

**Matter of German v New York City Dept. of
Health & Mental Hygiene**

2007 NY Slip Op 30470(U)

March 23, 2007

Supreme Court, New York County

Docket Number: 0113881/2006

Judge: Walter B. Tolub

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

PRESENT: _____
Justice

PART 15

Index Number : 113881/2006
GERMAN, ROSA FELICIA TAVERAS
vs
HEALTH & MENTAL HYGIENE
Sequence Number : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE: _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

motion to/for _____

PAPERS NUMBERED _____

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

FILED

Cross-Motion: Yes No

APR 02 2007

Upon the foregoing papers, it is ordered that this motion **COUNTY CLERK'S OFFICE
NEW YORK
IS DECIDED**

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

Dated: 2/23/07

WALTER B. TOLUB 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 15

-----X
In the Matter of the Application of
Rosa Felicia Taveras German,
Petitioner,

Index No. 113881/06

For leave to change, amend or correct the
records of the Bureau of Vital Statistics,
N.Y.C. Dept. of Health and Mental Hygiene

-against-

N.Y.C. Department of Health and Mental
Hygiene,
Respondent.

-----X
Walter Tolub, J.:

In this pro se Article 78 proceeding, the petitioner Rosa Felicia Taveras German (Rosa Taveras/German) seeks to change certain information in the "Death Transcript" or Certificate of Death (the certificate) that was issued for Marcelino Peralta (the decedent).

On May 27, 2006, the New York City Department of Health and Mental Hygiene (DOH) issued Certificate No. 156-06-022643 regarding the decedent. Item 16 in the certificate, entitled "Marital Status at Time of Death," states that the decedent was married. Item 17, entitled "Surviving Spouse's Name," lists the name of "Ana Ramona Garcia." Item 20a, entitled "Informant's Name," lists the name of "Ana Ramona Peralta." Item 20b, entitled "Relationship to Decedent," identifies the informant's relationship to the decedent as that of "Wife." Rosa Taveras/German now seeks to substitute her name, more specifically, the name of "Rosa F.

Taveras" (not "Rosa Felicia Taveras German" as listed in her petition caption)¹ in place of that of "Ana Ramona Garcia" in item 17 and "Ana Ramona Peralta" in item 20a. In her papers, she claims that she is the surviving spouse, not "Ana Ramona Garcia," and that she was in actuality the "Informant," not "Ana Ramona Peralta." She further indicates that she is the second wife of the decedent, that she had been caring for him for over three years during his illness, and that she was married to him at the time of his death.

As proof that she was the "Surviving Spouse," she provides, among other things, copies of her marriage certificate to the decedent, along with his divorce papers. The copies of the divorce papers and the marriage certificate come from an official of the civil state of the Dominican Republic and are stamped with what appears to be an official seal. The divorce decree indicates that the decedent and "Ana Ramona Garcia" were granted a divorce on April 27, 1993. The marriage certificate indicates that the decedent and "Rosa Felicia Taveras German" were married on September 17, 2002. She also includes wedding pictures and a number of notarized items and letters from friends and members of her community to attest to her marital status as the surviving spouse.

As proof that she was the "Informant," she explains that the names of "Ana Ramona Garcia" and "Ana Ramona Peralta" were mistakenly placed on the death certificate because her step-daughter, who was assisting her in providing the pertinent information to the DOH clerk,

¹The court notes that Rosa Taveras/German includes the decedent's last name of Peralta as part of her signatures on the Petition and the Verified Petition, but fails to include it as part of her signature on the "Consent to Change of Birth Record" form. The court further notes that, though Rosa Taveras/German states her name as being "Rosa Felicia Peralta German" on the notice of petition caption, she signs her name at the bottom of the first page of the notice of petition as "Rosa Felicias Taveras de Peralta," but lists her name as being "Rosa Felicia Peralta German" in the caption on the blue-back cover attached to the back of the notice of petition.

allegedly and intentionally misguided her so that her step-daughter's real mother would become the beneficiary of the decedent's Social Security benefits or any other benefits stemming from decedent's estate.

The DOH does not seek to dismiss the petition. But, it opposes amending the death certificate at this juncture because of the potential for a fraudulent conveyance of inheritance rights and benefits to the wrong party (*see Thomas v N.Y.C. Department of Health*, Sup Ct, NY County, October 12, 2000, Index No. 111319/00). The DOH argues that there is insufficient documentation to support Rosa Taveras/German's allegation that she is the decedent's surviving spouse. The DOH opposition appears to be premised upon two reasons: the first reason being that it needs additional information to be provided by pro se petitioner to substantiate her claims that she is the surviving spouse, in order to validly change the information on the death transcript; and the second reason being that necessary parties need to be added to the petition, i.e., the former wife, the step-daughter and all other siblings, if any, who may be entitled to certain benefits emanating from the decedent's estate, whatever that may be comprised of, i.e., insurance policies, if any, pension benefits, and Social Security benefits. The ex-wife and any children of the decedent fall into the second type of necessary party which CPLR 1001 (a) addresses, i.e., those persons "who might be inequitably affected by a judgment in an action" (*see 27th Street Block Association v Dormitory Authority of State of New York*, 302 AD2d 155, 160 [1st Dept 2002]). As such, the aforesaid persons ought to be joined as necessary parties to the petition before this court can grant the relief being sought by the pro se petitioner (*id.* at 160-161; *see also* CPLR 1001 [a] and CPLR 7802 [a]).

Accordingly, it is

ORDERED that, within twenty (20) days after service of a copy of this order with notice of entry, petitioner shall serve an Amended Notice of Petition and an Amended Petition, adding "Ana Ramona Garcia/Ana Ramona Peralta" (the purported "Surviving Spouse/Informant"), the petitioner's unnamed step-daughter and any other of the decedent's unnamed children as named parties to the petition, upon "Ana Ramona Garcia/Ana Ramona Peralta," the petitioner's unnamed step-daughter and any other of the decedent's unnamed children; and it is further

ORDERED that, within twenty (20) days thereafter, the matter may be restored to the motion calendar, upon submission of appropriate affidavits of service, demonstrating compliance herewith, along with copies of all amended pleadings and papers responsive to the amended petition; and it is further

ORDERED that the matter is held in abeyance pending renewal in accordance with the aforesaid.

Dated: 3/23/07

ENTER:



J.S.C.

FILED
APR 02 2007
COUNTY CLERK'S OFFICE
NEW YORK