

**Matter of Geffrard v New York State Off. of  
Children & Family Servs.**

2007 NY Slip Op 32285(U)

July 19, 2007

Supreme Court, New York County

Docket Number: 0117354/2006

Judge: Lewis Bart Stone

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

PRESENT HON. LEWIS BART STONE  
Index Number : 117354/2006

PART 505

GEFFRARD, MARIE

vs

NYC OFFICE OF CHILDREN

Sequence Number : 001

ARTICLE 78

INDEX NO. 117354/06

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

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

PAPERS NUMBERED

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

Answering Affidavits -- Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion

*is decided in accordance with attached Decision & Order*

**FILED**

JUL 25 2007

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: July 19, 2007

*Lewis Bart Stone*

J.S.C.

Check if appropriate:  DO NOT POST  
Check one:  FINAL DISPOSITION

HON. LEWIS BART STONE  
 REFERENCE  
 NON-FINAL DISPOSITION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE \_\_\_\_\_ FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 50S

|                                       |              |
|---------------------------------------|--------------|
| -----X                                |              |
| In the Matter of the Application of   | :            |
| MARIE GEFFRARD,                       | :            |
|                                       | :            |
| Petitioner,                           | DECISION AND |
|                                       | ORDER        |
| For a Judgment Pursuant to Article 78 | :            |
| of the Civil Practice Law and Rules   | INDEX NUMBER |
|                                       | :            |
| -against-                             | :            |
|                                       | :            |
| NEW YORK STATE OFFICE OF CHILDREN     | :            |
| AND FAMILY SERVICES,                  | :            |
|                                       | :            |
| Respondent.                           |              |

**FILED**  
JUL 25 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

-----X  
Hon. Lewis Bart Stone, J

Petitioner Marie Geffrard ("Geffrard"), brings this proceeding pursuant to Civil Practice Law and Rules ("CPLR"), Article 78 seeking to reverse the determination of the New York State Office of Children and Family Services ("OCFS"), which revoked Gaffrard's license to operate a group family day care center known as "The Little Bright Stars Daycare (the "Center"). OCFS opposes the petition.

**PROCEDURAL HISTORY**

Geffrard was licensed since 2002 to provide group family day care at the Center, such license being overseen by OFCS under Social Services Law, Article 390

[\* 3 ]  
and 18 NY Code Rules and Regulations, Article 415.5.

On March 20, 2006, a child was injured in the Center, which caused the mother to file a complaint with OFCS. OCFS promptly conducted a field investigation of the Center, visiting the center, conducting interviews of employees and obtaining records.

On April 6, 2006, after conducting the investigation, OFCS sent Geffrard a revocation letter which advised her that her license to operate the Center was revoked and advised her of the specific violations that sustained the charges. The letter provided the basis upon which OCFS had found that Geffrard had violated the rules governing day care operation specified and advised her of the right to request a hearing and the address to which such request should sent. Geffrard, through her attorney, on April 24, 2006, sent such request for a hearing to OCFS. On May 8, 2006, OCFS acknowledged such request and advised Geffrard of the date and location of such hearing, that she could bring witnesses, records and other forms of evidence and also described the procedure by which the hearing would be held.

On June 6, 2006, a hearing was held before an Administrative Law Judge (“ALJ”) based upon Geffrard’s request to challenge the agency’s determination to revoke her license. Geffrard was present and represented by an attorney and an attorney appeared on behalf of OCFS. Three witnesses and Geffrard testified, and were examined and cross examined by the attorneys. Numerous documents were also

admitted into evidence.

By written decision, the ALJ found that OCFS had proven by a preponderance of the evidence that Geffrard had failed to maintain required medical and emergency information for children in her care, did not have proper supervision at the Center, that Geffrard held another job with the New York Board of Education and was not present for a major portion of the Center's hours of operation, that Geffrard's assistant refused to cooperate with a field inspection during the post-incident investigation and that Geffrard was not present during the inspection and unavailable to be reached during that time. Such determination was reviewed by John F. Udochi, Bureau of Special Hearings, who determined that violations of 18 NYCRR §§416.8(a), 416.8(d)(1), 416.15(a)(20)(c)(b) and 416.15(a)(10) had been proven by OCFS by a preponderance of the evidence and that upon administrative review, such determination was not arbitrary and capricious.

Geffrard challenges this determination pursuant to CPLR §§7803(1), (2) and (3), claiming that the May 8, 2006 letter from OCFS failed "among other things, to furnish required statutory notice regarding (i) the manner in which the hearing will be conducted, (ii) petitioner's right to present testimonial evidence (ii)(sic) petitioner's right to present arguments on issues of fact and law, (iii) petitioner's right to cross-examine witnesses; and (iv) petitioner's right to examine any documents or

items offered into evidence” as specifically required under Title 18 NYCRR 413.5(a) and (c).

Geffrard provides no additional support for this claim and a review of the revocation letter sent by OCFS shows that such letter advised Geffrard of the manner of the hearing, her right to be present, her right to an attorney and all her rights regarding witnesses and documents. The Court therefore finds no violation of CPLR §7803 (1) and (2) regarding the manner in which Geffrard was notified of the hearing. Geffrard was in fact represented by an attorney at the hearing and such attorney participated fully.

Geffrard also claims that the decision to revoke her license was based on an “arbitrary and capricious” standard rather than a “preponderance of the evidence” standard. This claim is misplaced. The decision of July 27, 2006 is a review of the ALJ’s findings of fact and law, which determined that OCFS proved, “by a preponderance of the evidence” that Geffrard violated the rules that govern the running of a family day care center. Such administrative determination was then reviewed by John F. Udochi, who found that such decision was rational and not arbitrary and capricious.

In this Article 78 proceeding, the Court may consider “whether a determination was made in violation of lawful procedure, was affected by an error of law, or was arbitrary or capricious or an abuse of discretion.” CPLR §7803(3). In considering whether OCFS acted in an arbitrary and capricious manner, this Court is limited to an assessment of whether a rational basis exists for the exercise of discretion or the action complained of. Matter of Pell v. Board of Educ., 34 NY2d 222 (1974). This Court may not substitute its judgment for that of an agency, nor should it disturb the decision of the agency if the agency’s determination can be supported by a reasonable basis. Pell at 231.

This Court finds that the decision of OCFS had a reasonable and rational basis, was not in excess of jurisdiction and was not affected by an error of law. Geffrard has failed to substantiate any grounds under CPLR §7803 to reverse the determination.

The petition is dismissed.

This is the Decision and Order of the Court.

DATED: JULY 19, 2007  
NEW YORK, NEW YORK



Hon. Lewis Bart Stone  
Justice of the Supreme Court