

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

-----X
In the Matter of the Application of
MICHAEL BOATWRIGHT,

: Index No. 100330/07

Petitioner,

:
: **VERIFIED PETITION**

For a judgment pursuant to Article 78, C.P.L.R.,

-- against --

THE NEW YORK STATE OFFICE OF MENTAL
RETARDATION AND DEVELOPMENTAL
DISABILITIES,

Respondent.
-----X

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

INTRODUCTORY STATEMENT

This proceeding is brought to challenge and reverse respondent New York State Office of Mental Retardation and Developmental Disabilities' ("OMRDD," or "respondent") discriminatory determination, dated September 6, 2006, to deny petitioner Michael Boatwright employment with United Cerebral Palsy ("UCP") because of his single twenty-one year old criminal conviction. OMRDD made this decision without eliciting, obtaining or considering the information that, under New York State law, all employers must obtain and consider before denying job applications based on a criminal record – information which would have made it clear that Mr. Boatwright had long since been rehabilitated that that his conviction was not directly job-related, and that he was not an unreasonable risk to persons or property. OMRDD's decision, therefore, violated the New York State Correction Law, Article 23-A , §§ 750-755, the New York State Executive Law (the "New York State Human Rights Law"), § 296(15), the New York

City Administrative Code (the “New York City Human Rights Law”) § 8-107, and the New York State Executive Law §845-b(5)(b). These law were all enacted to ensure that persons previously convicted of criminal offenses do not suffer discrimination in employment and to reflect the state’s public policy to encourage employment of individuals previously convicted of criminal offenses. The decision also was arbitrary and capricious, and an abuse of discretion.

OMRDD’s decision was also arbitrary and capricious, and an abuse of discretion. OMRDD’s own emergency regulations governing criminal background checks for job applicants at facilities that OMRDD funds or regulates fail to incorporate the fundamental provision in the overarching statute, Executive Law § 845-b, that OMRDD make its employment decisions consistent with Article 23-A of the Correction Law. The pertinent section of the emergency regulations, 14 N.Y.C.R.R. § 633.22(i)(2), gives OMRDD personnel no guidance whatsoever in making these decisions. Upon information and belief, OMRDD did not seek or obtain any information about Mr. Boatwright that would have allowed it to make a fair or rational decision.

I. JURISDICTION, PARTIES AND VENUE

1. Petitioner, Michael Boatwright, resides at 419 East 135th Street, Bronx, New York. Petitioner applied for a job as a Residential Program Specialist with United Cerebral Palsy (“UCP”) at one of UCP’s three Bronx offices, located at 1770 Stilwell Avenue. The job was to be located in the Bronx, at a new residential facility. Respondent OMRDD denied Mr. Boatwright’s application in a letter it sent to him at his Bronx address.

2. Respondent OMRDD is a public agency. Its main office is located at 44 Holland Avenue, Albany, New York. It maintains a regional office at 75 Morton Street, New York, New York. OMRDD fingerprinted Mr. Boatwright at its New York County office.

3. Based on these facts, venue is properly set in New York County pursuant to C.P.L.R. §§ 7804(b) and 506(b), because material events at issue in this proceeding took place in both New York and Bronx Counties.

II. LEGAL FRAMEWORK

4. Michael Boatwright is one of thousands of New Yorkers whose employment applications are subject to an interrelated series of New York State laws prohibiting unfair employment discrimination against individuals with past convictions. Mr. Boatwright's conviction occurred 21 years ago.

5. First and chief among these laws is Article 23-A of the Correction Law, §§750-755, enacted in 1976 "to establish reasonable procedures to prevent...unfair discrimination against former criminal offenders in regard to licensure and employment," as the Governor stated in his Memorandum approving Article 23-A. A copy of the Governor's Memorandum, reprinted in McKinney's 1976 Session Laws at p. 2458, is annexed as Exhibit A.

6. Section 752 of the Correction Law prohibits public agencies and private employers in New York from denying employment to an individual on the basis of a prior criminal conviction unless there is a "direct relationship" between the individual's prior offense and the specific employment sought, or unless granting

employment to the individual “would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.” N.Y. Correct. Law § 752.

7. Section 753 further requires that, in determining whether to employ an individual with previous conviction(s), public agencies and private employers must consider a series of factors set forth in the statute, including the public policy of the state to encourage the employment of such individuals, the specific duties and responsibilities of the job sought, 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 duties or responsibilities, the time which has elapsed since the occurrence of the criminal offense or offenses, the age of the person at the time of occurrence of the criminal offense or offenses, the seriousness of the offense or offenses, any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct, and 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. N.Y. Correct. Law § 753(1).

