

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

\_\_\_\_\_  
In the Matter of the Application of

\_\_\_\_\_X  
Index No.

██████████  
Petitioner,

For a judgment pursuant to Article 78 of the CPLR,

**VERIFIED PETITION**

— against —

THE NEW YORK STATE OFFICE OF ALCOHOLISM  
AND SUBSTANCE ABUSE SERVICES,

Respondent.  
\_\_\_\_\_X

This proceeding is brought to challenge and reverse Respondent New York State Office of Alcoholism and Substance Abuse Services' ("OASAS" or "Respondent") illegal discriminatory denial of petitioner ██████████ Certified Alcohol and Substance Abuse Counselor Trainee (CASAC-T) license. Mr. ██████████'s license was denied in an August 31, 2007 letter because of his "criminal history" and "parole revocations"— reasons clearly contrary to N.Y. CORR. LAW Art. 23-A, §§ 750-755 ("Article 23-A"); N.Y. EXEC. LAW § 296(15),(16) ("State Human Rights Law"); and N.Y. CITY ADMIN. CODE § 8-107(10),(11) ("City Human Rights Law"). These laws were all enacted to further New York's public policy of encouraging the employment of people with criminal histories, especially when those histories do not negatively impact such persons' ability to perform their jobs safely and well.

OASAS' decision was also arbitrary and capricious because its laws and regulations governing the review of applicants' criminal histories fail to even acknowledge Article 23-A, giving no guidance to OASAS personnel who decide whether

to grant a CASAC-T license. Additionally, upon information and belief, OASAS did not seek or obtain any information regarding Mr. [REDACTED]'s rehabilitation, so it could not have made a fair and rational decision. Instead, when Mr. [REDACTED] called about the OASAS denial letter, he was told there was no evidence he could offer; there was no way to appeal.

### **JURISDICTION, PARTIES, AND VENUE**

1. Petitioner [REDACTED] resides at [REDACTED] in the Bronx, New York; there, he also received the letter from OASAS denying him the CASAC-T license. Petitioner completed the requisite amount of training hours and applied for the CASAC-T license at Argus Career Training Institute ("ACT-I"), located at 760 East 160 Street in the Bronx, New York. Petitioner currently works at [REDACTED] residential drug treatment program [REDACTED] in the Bronx, New York. Palladia would promote Mr. [REDACTED] if he received a CASAC-T, and many agencies require it to work in the field at all.

2. Respondent OASAS is a New York State agency located at 1450 Western Avenue in Albany, New York; it also maintains a New York City office at 501 7th Avenue.

3. Venue is properly laid where "material events took place." CPLR § 506(b); *see* § 7804(b). Because Petitioner resides, received the denial letter, and was trained for and will use his CASAC-T license in Bronx County, venue is properly laid there.

### **STATEMENT OF FACTS**

4. May 4, 2005 is a date forever etched in the mind of Petitioner [REDACTED] because it was on that date that he ended, of his own volition, his methadone program and began a new life.

5. Before that time, ever since this 54-year-old man was a teenager, he had either used drugs or been in a treatment program. Since then, he has been clean.
6. Before that time, he worked a variety of security, maintenance, and manufacturing jobs to help support his wife ██████, who he has been with for twenty-one years, and raise three children: a twenty-seven-year-old daughter who no longer lives with them and two boys, fifteen and eleven, who do. Since then, he has found his calling as a substance abuse counselor, using his experiences to help others.
7. Before that time, he was often involved with the criminal justice system. Since then, he has stayed out of trouble.
8. Mr. ██████ has been convicted of two felonies: A Class D felony for an attempted Class C felony in 1974 when he was 20 years old and a Class B felony for Robbery in the First Degree in 1980 when he was 26 years old. For the latter crime, he was incarcerated for half of his 15-year sentence and on parole for the remainder. During incarceration, Mr. ██████ earned both his General Educational Development (“GED”) diploma and an Associate’s Degree. Mr. ██████ left parole in 1995. See Exhibit 1.
9. Since then, he has been convicted of five Class A misdemeanors: the lowest degree of drug possession three times, the lowest degree of trademark counterfeiting once, and theft of services. This last conviction is the most recent; it occurred on October 1, 2004.
10. Shortly thereafter, Mr. ██████ decided his life was going to go nowhere if he continued as he had been. He began to, under supervision of his substance abuse program, gradually reduce his intake of methadone until, on May 4, 2005, he no longer needed it.

11. With more than the minimum six months of drug-free living required, Mr. █████ entered the ACT-I program on October 2, 2006. ACT-I trains low-income people to become substance abuse counselors, which are jobs in high demand with excellent pay and benefits.

12. While at ACT-I, Mr. █████ took advantage of service opportunities, doing outreach among the homeless and participating in the AIDS Walk. See Exhibit 2. He also engaged with a therapeutic community, where former drug addicts confront each other about negative behaviors.

13. A person may obtain a CASAC-T by completing 350 hours of education and training or by having 4000 hours of work experience and 85 hours of education and training in knowledge of alcoholism and substance abuse as required by 14 NYCRR 853, which governs certification of Credentialed Alcoholism and Substance Abuse Counselors. See 14 NYCRR § 819.7(e); Exhibit 3.

