

Matter of La Cloche v Daniels
2006 NY Slip Op 30666(U)
June 1, 2006
Supreme Court, New York County
Docket Number: 403466/2003
Judge: Louis B. York
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

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

PRESENT: **LOUIS B. YORK**
J.S.C. Justice

PART 2

La Cloche
- v -
Daniels

INDEX NO. 403 4 66/03
MOTION DATE _____
MOTION SEQ. NO. 04
MOTION CAL. NO. _____

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

Notice of Motlon/ Order to Show Cause — Affidavits — Exhibits

Answering Affidavits — Exhibits

Replying Affidavits

FILED

JUN 16 2006

PAPERS NUMBERED

Cross-Motion: ☐ Yes



No

NEW YORK

COUNTY CLERK'S OFFICE

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM DECISION.**

Dated:

6/1/06

Luy

J.S.C.

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 : IAS PART 2

----- X

In the Matter of the Application of

MARC LA CLOCHE,

Petitioner,

Index No. 403466/2003

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules

— against —

RANDY A. DANIELS, as Secretary of
State, New York State Department of
State,

Respondent.

----- X

FILED

JUN 16 2006

NEW YORK
COUNTY CLERK

LOUIS B. YORK, J.¹:

The underlying facts in this Article 78 proceeding are as follows:

Petitioner Marc La Cloche was convicted of armed robbery on November 17, 1989, at the age of 24. As a result of this conviction, he was sentenced to 9-to-16 years in prison. During his imprisonment, he was, by all accounts, an admirable prisoner. He successfully completed a drug rehabilitation program; and, he earned a

¹ This decision reflects the outrage and despair felt in chambers at the inhumanity exhibited by human beings with power over one person without power. Much is owed to this judge's law secretary, Beth Herstein, whose big heart and character would not let this pass by with a perfunctory decision dismissing this proceeding as a result of petitioner's death.

high school equivalency degree in 1998. He also received good evaluations on a regular basis during his incarceration. La Cloche v. Daniels, 195 Misc. 2d 329, 330, 755 N.Y.S.2d 827, 828 (Sup. Ct. N.Y. County 2003)

In addition, he attempted to prepare himself for a life after his release from prison. The State correctional facilities in which he resided offered vocational training courses to the inmates, purportedly for this purpose; and, Mr. La Cloche availed himself of the alleged opportunity to train for a career. He chose barbering and worked hard, taking over 50 classes, commencing in 1992. He obtained two certificates in barber training and received credits for 14 months of training, qualifying him for an apprentice's license. In addition, he trained other inmates in barbering; and, he cut hair for various inmates and guards. His enthusiasm for his profession was so great that he had a barber's clippers and comb tattooed onto his right arm. Clyde Haberman, He Did Time, So He's Unfit to Do Hair, N.Y. TIMES, March 4, 2005, at B1.

Mr. La Cloche was paroled in 2000, after serving 11 years in jail. In granting parole, the Board determined that Mr. La Cloche had conducted himself well and performed his duties efficiently. It also necessarily found that there was a reasonable probability that, once he was released, he would "live and remain at liberty without violating the law," and that his release "was not incompatible with the welfare of society" and would not deprecate the seriousness of his crime. Exec. Law § 259-i.

On August 8, 2000 – shortly before his release from the Clinton Correctional Facility – he applied for a barber's apprentice license. On September 28, 2000, Mr. La Cloche learned that his application had been denied summarily. Although the State itself offered barbering courses to prison inmates, it contended that these inmates

lacked the requisite moral character and trustworthiness for the license.

At this point, Mr. La Cloche appealed the adverse determination. Administrative Law Judge Felix Neals heard his appeal; and, on June 25, 2001, he reversed the State's denial of the license, ruling that good moral character is not a requirement for a barbering license. Therefore, Mr. La Cloche, who was now out of jail, received his license. He worked at God's Property E.A.B. Unisex Salon and at Diamond Cuts Unisex Barbershop for five months, without incident.

Unfortunately, the State was determined not to allow Mr. La Cloche to ply his trade. It appealed Judge Neals' decision to respondent Daniels, Secretary of State; and, on December 4, 2001, Daniels reversed Judge Neals and revoked Mr. La Cloche's license. Mr. La Cloche had excelled at his two jobs and earned the respect and friendship of the salon owners. Nonetheless, due to the Daniels' decision, Mr. La Cloche was forced to give up both positions.

The determination also remanded the matter back to the Office of Administrative Hearings for a new hearing. However, the administrative hearing office for respondent apparently neither held a new hearing nor asked petitioner to submit evidence of his good moral character. "Instead, respondent merely revoked the certificate it had previously issued." La Cloche, 195 Misc. 2d at 331, 755 N.Y.S.2d at 828.