8. Section 753 of the Correction Law also requires that any public agency prospective employer subject to the law “give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein.” N.Y. Correct. Law § 753(2).

9. The New York State Human Rights Law (the “HRL”), N.Y. Exec. Law § 290 *et seq.*, incorporates the Article 23-A requirements by making it “an unlawful discriminatory practice for any person, agency, bureau, corporation or

association . . . to deny any license or employment to any individual by reason of his or her having been convicted of one or more criminal offenses . . . when such denial is in violation of the provisions of article twenty-three-A of the correction law.” N.Y. Exec. Law § 296(15). OMRDD is an “agency” subject to this law.

10. The New York City Human Rights Law ("NYCHRL") specifically prohibits employment discrimination against New York City residents on the basis of a past history of criminal convictions. It states, in pertinent part, that

[i]t shall be unlawful discriminatory practice for any person to deny any license or permit or employment to any person by reason of his or her having been convicted of one or more criminal offenses, or by reason of a finding of a lack of "good moral character" which is based on his or her having been convicted of one or more criminal offenses, when such denial is in violation of the provisions of article twenty-three-a of the correction law.

N.Y. City Admin. Code § 8-107(a)(10). The term “person” includes government agencies, therefore OMRDD is subject to this law.

11. All three anti-discrimination laws referenced above – the New York State Correction Law, the New York State Human Rights Law, and the New York City Human Rights Law – impose a duty on employers to use reasonable procedures to ensure that they obtain and consider certain types of information. They also require that employers consider this information in light of the relevant standards, i.e., that they not deny employment *unless* the conviction is *directly* job related or employment would involve an unreasonable risk.

12. Since 2003, both the New York State Mental Hygiene and Executive Laws have authorized and required OMRDD to obtain and review the criminal conviction histories of applicants for employment with service providers OMRDD funds or regulates, where those applicants will have regular and substantial unsupervised or

unrestricted contact with mentally retarded or developmentally disabled persons. These laws require OMRDD to determine whether applicants should be employed, and to do so in light of the standards in Article 23-A of the Correction Law.

13. Specifically, Mental Hygiene Law §§ 16.33 and 31.35 require that any provider of services to mentally retarded or developmentally disabled persons “who contracts with, or is approved or otherwise authorized” by OMRDD to provide services, must request OMRDD to perform a fingerprint-based criminal background check of all prospective employees “who will have regular and substantial unsupervised or unrestricted physical contact with clients” of the provider. UCP “contracts with, or is approved or otherwise authorized” by OMRDD to serve developmentally disabled adults and children, and is therefore bound by these provisions.

14. Executive Law § 845-b governs access to and uses of criminal history information OMRDD obtains pursuant to Mental Hygiene Law §§ 16.33 and 31.35. Section 845-b requires a prospective employer to complete a form certifying to OMRDD that the applicant’s prospective job is covered by the above sections of the Mental Hygiene Law and specifying the duties of the job sought, as well as other forms. N.Y. Exec. Law § 845-b (3). OMRDD reviews these forms, performs the fingerprinting, and requests that the New York State Division of Criminal Justice Services (DCJS) provide the records.

15. When DCJS returns the criminal record information to OMRDD, OMRDD reviews the results pursuant to a process set forth in Executive Law § 845-b(5). If the information does not reveal convictions for certain presumptively disqualifying crimes (e.g., sex offenses or violent felonies within the last ten years), OMRDD has

discretion to approve or deny the application “consistent with article 23-A of the correction law.” N.Y. Exec. Law § 845-b(5)(b).

16. In exercising this discretion, OMRDD must adhere to all of the requirements of Article 23-A of the Correction Law, including its central mandate that:

[n]o application for any license or employment, to which the provisions of this article are applicable, shall be denied by reason of the applicant’s having been previously convicted of one or more criminal offenses . . . when such finding is based upon the fact that the applicant has previously been convicted of one or more criminal offenses, unless:

- (1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought; or
- (2) the issuance of the license or the granting of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.”

N.Y. Correct. Law § 752.

17. OMRDD issued emergency regulations to implement Mental Hygiene Law §§ 16.33 and 31.35, and Executive Law § 845-b. These regulations are set forth at 14 NYCRR Parts 633, 679, 680, 681 and 690, 698 and 699 as amended by emergency measures on April 1, June 30, September 28 and December 27, 2005 and on March 27, June 23, September 21, and December 27, 2006.