14. Mr. █████ completed the required 350 hours of education and training in knowledge of alcoholism and substance abuse at ACT-I, graduating July 13, 2007. At that time, he had over two years without any involvement with drugs or the criminal justice system. See Exhibit 4

15. Shortly thereafter, he mailed a completed CASAC-T application to the OASAS office in Albany, New York. New York Vocational and Educational Services for Individuals with Disabilities (“VESID”) paid the \$100 application fee.

16. On August 31, 2007, OASAS mailed a letter denying the CASAC-T to Mr. █████ because of his “criminal history” and “parole violations.” See Exhibit 5. The letter was signed by Paula Johnston, Credentialing Unit Manager, who left her phone number. *Id.*

17. Mr. [REDACTED] was dismayed by the denial because he had worked so hard to put his past behind him and, in fact, use his past to help others avoid his mistakes. With a CASAC-T, he could work toward full certification as a substance abuse counselor while supporting his family, and he could work with people, not with the drill presses and forklifts of his past jobs.

18. Mr. [REDACTED] called Ms. Johnston and offered to send evidence of rehabilitation. He was told, however, not to bother—there was no way to appeal and no time at which he could reapply.

19. Despite the denial, Mr. [REDACTED] remained committed to finding a meaningful career working with the less-fortunate. To support his family, however, he had to get two jobs. He found part-time employment, at \$7.50 per hour, at [REDACTED] in Brooklyn. He also interns at [REDACTED] residential drug treatment program, which would hire him full-time if he had a CASAC-T license.

## ARGUMENT

I. OASAS Violated State Law by Impermissibly Denying Petitioner’s License Solely Upon His Criminal History Without Considering Mandatory Statutory Factors.

20. A public agency cannot deny a license or find that an applicant lacks “good moral character” simply because of his criminal history. N.Y. CORR. LAW § 752. A criminal conviction is only relevant if a direct relationship exists between the conviction and the prospective job or granting the license would pose an unreasonable risk to persons or property. N.Y. CORR. LAW § 752.

21. Before denying a license under either the direct relationship or unreasonable risk exceptions, however, the agency must consider the factors in § 753 of the Corrections

Law:

- a. New York's public policy to encourage employment of the formerly incarcerated;
- b. The job's necessary duties and responsibilities and the conviction's bearing on the applicant's fitness and ability to fulfill them;
- c. How long ago the offense occurred, how serious it was, and the applicant's age at that time;
- d. Evidence from the applicant of rehabilitation and good conduct;
- e. The legitimate interest of the employer in protecting people and property; and
- f. A Certificate of Relief from Disabilities or Certificate of Good Conduct, which creates a presumption of rehabilitation. N.Y. CORR. LAW § 753.

22. These factors are applied differently depending on the exception the agency would like to apply. An agency cannot simply presume an unreasonable risk exists; instead, it must apply the § 753 factors to determine so. *Bonacorsa v. Van Lindt*, 71 N.Y.2d 605, 613–14 (N.Y. 1988). If the agency claims a direct relationship, however, it must use the factors to discover whether the relationship is sufficiently attenuated, warranting licensure regardless. *Id.*

23. In its denial letter, OASAS based its decision on Mr. ██████'s "criminal history" and "parole violations" in clear violation of Article 23-A.

24. Indeed, the letter does not even contain a perfunctory statement that the decision was made in accordance with Article 23-A after considering the § 753 factors, never mind whether the agency found that the direct relationship or unreasonable risk exceptions applied.

25. Additionally, OASAS could not have made a rational decision under Article 23-A because it lacked any information to evaluate the § 753 factors and Mr. ██████'s

rehabilitation. In fact, Mr. █████ offered to provide evidence of rehabilitation, but Ms. Johnston actively discouraged him from doing so.

26. OASAS neither sought, nor asked Mr. █████ to provide, information regarding his GED and Associate's Degree; his long history of employment; his success in confronting his substance abuse problem; his present employer or whether he had a job offer pending his receipt of a CASAC-T and what the job's duties and responsibilities would be.

27. Upon information and belief, OASAS did not consider New York's public policy favoring employment of people with criminal records or how long ago Mr. █████'s offenses occurred, how serious they were, and his age at that time.

28. OASAS violated Article 23-A by denying Mr. █████ a CASAC-T license solely because of his criminal history.

## II. OASAS Violated the State Human Rights Law by Ignoring Article 23-A.

29. Under the State Human Rights Law, violation of Article 23-A is an "unlawful discriminatory practice," as is denying a license based on an arrest that did not lead to conviction. N.Y. EXEC. LAW § 296(15),(16).

30. Upon information and belief, OASAS denied Mr. █████ a CASAC-T license based on an arrest that did not lead to conviction, which violated the State Human Rights Law.

31. For the reasons set forth above, OASAS violated Article 23-A and therefore contravened the State Human Rights Law.

III. OASAS Violated the City Human Rights Law by Ignoring Article 23-A.

32. Under the City Human Rights Law, violation of Article 23-A is an “unlawful discriminatory practice,” as is denying a license based on an arrest that did not lead to conviction. N.Y.CITY ADMIN. CODE § 8-107(10),(11).

