

Hunt v New York City Dept. of Correction

2008 NY Slip Op 32997(U)

October 31, 2008

Supreme Court, New York County

Docket Number: 109852/08

Judge: Carol R. Edmead

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

PRESENT: CAROL EDMEAD
J.S.C.

PART 35

- Index Number : 109852/2008

HUNT, MELINDA

vs
NYC DEPT OF CORRECTION

Sequence Number : 001

ARTICLE 78

VDEX NO.

OTION DATE

OTION SEQ. NO.

OTION CAL. NO.

10/31/08
001

TI _____ 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

The instant motion (sequence 001) is decided in accordance with the accompanying Memorandum Decision. It is hereby

ORDERED that the application of petitioner Melinda Hunt, for an order and judgment: (1) ordering respondent New York City Department of Correction (“respondent”) to release the requested documents pursuant to Public Officers Law Article 6 §§ 84 - 90, Freedom of Information Law (“FOIL”); and (2) ordering respondent to pay the reasonable litigation costs and reasonable attorney’s fees pursuant to Public Officers Law Article 6 § 89(4)c, is **denied in its entirety and the Petition is dismissed**; and it is further

ORDERED that counsel for respondent shall serve a copy of this order with notice of entry within twenty days of entry on counsel for petitioner.

FILED
NOV 06 2008
COUNTY CLERK'S OFFICE

Dated: 10/31/08

[Signature]
CAROL EDMEAD
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: PART 35

MELINDA HUNT,

Petitioner,

Index No. 109852/08

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

DECISION/ORDER

-against-

NEW YORK CITY DEPARTMENT OF CORRECTION,

Respondent.

EDMEAD, J.S.C.

FILED
NOV 06 2008
COUNTY CLERK'S OFFICE
NEW YORK

MEMORANDUM DECISION

Petitioner Melinda Hunt ("petitioner") moves for an order and judgment: (1) ordering respondent New York City Department of Correction ("respondent") to release the requested documents pursuant to Public Officers Law Article 6 §§ 84 - 90, Freedom of Information Law ("FOIL"); and (2) ordering respondent to pay the reasonable litigation costs and reasonable attorney's fees pursuant to Public Officers Law Article 6 § 89(4)c.

On or about October 23, 2007 petitioner sent a comprehensive FOIL request to respondent, asking for a copy of all Hart Island¹ Burial Records from 1985 to the present. Petitioner allegedly required the requested data so as to assist individuals in determining whether deceased friends or family members were buried on Hart Island. Petitioner also considers the log books on Hart Island to be future historic artifacts in and of themselves and desired copies in

¹ Hart Island, commonly called "Potter's Field," is an island of approximately one hundred acres in size located in Long Island Sound, and is part of the Bronx. The Department of Corrections maintains and operates the City cemetery on Hart Island. Burials are conducted using inmate labor under the supervision of the Department of Corrections.

order to be able to ensure preservation of this unique historical record as well as the locations of intact mass graves for future generations.

On or about March 14, 2008, respondent sent petitioner 1302 pages of partially redacted documents, and a letter stating that the documents were redacted in part because the New York Public Officers Law (“NYPOL”) §§87(2)(b) and (f) provides respondent with an exemption.

On April 14, 2008, petitioner sent respondent a letter appealing the denial of access to these records. By letter dated April 28, 2008, respondent informed petitioner that her appeal was denied and that any further review must take place in a judicial proceeding.

Petitioner's Contentions

The documents received by petitioner in response to her request will preserve only part of the historical record contained in the log books. And, the documents received by petitioner in response to her request will provide only limited guidance to family members seeking to understand how deceased individuals came to receive a public burial in New York City, as they lack vital information regarding the place of death.

The repeated claims by respondent that some of the information was withheld because it was not responsive to petitioner's request is unfounded. The failure to disclose such information under the argument that it is unresponsive to the request is clearly a misinterpretation of the original request.

Respondent's failure to disclose based on exemptions is likewise unavailing. Respondent, in neither response, included any particularized or specific reasoning; instead, respondent applied the exemption in a blanket manner.

The New York Court of Appeals has held that there is no basic right to personal privacy

after death and have also supported petitioners in their FOIL requests for death certificates.

There is no evidence or valid argument that the disclosure of the withheld records could endanger the life or safety of any person.

Respondent's Opposition

The petitioner's FOIL request did not request the *place* of death of any of the individuals who were buried at Potter's Field, and, as such, that information was redacted.

Respondent denied access to certain records or portions thereof relying on the exemption in the NYPOL section 89(2)(b) permitting withholding information if it is to be used for commercial or fund raising purposes.