18. Sections 633.22(g), (h) and (i) of the OMRDD emergency regulations establish OMRDD’s procedures for conducting criminal history record checks of job applicants. They also set forth the “standards for OMRDD determinations” regarding whether to “issue a denial” or to “direct the agency, sponsoring agency or provider of services to issue a denial” of employment to applicants whose criminal history record includes a conviction for one or more crimes. 14 NYCRR § 633.22(h)(2).

19. Consistent with the requirements of Executive Law § 845-b(5)(a), the emergency regulations provide that when applicants have certain

“presumptively disqualifying crimes,” OMRDD “shall” deny employment unless OMRDD determines that the employment “will not in any way jeopardize the health, safety or welfare of the beneficiaries of the people receiving services.” 14 NYCRR § 633.22(i)(1). Mr. Boatwright does not have convictions for any of the listed disqualifying offenses.

20. However, in specifying the standard for OMRDD determinations concerning job applicants with convictions for crimes *other* than those that presumptively deny employment, the OMRDD emergency regulations fail to incorporate the requirement imposed by Executive Law § 845-b(5)(b) that all such determinations must be made “consistent with article 23-A of the correction law.” The emergency regulations state only that “OMRDD may issue a denial or direct the agency, sponsoring agency or provider of services to issue a denial based on a conviction for a crime other than those specified at paragraph (1) of this subdivision.” 14 NYCRR § 633.22(i)(2).

21. OMRDD’s implementing emergency regulations provide no guidance to OMRDD on how to exercise its discretion in making these employment decisions, and fail to incorporate or apply to OMRDD itself the fundamental mandate of Executive Law § 845-b(5)(b) that OMRDD’s, as well as covered providers’, employment decisions be made “consistent with Article 23-A of the Correction Law.”

22. Civil Practice Law and Rules Art. 78 provides a vehicle for challenging administrative decisions made by government bodies or officers. The Court is empowered to decide whether a given agency determination “was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion . . .” N.Y. C.P.L.R. §§ 7801, 7803(3). It is then permitted to issue

judgment “granting petitioner the relief to which he is entitled . . . [or] annul or confirm the determination in whole or in part, or modify it, and may direct or prohibit specified action by the respondent.” Petitioner may seek damages “incidental to the primary relief sought. . .” N.Y. C.P.L.R § 7806.

III. STATEMENT OF FACTS

Mr. Boatwright Applies for a Job with UCP

23. Michael Boatwright, who is 52 years old, applied for a position as a “residential program specialist” with UCP, a social services organization that is funded, regulated and/or authorized by OMRDD. He completed an employment application in or about July, 2006 and submitted a resume detailing his 32-year work history.

24. Mr. Boatwright has a 1985 criminal conviction for attempted possession of a weapon, a class “E” (i.e. lowest severity level) felony. This conviction did not interfere with his successfully working in a series of jobs in the 21 years since the conviction.

25. At the time he applied for the UCP job (and continuing to present), Mr. Boatwright was employed by the New York City Department of Education as a school aide, working with middle-school aged children. The Department of Education had required that he undergo a fingerprint-based criminal history background check, and hired him in spite of the 1985 conviction.

26. UCP interviewed Mr. Boatwright in or about July, 2006 and found him to be a good candidate for the job. It reviewed his history – documented in his job application and resume – of working in health care, working with vulnerable populations, and caring for animals. Upon information and belief, Mr. Boatwright’s application and

resume noted his work with the New York City Department of Education as a school aide.

27. In the UCP interview and on his job application, Mr. Boatwright was candid about his 1985 criminal conviction. Mr. Boatwright pleaded guilty to the attempted weapon possession charge, and was sentenced to five years' probation rather than to a term of imprisonment. His probation was terminated early because of good compliance and behavior, a fact that, upon information and belief, he noted to UCP. Since the 1985 conviction, he has incurred no other criminal convictions.

28. Upon information and belief, Mr. Boatwright explained the following circumstances surrounding the 1985 conviction in the course of his job interview with UCP: in 1985, an era of high crime in New York City, Mr. Boatwright was robbed while a sawed-off shotgun was held to his neck. He worried for his continued safety and obtained a gun for protection... Mr. Boatwright was arrested when a group of men tried to rob him one evening. The police intervened and searched each person and discovered the gun.

