

**Boatwright v New York State Office of Mental
Retardation and Developmental Disabilities**

2007 NY Slip Op 30911(U)

April 18, 2007

Supreme Court, New York County

Docket Number: 0100330/2007

Judge: Emily Jane Goodman

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

PRESENT: EMILY JANE GOODMAN
Justice

PART 17

MICHAEL BOATWRIGHT

MOTION INDEX NO. 100330/07

MOTION DATE _____

- v -

MOTION SEQ. NO. 001

New York State Office of Mental Retardation
and Developmental Disabilities

MOTION CAL. NO. _____

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits: Not accepted as it was not filed.

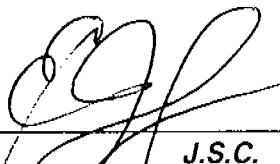
PAPERS NUMBERED

Cross-Motion: Yes No

Upon for foregoing papers, it is ordered that this Petition is decided in
accordance with Decision, Order and Judgment attached.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk
and notice of entry cannot be served based hereon. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
141B).

Dated: April 18, 2007



J.S.C.

EMILY JANE GOODMAN

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : I.A.S. PART 17

-----X
MICHAEL BOATWRIGHT,

Petitioner,

Index No. 100330/07

-against-

NEW YORK STATE OFFICE OF MENTAL
RETARDATION AND DEVELOPMENTAL
DISABILITIES,

Respondent.

-----X
EMILY JANE GOODMAN, J.S.C.:

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk
and notice of entry cannot be served hereon. To
obtain entry, counsel or a party must personally appear
appear in person at the Judgment Clerk's Desk (Room 141B).

Michael Boatwright, 52 years of age, is employed by the New York City Department of Education as a teacher's classroom aide. In an effort to increase his experience, income, and to qualify for union membership and benefits, and to acquire a suitable apartment, Mr. Boatwright applied for a job with United Cerebral Palsy (UCP) which functions under the auspices of the New York State Office of Mental Retardation and Developmental Disabilities (OMRDD). He was hired by UCP on a temporary basis, but was soon terminated. The termination was effectuated by OMRDD because of a previously disclosed 21-year-old conviction of a Class E felony, attempted possession of a weapon in the third degree. At the time of that incident, 1985, Boatwright was approximately 30, working as a security guard, and had no other record. He pled guilty and was placed on probation for five years. However, he was discharged from probation early as a result of his cooperation and good conduct. In fact, he received a certificate of Good Conduct, and a Certificate of Relief from Disabilities, from the State of New York,

both intended to remove barriers to employment and to a productive life despite a criminal conviction. When routine, required fingerprinting and a record search reported the already disclosed 1985 incident, OMRDD denied Boatwright's application.

Under state law enacted, to establish reasonable procedures to preventing unfair discrimination against former criminal offenses in regard to licenses and employment, the following specific factors must be considered:

- (a) The public policy of this state, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
 - (b) The specific duties and responsibilities necessarily related to the license or employment sought.
 - (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such other duties or responsibilities.
 - (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
 - (e) The age of the person at the time of occurrence of the criminal offense or offenses.
 - (f) The seriousness of the offense or offenses.
 - (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
 - (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.
- Correction Law Art. 23-A §753¹

Michael Boatwright would seem to be the perfect candidate for application of the relevant law and the carrying out of its public policy. UCP had, with full knowledge of his history, already decided to hire Boatwright. With the same record and the same

¹Petitioner also relies on NYS Human Rights Law §296, Art. 15 (15) and NYC Human Rights Law Administrative Code 18-107(a)(10) which bar public job discrimination based on conviction alone.

background check, he had been hired by the New York City Department of Education, which continues to employ him in a comparable position, i.e., working with a “vulnerable population,” namely school children. The conviction is decades old, it was not job related, no weapon was used, there was no violence and he has never again been in trouble with the law. His rehabilitation is clear, he is active in his community and his church, he is enrolled in classes in La Guardia Community College (CUNY), he is middle-aged, was convicted of the lowest felony, has worked for the NYC Parks Department Summer Youth Program - - again, with youths, a “vulnerable population,” and now has comparable employment interacting with public school students in his work for the NYC Department of Education. Nevertheless, he was turned down.

Naturally, any felony conviction must be taken seriously. But the question is whether Michael Boatwright’s disqualification from employment because of the conviction, was arbitrary, capricious, and/or an abuse of discretionary powers.² In light of public policy and law which require that foreclosure of public employment based on criminal record alone be closely scrutinized, we must closely scrutinize the state’s submissions. The initial determination to deny the application was made by an “Associate Personnel Administrator,” in other words, a clerk. His report is not submitted, merely a form denial. He notified Boatwright of the rejection, informing him that he could write as to why the determination should be reversed. Boatwright did submit a

²It is well known that lawyers and doctors with felony records have been granted licenses to practice in this date despite convictions for narcotics, robbery, weapons, and bail jumping.

letter along with six letters of reference. Still, the denial was ratified.