Petitioner claims that the main reason for obtaining the place of death information is so family members of the deceased can locate family members on Potter's Field. Petitioner further argues that the release of the place of death of the deceased does not create an unwarranted invasion of personal privacy, although it contains residential addresses of individuals currently alive. Further, petitioner would claim that the list of addresses, which denotes the person's place of death is not going to be used for commercial or fund raising purposes. However, petitioner has constructed a website listing some information about Hart Island and Potter's Field and the website clearly states that individuals should "consider volunteering time or money toward the effort," to build a searchable data base.

Analysis

CPLR 7803 states that the court review of a determination of an agency, consists of whether the determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to

the measure or mode of penalty imposed. CPLR 7803(3) (*see Windsor Place Corp. v New York State DHCR*, 161 A.D.2d 279 [1st Dept.1990]; *Mazel v DHCR*, 138 A.D.2d 600 [1st Dept.1988]; *Bambeck v DHCR*, 129 A.D.2d 51 [1st Dept.1987], *lv. den.* 70 N.Y.2d 615 [1988]). An action is arbitrary and capricious, or an abuse of discretion, when the action is taken "without sound basis in reason and ... without regard to the facts." *Matter of Pell v Board of Education*, 34 N.Y.2d 222, 231(1974). Rationality is the key in determining whether an action is arbitrary and capricious or an abuse of discretion. *Matter of Pell v Board of Education*, 34 N.Y.2d, at 231. The court's function is completed on finding that a rational basis supports the DHCR's determination (*see Howard v Wyman*, 28 N.Y.2d 434 [1971]). Where the agency's interpretation is founded on a rational basis, that interpretation should be affirmed even if the court might have come to a different conclusion (*see Mid-State Management Corp. v New York City Conciliation and Appeals Board*, 112 A.D.2d 72 [1st Dept.], *aff'd* 66 N.Y.2d 1032 [1985]).

As to the petitioner's argument that the respondent misapplied the relevant statutes, the court is guided by the Court of Appeals in *Howard v Wyman*, 28 N.Y.2d 434 N.Y. 1971, wherein the Court stated:

It is well settled that the construction given statutes and regulations by the agency responsible for their administration, if not irrational or unreasonable, should be upheld. (See, e.g., *Matter of Mounting & Finishing Co. v. McGoldrick*, 294 N. Y. 104, 108; *Matter of Colgate-Palmolive-Pect Co. v. Joseph*, 308 N. Y. 333, 338; *Udall v. Tallman*, 380 U. S. 1, 16-18; *Power Reactor Co. v. Electricians*, 367 U. S. 396, 408.) As this court wrote in the *Mounting & Finishing Co.* case (294 N. Y., at p. 108), "statutory construction is the function of the courts 'but where the question is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially, the reviewing court's function is limited' (*Board v. Hearst Publications*, 322 U. S. 111, 131). The administrative determination is to be accepted by the courts 'if it has "warrant in the record" and a reasonable basis in law' (same citation). "The judicial function is exhausted when there is found to be a rational basis for the conclusions

approved by the administrative body' (Rochester Tel. Corp. v. U. S., 307 U. S. 125, 146)."

Howard at 434.

Both petitioner and respondent have accurately articulated the relevant regulations and statutes. Where they diverge is on whether petitioner is entitled to the withheld information based on the statute.

This court finds that the Department of Corrections made a reasonable application and interpretation of the applicable regulations and statutes in determining to withhold the requested data from petitioner. Based on the evidence before the respondent, it was reasonable to conclude that the withheld information would be used for commercial and/or fund raising purposes.

Conclusion

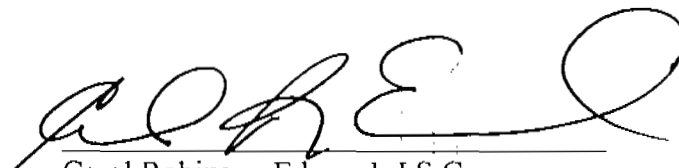
Based on the foregoing, it is hereby

ORDERED that the application of petitioner Melinda Hunt, for an order and judgment: (1) ordering respondent New York City Department of Correction ("respondent") to release the requested documents pursuant to Public Officers Law Article 6 §§ 84 - 90, Freedom of Information Law ("FOIL"); and (2) ordering respondent to pay the reasonable litigation costs and

reasonable attorney's fees pursuant to Public Officers Law Article 6 § 89(4)c, **is denied in its entirety and the Petition is dismissed;** and it is further

ORDERED that counsel for respondent shall serve a copy of this order with notice of entry within twenty days of entry on counsel for petitioner.

Dated: October 31, 2008



Carol Robinson Edmead, J.S.C.

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