29. Mr. Boatwright's conviction occurred in his distant past. As documented in his employment application and resume, he has been steadily employed in the ensuing 21 years. He has also done volunteer work, and has served as an usher, a youth counselor, a cultural studies instructor and, most recently, as a member of the board of trustees of The House of God Pentecostal Church in the Bronx, and is active in community affairs. Upon information and belief he told UCP of these activities during his job interview.

30. With full knowledge of his 1985 conviction, UCP hired Mr. Boatwright for the residential program specialist position on a provisional basis on or about July 22, 2006. The position paid approximately \$8.80 per hour, and Mr. Boatwright was to work 35 or more hours a week in overnight shifts.

31. As a permanent employee, Mr. Boatwright would have been entitled to pro-rated health insurance benefits. Upon information and belief, his job would have been covered by a collective bargaining agreement with 1199/SEIU, and Mr. Boatwright would have been eligible to join that union.

32. Mr. Boatwright's job duties, once he was hired on a permanent basis, would have included working with nursing staff, therapists and medical personnel to ensure that residents were fed and cared for, that they participated in activities and were transported to appointments.

33. Before UCP could hire Mr. Boatwright as a permanent employee, however, it was required to subject him to a fingerprint-based background check through a process set up by OMRDD pursuant to Executive Law § 845-b, Mental Hygiene Law §§ 16.33 and 31.35, and OMRDD emergency regulations (14 NYCRR §§ 633.22 (g), (h) and (i)).

34. OMRDD fingerprinted Mr. Boatwright in or about July, 2006 after UCP submitted papers requesting that it do so. Upon information and belief, OMRDD did not require Mr. Boatwright to fill out any documents other than those he had already submitted to UCP, nor did it require him to present his employment application, resume or any contents of his employment file to OMRDD.

35. Upon information and belief, neither did OMRDD require or request UCP to forward any such documents, and UCP did not do so.

OMRDD Criminal Background Check Policies and Procedures

36. Respondent's criminal record check policies, as set forth in both the Executive Law and in OMRDD emergency regulations, do not reasonably assure that OMRDD will have and consider the information it needs to comply with Article 23-A of the Correction Law: they do not make it possible for OMRDD to determine, *first*, whether applicants' criminal records are related to the proposed job duties, or, *second*, whether applicants will pose a significant risk to persons or property.

A. OMRDD policies did not allow it to reasonably determine whether there was a direction relationship between Mr. Boatwright's criminal conviction and the job sought

37. In order for an employer to request OMRDD to complete a criminal record background check, it must complete two forms: a "request for criminal history record check" and an "information for fingerprint submission." Upon information and belief UCP transmitted these two forms to OMRDD. OMRDD did not request, nor did UCP submit, any other forms or documents. Specimen copies of these two forms are annexed hereto as Exhibit B.

38. While OMRDD emergency regulations state that the employer is to furnish OMRDD with a list of the prospective job requirements, neither of the two forms OMRDD requires or includes a space for this information, or even a space for the job title.

39. Upon information and belief, UCP did not provide any information about the residential program specialist job requirements, or the job title itself, to OMRDD via either of the two forms or in any separate communication.

40. OMRDD had no way to determine – because its procedures did not allow it to do so and because it lacked critical information – whether Mr. Boatwright’s sole criminal conviction was related to the duties of a residential program specialist.

B. OMRDD policies did not allow it to determine whether Mr. Boatwright posed an unreasonable risk to persons or property

41. OMRDD had no way to determine whether Mr. Boatwright posed an “unreasonable risk to property or to the safety or welfare of specific individuals or the general public.” Its emergency regulations and policies did not require that it elicit, request or obtain any materials that would allow it to make such a determination. A review of his 1985 conviction – in isolation from such materials – was not adequate for this purpose.

42. Upon information and belief OMRDD did not have or consider Mr. Boatwright’s employment application, resume or any contents of his UCP employment file when making the determination. It thus could not have seen that Mr. Boatwright’s decades-old conviction – in light of all the evidence OMRDD was required to obtain and consider – did not make him an unreasonable risk to persons or property.

OMRDD Deems Mr. Boatwright Ineligible for the UCP Position

43. On or about August 4, 2006, OMRDD sent Mr. Boatwright a letter (the “August 4th letter”) indicating that the background check revealed his 1985 conviction. It stated that “[t]he criminal history information . . . may disqualify you from

employment or volunteer service.” The August 4th letter, a copy of which is attached as Exhibit C hereto, revoked his provisional employment status.