An affirmation from an attorney, Margaret Drake, refers to prejudicial material clearly not related to Mr. Boatwright or his petition, perhaps left over from another case, i.e., references to the potential for verbal, physical, sexual misconduct. Her 10-line, one paragraph, “memo to file” gives absolutely no reasoning, but recites, totally tracking the statute, the required factors she allegedly considered before denying the application. In the same paragraph in which she acknowledges receiving six letters of reference, which were from the Pastor of his church (where he is on the Board of Trustees), LaGuardia Community College (where he is enrolled in various courses), a teacher who has known him for 11 years and recommends him for work with children, an executive of Morgan Stanley, South Jamaica Senior Service Program applauding his work with seniors (another vulnerable population), the attorney goes on to say, “no further information on rehabilitation or good conduct.” The recommendations apparently don’t count. In conclusory form she writes, “Direct relationship found between job and previous conviction... . Employment would involve unreasonable risk to safety and welfare of consumers or general public.” She does not discuss how Boatwright could endanger the UCP or general population in carrying out his duties and responsibilities, but merely decides that he would.

The Court cannot reconcile the claim that Ms. Drake analyzed and considered the merits, with the rubber-stamping of “Denial.” She does not consider six letters as “further

information on rehabilitation or good conduct.” Nor does she consider his employment record and in particular his Department of Education position. She simply concludes her “memo to file” with a 10-line decision of denial.

If Michael Boatwright is not acceptable, who is? The Court is bound to question what individual with a felony conviction in his or her past, can benefit from the Correction Law which was enacted specifically to permit individuals like Michael Boatwright to be productive members of society. The statute, enacted in 1976, with the then-Governor’s statement

“Observers of our criminal justice system agree that the key to reducing crime is a reduction in recidivism... . The great expense and time involved in successfully promoting and incarcerating the criminal offender is largely wasted if upon the individual’s return to society, his willingness to assume a law-abiding and productive role is frustrated by senseless discrimination.

“Providing a former offender a fair opportunity for a job is a matter of basic human fairness, as well as one of the surest ways to reduce crime.”

Gov. Hugh L. Carey on approving L.1976 c 931
(now Correction Law supra)

The rejection of Michael Boatwright suggests to this Court that in the view of the OMRDD, there is no such thing as rehabilitation, or overcoming a conviction, and that the notion that one with a conviction can benefit from this state’s public policy of affording jobs to the once-convicted is illusory.

While this Court cannot substitute its judgment for that of the underlying agency, one is forced to ponder how the agency could have arrived at its determination which is surely arbitrary, since no analysis of the factors was done. If such factors of rehabilitation and public policy were or are to be rationally considered, one cannot see how any other conclusion could be reached, but that Boatwright should be approved as the model person the law is designed to benefit.

The respondent's reliance on Arrocha v. Board of Education, in which the Court of Appeals, reversing two lower courts, upheld the Board's denial of a teaching license, is misplaced. There, the applicant who applied for a job as a public school teacher, had been convicted of sale of cocaine only nine years before, was sentenced to 2-6 years in a New York State prison; was convicted of a class "B" felony ("A" being the most serious) which is listed in Executive Law 845-b as a crime which if committed within the last 10 years, carries a presumption that the application should be denied. The Court concluded that it was proper in those circumstances to find that licensing the applicant would "pose a risk to the safety and welfare of the student population and Board of Education employees." (Arrocha v. Board of Education City of New York, 93 NY2d 361 [1999]). Moreover, in that case, the Board did evaluate and analyze each element of the statute and did not just issue a cavalier denial as appears to be the case here.

The agency decision must be vacated as arbitrary and capricious, for the foregoing reasons including that no analysis of the factors were done. (See Gallo v. OMRDD, 38


AD3d 984 [3rd Dept 2007] [decision denying application for employment as a bus driver based on conviction for assault vacated and remanded because all factors under Correction Law were not addressed]).

The Court concludes that the agency abused its discretion and acted in an arbitrary and capricious manner and must revisit the application. Petition granted, decision vacated and matter remitted to OMRDD for further proceedings.

This constitutes the Decision, Order and Judgment of the Court.

Dated: April 18, 2007

ENTER:



J.S.C.
EMILY JANE GOODMAN

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