Mr. La Cloche commenced an Article 78 proceeding, arguing that under GBL §§ 437 and 434[1][b], [e][1], good moral character is not required for an apprentice's certificate. The Supreme Court disagreed with this reasoning, stating that, considering the statutory scheme as a whole, good character was an implicit requirement for the certification of both barbers and apprentices. See La Cloche, 195 Misc. 2d at 331, 755

N.Y.S.2d at 829. Nevertheless, the Court found that the State had erred for deciding, without considering the facts, that Mr. La Cloche's criminal conviction, per se, rendered him of inadequate moral character. As the Court noted,

If the State offers this vocational training program to persons who are incarcerated, it must offer them a reasonable opportunity to use the skills learned thereby, after they are released from prison. . . . To refuse to certify an applicant . . . solely because of a previous criminal conviction would be to deny the applicant the opportunity to practice a trade which the State itself taught him/her.

Id. at 333, 755 N.Y.S.2d at 830. On this basis, the Court remanded the matter for a rehearing.

On May 13, 2003, Mr. La Cloche had a new hearing. In support of his application, Mr. La Cloche submitted overwhelming evidence of his good character and fitness for a barbering license. Among other things, he submitted glowing references from both of his employers and from his landlord. One of his employers, Michael Santos of Diamond Cuts, stated that Mr. La Cloche would be his first choice to manage a second store should Mr. Santos open one; the employers from God's Property – a minister and his wife – not only praised his work but extolled Mr. La Cloche's high moral character. Finally, there was a reference from petitioner's parole officer, asserting that he had satisfied all of the conditions of his parole.

Nonetheless, Administrative Law Judge Roger Schneier determined that Mr. La Cloche had failed to establish good moral character. The basis of this was that Mr. La Cloche's testimony regarding the events surrounding his 15-year-old crime was inconsistent with his earlier testimony. In particular, someone was killed during the commission of the robbery in which Mr. La Cloche participated. Apparently Mr. La

Cloche was not directly involved in the murder. However, Schneier felt that because Mr. La Cloche did not give consistent testimony about whether he'd been in the room when the murder was committed, he had not shown sufficient remorse for his crime.

Subsequently, petitioner commenced the current proceeding. Respondent cross-moved to dismiss prior to answering the petition, arguing that petitioner failed to exhaust his administrative remedies. Respondent also requested that the court transfer the matter to the Appellate Division. On October 14, 2004, this court issued a decision in which it denied respondent's cross-motion and gave it 10 days to Answer.

Apparently, although respondent answered, for several months neither party forwarded the case file to the court for review on the merits. In April 2005, petitioner brought an application by Order to Show Cause for this review, which this Court declined. This Court mistakenly believed the Order to Show Cause sought reargument of the earlier petition. Petitioner apparently did not submit a new Order to Show Cause at that time.

There was no further activity on this matter until October, 2005, when Petitioner again sought to re-calendar this proceeding. Unfortunately the record was submitted to the court in the form of hundreds of loose leaf pages bound only by a rubber band. The court requested a proper set of papers from the parties. However, when after several months no one submitted a new set of papers or otherwise communicated to the court, the court denied the application with leave to renew, submitting a properly bound record.

It appears that no one submitted a properly bound record because, in October 2005, Mr. La Cloche died. Michele Davila, counsel for petitioner, notified the court of

this fact by letter dated November 17, 2005. The letter further stated that she wished to withdraw the petition. The court informed her, also by letter, that the death of petitioner extinguished her authority to serve as petitioner's counsel, and that she lacked the authority to withdraw the petition. All of the above correspondence was also sent to counsel for respondent. Based on the record before the court, it is not clear whether either party took any further action prior to this motion. The current motion, by respondent, seeks dismissal of the proceeding based on petitioner's death.

Respondent is entitled to the relief it currently requests, regardless of whether an administrator has been appointed. This is because where the only relief sought is, as here, the issuance of a license, "the proceeding does not survive the applicant's death." Hanna v. New York State Educ. Dept., 104 A.d.2d 680, 680, 479 N.Y.S.2d 911, 912 (3rd Dept. 1984). Instead, the death of the petitioner renders the matter moot, Forth v. McGuire, 254 A.D.2d 836, 837, 677 N.Y.S.2d 841, 841 (4th Dept. 1998), and strips the court of jurisdiction. See Saratoga County Chamber of Commerce, Inc. v. Pataki, 100 N.Y.2d 801,810, 766 N.Y.S.2d 654, 658 (2003). Accordingly, the court has no power to do anything other than dismiss the proceeding.

Nonetheless, the court feels compelled to comment upon the injustice that has been committed here. Mr. La Cloche used his years in prison to rehabilitate himself, and availed himself of the opportunity for vocational training offered by the State. His determination to practice his trade was so great that he continued to fight for the right to work for six years after the denial of his original application. During that period, he did not get into further legal trouble or engage in any acts of violence that suggests he lacked the moral character to be a barber. Instead, he'd excelled at his chosen trade,

and gained the trust and respect of those with whom he'd worked.