44. The August 4th letter did not explain OMRDD’s analysis. Instead, it stated that OMRDD was “affording [Mr. Boatwright] an opportunity to explain in writing, within 30 calendar days of the date this letter was mailed, why [his] application for employment should not be denied.” It went on to state, in bold type,

PLEASE BE ADVISED THAT YOUR APPLICATION WILL BE DENIED ON September 4, 2006 (UNLESS OMRDD RECEIVES A WRITTEN EXPLANATION WHICH LEADS OMRDD TO REVERSE THIS DECISION).

45. The August 4th letter directed that any response “must include a written explanation why you should not be denied and should demonstrate your rehabilitation and good conduct.” It stated that “[e]xamples of documents that would be helpful to support your application may include a certificate of relief from disabilities, letters of support from your prospective employer, letters of references [*sic*], etc.”

46. The August 4th letter gave no indication either that OMRDD had found Mr. Boatwright’s 21-year old conviction directly related to the UCP residential program specialist duties or that it had found that his employment would pose an unreasonable risk to UCP clients, employees or property – findings that Correction Law Art. 23-A required it to make in determining whether to approve or deny his application.

47. The August 4th letter provided no guidance to Mr. Boatwright about the standards set forth in Correction Law § 753 and did not list any specific determinations or findings on any of these standards. The letter also failed to specify the sorts of information OMRDD was required to consider (or did consider) in making its determination.

48. For these reasons, and because he had no grounds to know that respondent was evaluating his criminal record in a vacuum – without any of the materials he had submitted to UCP, such as his resume, job application form or any other materials from UCP’s job application file, and without materials listing residential program specialist job duties or even a job title, Mr. Boatwright was not in a position to draft a letter and gather documents and references that would have squarely addressed respondent’s findings.

49. On or about August 8, 2006, Mr. Boatwright wrote a letter to OMRDD to explain why he should not be denied the UCP job. Upon information and belief, Mr. Boatwright’s letter discussed the circumstances of his 1985 conviction, as well as the fact that he had not been convicted of a crime since that time, the fact that he had obtained both a Certificate of Relief from Disabilities and a Certificate of Good Conduct, and other facts surrounding his rehabilitation since the 1985 conviction. He attached letters of reference and his Certificate of Good Conduct. Mr. Boatwright did not keep a copy of the letter he wrote to OMRDD or his Certificate of Good Conduct (he has requested that the agency send him copies of these submissions), but copies of the letters of reference are attached hereto as Exhibit D.

50. Had Mr. Boatwright known precisely what OMRDD concerns were (i.e., whether they viewed the conviction as being directly job-related or they viewed him as an unreasonable risk) and that OMRDD did not have any of the information he had given to UCP during the application process, he would have been in a better position to gather even stronger evidence of his rehabilitation and to address squarely OMRDD’s concerns.

OMRDD Denies Mr. Boatwright the UCP Position

51. On or about September 6, 2006, OMRDD sent Mr. Boatwright a letter (the “September 6th letter”) stating that “OMRDD is now notifying you and the provider of its determination to: DENY the application on the grounds that you were convicted of a crime or crimes and that this determination was made consistent with the provisions of Article 23-A of the Corrections Law.” The letter did not give any details of how OMRDD made the employment decision. A copy of the September 6th letter is attached hereto as Exhibit E.

52. Like the August 4th letter, the September 6th letter did not state that OMRDD had made findings required by Correction Law Article 23-A: it did not indicate that OMRDD had found Mr. Boatwright’s decades-old conviction directly related to the UCP residential program specialist duties or that it had found that his employment would pose an unreasonable risk to UCP clients, employees or property.

53. Since August 6, 2006, when OMRDD terminated his provisional UCP employment, Mr. Boatwright has not been able to find work other than the part-time Department of Education job, which is suspended during the summer and on holidays when school is closed. Because he is unable to afford an apartment on his Department of Education salary, he is currently sleeping at the Bronx church where he serves as member of the Board of Trustees.