33. Upon information and belief, OASAS denied Mr. [REDACTED] a CASAC-T license based on an arrest that did not lead to conviction, which violated the City Human Rights Law.

34. For the reasons set forth above, OASAS violated Article 23-A and therefore contravened the City Human Rights Law.

### **CONCLUSION**

35. Respondent OASAS violated Article 23-A and the State and City Human Rights Laws by denying Petitioner’s license solely because of his criminal history and by failing to evaluate the § 753 factors.

36. Upon information and belief, Respondent OASAS continues to violate Article 23-A and the State and City Human Rights Laws by failing to incorporate their mandates into OASAS regulations, giving no guidance to staff who evaluate CASAC-T applications and leading to the arbitrary and capricious action in this case.

### **VIOLATIONS OF LAW**

#### **FIRST CAUSE OF ACTION: RESPONDENT’S LICENSE DENIAL VIOLATED ARTICLE 23-A**

37. Petitioner repeats and re-alleges each paragraph above as if fully set forth herein.

38. Upon information and belief, Respondent OASAS based its denial on Mr. [REDACTED]’s criminal history without finding such history was either directly related to a CASAC-T



license or that granting the license would pose an unreasonable risk to persons or property. Therefore, basing the license denial solely on his criminal history was an abuse of discretion and arbitrary and capricious as a matter of law because it violated Article 23-A.

39. Upon information and belief, OASAS denied Mr. [REDACTED] a CASAC-T license without considering New York's public policy favoring employment of people with criminal records or how long ago Mr. [REDACTED]'s offenses occurred, how serious they were, and his age at that time. This information was necessary to discover whether OASAS could permissibly deny licensure based on the direct relationship or unreasonable risk exceptions to Article 23-A.

40. Upon information and belief, OASAS denied Mr. [REDACTED] a CASAC-T license without considering—and, indeed, actively rejecting—his evidence of rehabilitation, which was necessary to discover whether it could permissibly deny licensure based on the direct relationship or unreasonable risk exceptions to Article 23-A. OASAS did not obtain or review information about Mr. [REDACTED]'s résumé, GED and Associate's Degree; his participation in substance abuse programs; his present employer or whether he had a job offer pending his receipt of a CASAC-T. It didn't even ask Mr. [REDACTED] to write a letter on his own behalf.

SECOND CAUSE OF ACTION:  
RESPONDENT'S LICENSE DENIAL VIOLATED  
THE STATE HUMAN RIGHTS LAW

41. Petitioner repeats and re-alleges each paragraph above as if fully set forth herein.

42. By violating Article 23-A, Respondent committed an unlawful employment practice in violation of the State Human Rights Law N.Y. EXEC. LAW § 296(15),(16).

THIRD CAUSE OF ACTION:  
RESPONDENT'S LICENSE DENIAL VIOLATED  
THE CITY HUMAN RIGHTS LAW

43. Petitioner repeats and re-alleges each paragraph above as if fully set forth herein.

44. By violating Article 23-A, Respondent committed an unlawful employment practice in violation of the New York City Human Rights Law N.Y.CITY ADMIN. CODE § 8-107(10),(11).

FOURTH CAUSE OF ACTION:  
RESPONDENT'S LICENSE DENIAL WAS AN ABUSE OF DISCRETION AND  
ARBITRARY AND CAPRICIOUS IN VIOLATION OF CPLR ARTICLE 78

45. Petitioner repeats and re-alleges each paragraph above as if fully set forth herein.

46. This petition is brought pursuant to CPLR § 7803(3).

47. By denying Mr. [REDACTED] a CASAC-T license in contravention of clearly established State and City law, Respondent abused its discretion and acted arbitrarily and capriciously.

**WHEREFORE**, Petitioner seeks judgment under CPLR Article 78:

1. Declaring that:
  - a. Respondent OASAS violated Article 23-A;
  - b. Respondent OASAS violated the State Human Rights Law;
  - c. Respondent OASAS violated the City Human Rights Law;
2. Directing the Respondent OASAS's determination to deny Mr. [REDACTED] a CASAC-T license is null and void;
3. Directing Respondent OASAS to grant Petitioner [REDACTED] a CASAC-T license;
4. Entering judgment on behalf of Petitioner [REDACTED] against Respondent OASAS for restitution and damages incidental to Respondent's denial of Petitioner's CASAC-T

license, including but not limited to back pay and all other rights, privileges, and benefits  
Petitioner would have been entitled to had he been able to work at ████████ as a CASAC  
trainee;

5. Alternatively, directing a trial of any issues of fact raised by the parties' pleadings  
and proof;

6. Awarding attorney fees and costs under the New York Equal Access to Justice  
Act. CPLR § 8601; and

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

Dated: New York, NY  
December 28, 2007

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Juan Cartagena  
General Counsel  
Community Service Society  
105 East 22nd Street  
New York, NY 10010  
212-614-5462  
Fax: 212-260-6218