Moreover, petitioner had the potential, and the desire, to use his experience and training to benefit others. While in prison, he'd helped train other inmates in barbering. Once out, he worked with the nonprofit group the Fortune Society, a non-profit group in part designed to help former inmates break out of their old patterns of criminal behavior. (See www.fortunesociety.org). As a successful barber, he'd hoped to hold himself out as a role model and show other reformed inmates that it was possible for them to earn a living doing something they loved. Instead, the State made this impossible. It repeatedly denied Mr. La Cloche his license, without determining whether there was a valid basis for its determination. As a result, Mr. La Cloche was forced to go on welfare – earning a few dollars cleaning in the salons where he'd once cut hair, occasionally cutting friends' hair for a small fee, and sinking into a depression from which he never recovered. Jennifer Gonnerman, Banned From the Barbershop: The quiet death of a fighter for civil rights, THE VILLAGE VOICE, November 9-15, 2005.

In addition, based on all the information in the record and outside of it, it is evident that the State acted improperly in denying Mr. La Cloche his license. In the matter before this court, the Administrative Law Judge erred in his decision denying the barber's license to Mr. La Cloche. For one thing, by considering the depth of Mr. La Cloche's remorse and sense of responsibility for his crime, Schneier made a determination reserved for the Parole Board. In addition, the Parole Board, which is entitled to substantial deference in such matters, see Walker v. Travis, 252 A.D.2d 360, 362, 676 N.Y.S.2d 52, 54 (1st Dept. 1998) (emphasizing the "extraordinary degree of responsibility" that is vested in the Parole Board and the "heavy burden" a challenger

faces in overturning a Board determination), already had reached the opposite conclusions on these issues; otherwise, it would not have ordered his release. On this basis alone, Schneier's decision was both outside the scope of his power and irrational. Even if he had not overstepped his powers, Schneier's conclusion – that because Mr. La Cloche's memory wavered on the circumstances of a murder committed by another person at the scene of his 15-year-old crime, he was unfit to be a barber today – is irrational, particularly when Schneier failed to give adequate weight to Mr. La Cloche's more recent conduct and to his conduct as a barber-in-training. Finally, it goes beyond the purview of the type of character evaluation traditionally considered in the issuance of barber's licenses. See Pond v. Lomenzo, 32 A.D.2d 887, 302 N.Y.S.2d 158 (4th Dept. 1969) (although applicant was guilty of drunkenness, a permissible basis for denial of barber's license, State did not act rationally in denying applicant's application based on lack of moral character).

For another, the State's conduct throughout this battle has been contrary to its own statutorily mandated policies. "The public policy of this state . . . [is] to encourage the licensure and employment of persons previously convicted of one or more criminal offenses." Corr. Law § 753(1)(a); cf. Soto-Lopez v. New York City Civil Service Commission, 713 F. Supp. 677, 679 (S.D.N.Y. 1989)(in another context, regarding caretaker's license). Under the Corrections Law, therefore, the State cannot refuse to issue a license to a former inmate based on his or her criminal record unless (1) a direct relationship exists between the previous criminal offense and the license sought; or (2) issuing the license would create "an unreasonable risk to property or to the safety or welfare of specific individuals or the general public." Corr. Law § 752. The specific

duties and responsibilities of a barber are not "necessarily related to the license or employment sought," see Soto-Lopez, 713 F. Supp. at 679, and the Parole Board found that petitioner was not a danger to society. Exec. Law § 259-i. The State therefore should have taken a broader view and a more rational look at petitioner's relevant qualifications and conduct. Cf. Pond, 32 A.D.2d 887, 302 N.Y.S.2d 158. Its failure to do so may well have been discriminatory and a breach of the statute.

For a third, the determination was irrational on its face. Petitioner had outstanding job and character references, many of which directly related to the type of work in question. As detailed earlier, Mr. La Cloche had an impeccable record in all respects. And, by overcoming his drug addiction, he had surmounted the underlying problems which had led him to engage in criminal conduct. Sadly, the State ignored all this in reaching its seemingly predetermined conclusion.

Ultimately, the judiciary issued decisions in both of Mr. La Cloche's Article 78 proceedings which were supportive of petitioner's right to practice his chosen profession. Unfortunately, the delay with which the court reached these decisions, and the myriad delays and roadblocks unrelated to the courts, prevented Mr. La Cloche from obtaining a fair hearing of this matter prior to his death. It is a sad circumstance in which petitioner's counsel and the judicial system, with the best of intentions, did not address matters promptly enough to enable petitioner to attain a favorable outcome during his lifetime. Also tragically, it is a situation in which the State successfully rehabilitated a citizen and then vigorously fought to deny him the right to live a rehabilitated life.

At this point, however, the court lacks jurisdiction over the case, and it is

ORDERED that the motion is granted and the petition is dismissed as moot.

ENTER:

Dated: 6/1/06

Ly
LOUIS B. YORK, J.S.C.

FILED
JUN 16 2006
NEW YORK
COUNTY CLERK'S OFF.