VIOLATIONS OF LAW

FIRST CAUSE OF ACTION: RESPONDENT’S EMPLOYMENT DECISION VIOLATED ARTICLE 23-A OF THE CORRECTION LAW

54. Mr. Boatwright repeats and realleges each paragraph above as if fully set forth herein.

55. Upon information and belief, respondent's employment decision and termination of Mr. Boatwright's provisional employment, was made with no consideration whatsoever of Mr. Boatwright's 21-year record of rehabilitation since his single criminal conviction in 1985. Because it did not obtain or review Mr. Boatwright's resume, interview notes, job application, or any other materials from his UCP employment file, respondent did not consider – and could not have considered – his decades-long employment history (including current employment as a school aide with the New York City Department of Education), his volunteer work, or his ties and contributions to his church.

56. Without obtaining and reviewing this information, respondent could not have made, and did not make, a fair, reasoned and rational decision that Mr. Boatwright posed an unreasonable risk to persons or property.

57. Upon information and belief, respondent did not seek or obtain a list of job duties for the position Mr. Boatwright sought, or even the job title itself.

58. Without obtaining and reviewing this information – as well as the information referenced in paragraph 55, *supra*, respondent could not have made, and did not make, a fair, reasoned and rational decision that Mr. Boatwright's conviction was directly related to the duties of the job sought.

59. Upon information and belief, in making its employment decision and in terminating Mr. Boatwright's provisional employment, respondent did not reasonably and fairly consider Mr. Boatwright's written submission as to why he should not be denied, including appended letters of reference and Certificate of Good Conduct.

60. Respondent's actions violated the anti-discrimination provisions of Article 23-A of the Correction Law, §§ 752 and 753.

SECOND CAUSE OF ACTION: RESPONDENT'S EMPLOYMENT DECISION VIOLATED THE NEW YORK STATE HUMAN RIGHTS LAW

61. Mr. Boatwright repeats and realleges each paragraph above as if fully set forth herein.

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

THIRD CAUSE OF ACTION: RESPONDENT'S EMPLOYMENT DECISION VIOLATED THE NEW YORK CITY HUMAN RIGHTS LAW

63. Mr. Boatwright repeats and realleges each paragraph above as if fully set forth herein.

64. By violating Article 23-A of the Correction Law, respondent also 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).

FOURTH CAUSE OF ACTION: RESPONDENT'S EMPLOYMENT DECISION VIOLATED § 854-b OF THE NEW YORK STATE EXECUTIVE LAW

65. Mr. Boatwright repeats and realleges each paragraph above as if fully set forth herein.

66. By violating Article 23-A of the Correction Law, respondent violated Executive Law § 845-b.

FIFTH CAUSE OF ACTION: RESPONDENT'S EMPLOYMENT DECISION WAS ARBITRARY AND CAPRICIOUS, AND CONSTITUTED AN ABUSE OF DISCRETION

67. Mr. Boatwright repeats and realleges each paragraph above as if fully set forth herein.

68. This cause of action is brought pursuant to C.P.L.R. § 7803(3).

69. By denying Mr. Boatwright employment with UCP and terminating his provisional employment with that agency, respondent acted arbitrarily and capriciously, and its actions constituted an abuse of discretion.

**WHEREFORE, PETITIONER PRAYS FOR JUDGMENT
PURSUANT TO ARTICLE 78 OF THE CIVIL PRACTICE LAW AND RULES:**

1. Adjudging and declaring that respondent's actions in denying Mr. Boatwright employment with UCP and terminating his provisional employment with that agency:

- (a) were arbitrary and capricious, and an abuse of discretion;
- (b) were in violation of Correction Law §§ 752 and 753;
- (c) were in violation of Executive Law § 296(15);
- (d) were in violation of New York City Admin. Code Tit. 8, § 8-107(10);
- (e) were in violation of Executive Law § 845-b, Mental Hygiene Law §§ 16.33 AND 31.35 and 14 NYCRR Part 633.22; and
- (f) are null and void;

2. Directing respondent to reinstate Mr. Boatwright to his position at UCP,

3. Entering judgment on behalf of Mr. Boatwright and against respondent in an amount representing back pay and all the other rights, privileges or

benefits that Mr. Boatwright would have been or become entitled to had he not been denied employment with UCP and terminated from his provisional employment with that agency;

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

6. Awarding attorney fees and costs as permitted by the New York Equal Access to Justice Act, C.P.L.R. § 8601; and

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

Dated: New York, New York
January 5, 2007

MICHAEL BOATWRIGHT, Petitioner

JUDITH M. WHITING
PAUL N. SAMUELS
Legal Action Center of the
City of New York, Inc.
225 Varick Street
New York, New York 10014
Tel. (212) 243-1313
Fax. (212) 675-0286
jwhiting@lac.org