

NEW YORK SUPREME COURT - COUNTY OF BRONX

PART 24

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

Case Disposed   
Settle Order   
Schedule Appearance

HOLLINGSHEED, MICHAEL

Index No. 0006848/2007

-against-

Hon. PATRICIA ANNE WILLIAMS

THE NEW YORK STATE

Justice.

The following papers numbered 1 to \_\_\_\_\_ Read on this motion, ARTICLE 78  
Noticed on February 26 2007 and duly submitted as No. \_\_\_\_\_ on the Motion Calendar of \_\_\_\_\_

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this motion is decided in accordance with the annexed decision and order of the same date.

Respectfully Referred to: \_\_\_\_\_  
Dated: \_\_\_\_\_

Dated: 11/3/2008

Hon. Patricia Anne Williams  
PATRICIA ANNE WILLIAMS, J.S.C.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF THE BRONX: PART IA 24**

-----X  
**In the Matter of the Application of  
MICHAEL HOLLINGSLED,**

**Petitioner,**

**DECISION & ORDER**

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

**Index No. 6848/07**

**- against -**

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

**Respondent.**

-----X  
**WILLIAMS, PATRICIA ANNE, J.**

The Petitioner Michael Hollingsled has filed the instant Petition pursuant to Article 78 of the Civil Practice Law and Rules for an Order adjudging and declaring that the actions of the Respondent, The New York State Office of Mental Retardation and Developmental Disabilities (OMRDD) in denying him employment with Episcopal Social Services were in violation of:

- (a) Correction Law §§ 752 and 753;
- (b) Executive Law § 296(15);
- (c) New York City Administrative Code Title 8 § 8-107(10);
- (d) Executive Law § 845-b;
- (e) Mental Hygiene Law §§16.33 and 31.35; and 14 NYCRR Part 633.22.

The Petitioner also seeks to have this court find that OMRDD's denial of his employment application was arbitrary and capricious and an abuse of discretion. The Respondent OMRDD has responded in opposition to the instant petition. Having fully

considered the papers submitted by both parties, this court grants the Petitioner's petition for the reasons set forth hereinafter.

Mr. Hollingshed commenced the instant petition after being denied employment as a Direct Care Worker with Episcopal Social Services ("ESS"). ESS is a not-for profit social services organization which is funded, regulated and/or authorized to operate by OMRDD. The direct care worker position involved helping high-functioning mentally impaired adults with feeding, bathing, dressing and activities and taking them on trips. The direct care worker position paid \$10.00 per hour and was on a *per diem* basis. Mr. Hollingshed would be covering for absent workers and was guaranteed a minimum of 24 hours work per week. There was also a possibility that the person hired for the position would be considered, at a later date, for full time employment based on prior job performance.

Mr. Hollingshed's prior work experience as detailed in his resume which was submitted with his application to ESS and annexed in support of the instant Petition, sets forth a work history of over fourteen years working with individuals with special needs. Mr. Hollingshed's prior work experience included, *inter alia*, transporting handicapped clients to school, medical appointments and workshops (Cerebral Palsy Transport, Inc. February 1992 to May 1998); assisting in the care and safety of over 200 homeless male adults as a case manager with Volunteers of America; assisting in the daily operation of an on-site substance abuse program (Volunteers of America January 1993 to April 1998); transporting emotional, mentally, and physically challenged foster children to parental visits, medical and dental appointments and recreational activities; (New Alternatives for Children April 1998 to November 2002);

monitoring residence behavior and crisis intervention (Vaughan Glanton Employment Residence March 2001 to May 2004); and assisting homeless individuals and families on the street, counsel clients on substance abuse and HIV/AIDS (Volunteers of America June 2004 to Present). Thus, Mr. Hollingshed's resume revealed that he had a wealth of experience working with individuals with special needs – the same population he would be serving as an employee of ESS.

After submitting his application for employment and answering questions concerning his criminal history, Mr. Hollingshed was contacted by OMRDD via letter dated August 25, 2006, in which he was advised that the background check run on him revealed his conviction history and that the criminal history information . . . may disqualify [him] from employment or volunteer service.” Mr. Hollingshed was given an opportunity to explain in writing within 30 calendar days of the date of [the August 25<sup>th</sup>] letter, why [his] application for employment should not be denied.” Mr. Hollingshed responded with a letter dated September 8, 2006 detailing his prior encounters with the criminal justice system and noting that since his last conviction in 1983 he had had no further encounters with the criminal justice system and had turned his life around. In fact, he had been working continuously since his release from prison. Indeed in May 1992, Mr. Hollingshed was issued a Certificate of Good Conduct from the New York State Executive Department, Board of Parole. The Certificate of Good Conduct verified that the Board of Parole found Mr. Hollingshed to have maintained a record of good conduct since January 21, 1988. The Certificate of Good Conduct also served to remove all legal bars and disabilities to employment, license and privilege except those pertaining to firearms and except the right to be eligible for public office. Mr.

