Reconsideration."

27. Ms. Boone retained counsel from the nonprofit Youth Represent and a reconsideration demand was filed on November 13, 2014 (exhibit L).

28. On January 9, 2015, the DOE mailed Ms. Boone a final denial letter (exhibit M). The original finding was affirmed with some telling language. Specifically, the affirmation stated that the denial was on the basis of "the specific nature of your *recent* offense, *abusing your position*

of authority over a group vulnerable to you and your subsequent lack of sufficient satisfactory employment.” (*Id.* emphasis added). No further clarity was provided as to who this new, mysterious “vulnerable group” was in which Ms. Boone was alleged to have abused her position over.

29. On February 2, 2015, a Freedom of Information Law Request was submitted to the DOE requesting all documents related to Ms. Boone’s application (exhibit N). The DOE has twice requested an extension of time since the initial request, and as of the filing of this petition, the DOE has not provided the requested documents. *Id.*

30. On February 12, 2015, a Notice of Claim was served on both the NY Law Department Office of Corporation Counsel as well as the Comptroller’s Office (exhibit O).

VIOLATIONS OF LAW

COUNT I RESPONDENTS’ EMPLOYMENT DECISION VIOLATED ARTICLE 23-A OF THE CORRECTIONS LAW

31. Ms. Boone realleges and incorporates by reference all preceding allegations of law and fact.

32. Article 23-A of the Correction Law requires Respondents to make a fair and reasoned decision—based on the required factors set forth in that law—about whether Ms. Boone’s conviction directly related to the duties of a school bus attendant or whether her employment would pose an unreasonable risk to persons or property.

33. In light of Ms. Boone’s employment and rehabilitation history, her Certificate of Relief, and the facts relating to the conviction itself, which were documented to the DOE, Respondents’ determination to deny Ms. Boone the school bus attendant license was arbitrary and capricious, and constituted an abuse of discretion.

34. Respondents' actions violated the anti-discrimination provisions of Article 23-A of the Correction Law, §§ 750-755.

COUNT II

RESPONDENTS' EMPLOYMENT DECISION VIOLATED NEW YORK STATE HUMAN RIGHTS LAW

35. Ms. Boone repeats and realleges each paragraph above as if fully set forth herein.

36. By violating Article 23-A of the Correction Law, Respondents committed an unlawful employment practice in violation of the New York State Human Rights Law, Executive Law § 296(15).

COUNT III

RESPONDENTS' EMPLOYMENT DECISION VIOLATED NEW YORK CITY HUMAN RIGHTS LAW

37. Ms. Boone repeats and realleges each paragraph above as if fully set forth herein.

38. By violating Article 23-A of the Correction Law, Respondents committed an unlawful employment practice in violation of the New York City Human Rights Law, N.Y. City Admin. Code §§ 8-107(a) and (b).

39. Pursuant to the *Williams v. New York City Hous Auth.*, 2009 NY Slip Op 440, 3-4 (N.Y. App. Div. 1st Dep't, Jan. 27, 2009), the Court must make an independent inquiry, apart from the inquiries under the above-mentioned state laws, into whether the DOE violated the City Human Rights Law.

WHEREFORE, Petitioner seeks judgment pursuant to Article 78 of the Civil Practice Law and Rules:

40. Adjudging and declaring that Respondents' actions in denying Ms. Boone employment:

- a. Were arbitrary and capricious, and an abuse of discretion;
- b. Were in violation of Correction Law §§ 750-755;
- c. Were in violation of Executive Law § 296(15);
- d. Were in violation of New York City Admin. Code § 8-107(10); and
- e. Are null and void;

41. Directing Respondents to rescind their employment denial and permit Ms. Boone to be hired by the DOE for a school bus attendant position or any comparable position in a New York City public school;

42. Entering judgment on behalf of Ms. Boone and against Respondents in an amount representing back pay and all other rights, privileges or benefits that Ms. Boone would have been or become entitled to had she not been denied employment as a school bus attendant in the New York City public school system;

43. In the alternative, directing a trial of any triable issues raised by the pleadings and proof of the parties;

44. Awarding Ms. Boone attorney fees and costs as permitted by the New York Equal Access to Justice Act, CPLR § 8601 or New York City Human Rights Law, Admin. Code § 8-502(g); and

45. Granting such other and further relief as this Court deems just and proper.

Dated: April 8, 2015
New York, New York

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