Hollingshed submitted a copy of his Certificate of Good Conduct as well as several reference letters from people with whom he had worked. Mr. Hollingshed had also submitted reference letters with his initial employment application with ESS.

OMRDD admits that it received Mr. Hollingshed's letter in support of his application for employment as well as his letters of reference and Certificate of Good Conduct. However, OMRDD argues that although Mr. Hollingshed's convictions were remote in time, the number of convictions, including the number of convictions for serious felonies, established a pattern of behavior. OMRDD further argues that the serious nature of Mr. Hollingshed's convictions presented an unreasonable danger to ESS's consumers whom it considers a vulnerable population. OMRDD's arguments are flawed in that it does not take into account that the vulnerable population which Mr. Hollingshed would be working with at ESS is the same population he had been working with continuously without incident.

Section 752 of the New York State Correction Law prohibits public agencies and private employers in New York from denying employment to an individual on the basis of prior criminal convictions unless there is a "direct relationship" between the individual's prior offenses 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. Correction Law § 752. Correction Law § 753 sets forth the following specific factors which must be considered in determining whether to employ a person with prior criminal convictions:

- (1) The public policy of this state to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
- (2) The specific duties and responsibilities necessarily related to the license or employment sought.
- (3) 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.
- (4) The time which has elapsed since the occurrence of the criminal offense or offenses.
- (5) The age of the person at the time of occurrence of the criminal offense or offenses.
- (6) The seriousness of the offense or offenses.
- (7) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
- (8) 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.

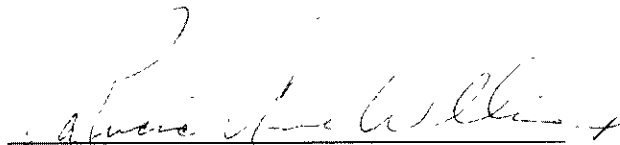
Taking into account the requirements of Correction Law § 753, Mr. Hollingshed's history fits squarely within its parameters. He has been employed with Volunteers of America for the following periods – from January 1993 to April 1998 and June 2004 to the present working with the same vulnerable population about which OMRDD is properly concerned. His felony convictions are decades old and they are not related to the job he will be performing with ESS. Mr. Hollingshed's last conviction was in April 1983 (over 20 years before his application to OMRDD) when he was convicted after trial of Robbery in the Third Degree and Grand Larceny in the Third Degree. He was sentenced to concurrent terms of 30 months to 5 years and 18 months to 3 years, respectively. Since his release from prison on January 21, 1988, Mr. Hollingshed has had no further arrests and has been continuously and successfully employed working with emotionally, mentally, and physically handicapped children. Despite his unblemished work record and experience with a "vulnerable population" Mr. Hollingshed was denied employment with ESS.

OMRDD's denial of Mr. Hollingshed's employment application based solely on the sheer number of his over 20-year old convictions is clearly arbitrary, capricious, and an abuse of discretionary power. OMRDD states in its "Memo to File" dated September 25, 2006, concerning the denial of Mr. Hollingshed's employment with ESS, that Mr. Hollingshed did not provide any verification that he has been drug and alcohol free for almost 18 years; nor did he provide information concerning rehabilitation. The Memo to File also stated that there was no information provided from parole. Since OMRDD was provided with letters of reference, Mr. Hollingshed's work history as well as a Certificate of Good Conduct, it does not appear that OMRDD fully considered these documents. Indeed, if they had, OMRDD could not reasonably state that Mr. Hollingshed provided no proof of his rehabilitation or the fact that he had been drug free for almost 18 years. Indeed, both of these items are borne out in his continuous work history and letters of reference. See, *Michael Boatwright v. OMRDD*, NYL.J. p. 18 col 1 (N.Y. County, May 3, 2007). With respect to OMRDD's claim that they received no documentation from the Department of Parole, Mr. Hollingshed was never asked to provide such information and can not reasonably be penalized for not having done so. In fact, had OMRDD needed information from the Department of Parole it could have requested them on its own. Given these facts, this Court concludes that OMRDD's decision in denying Mr. Hollingshed employment with ESS was arbitrary and capricious and an abuse of its discretion. Accordingly, Mr. Hollingshed's petition is granted, OMRDD's decision is vacated and OMRDD is directed to permit Mr. Hollingshed to be hired by ESS.

**CONCLUSION**

The foregoing constitutes the decision and order of this Court.

**DATED: JANUARY 31, 2008**

A handwritten signature in cursive script, appearing to read "Patricia Anne Williams", is written over a horizontal line.

**PATRICIA ANNE WILLIAMS  
ACTING JUSTICE OF THE  
SUPREME COURT**