

Matter of Gillis v New York State Educ. Dept.

2011 NY Slip Op 31830(U)

June 22, 2011

Sup Ct, Albany County

Docket Number: 6639-10

Judge: Jr., George B. Ceresia

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In The Matter of the Application of
ROBERT PATRICK GILLIS,

Petitioner,

-against-

NEW YORK STATE EDUCATION DEPARTMENT;
THE NEW YORK STATE BOARD OF REGENTS;
THE OFFICE OF THE PROFESSIONS; THE
COMMITTEE ON PROFESSIONS; DAVID
STEINER, as Commissioner of Education of the State
of New York; FRANK MUNOZ, Deputy Commissioner
of Education of the State of New York; MERRYL H.
TISCH, Chancellor of New York State Board of
Regents; and LEONARD LAPINSKI, Supervisor of
Professional Education Programs,

Respondent,

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

Supreme Court Albany County Article 78 Term
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding
RJI # 01-10-ST1902 Index No. 6639-10

Appearances: Serrins & Associates
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DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

On July 27, 1979 the petitioner received a license from the respondent New York State Department of Education to practice medicine within the State of New York. He practiced psychiatry for twenty-one years. On February 29, 2000 he voluntarily surrendered his license to the New York State Board for Professional Medical Conduct, by reason of having engaged in a personal relationship with one of his patients. On April 10, 2003, following three years of therapy, he submitted an application for restoration of his medical license to the Committee On Professions (“Committee”). He was interviewed by telephone on October 16, 2003. On July 13, 2004 the Office of Professional Responsibility, State Board of Medicine’s Peer Panel met with petitioner and his attorney. The Peer Panel, on March 5, 2005, declined to recommend restoration of petitioner’s license. On June 27, 2005 the petitioner and his attorney made a personal appearance before the Committee. On July 14, 2006 the petitioner wrote the Committee inquiring when a decision on his license application would be issued. According to the petitioner, the Committee never responded. In January 2007 the petitioner enlisted the assistance of a State Senator to find out when the Committee would issue a decision. Since then, and up to the time of the filing of the petition, no decision on petitioner’s application had been made.¹ The petitioner commenced the above-captioned CPLR Article 78 proceeding to compel respondent to render a determination with regard to the restoration of his medical license.

Following commencement of the proceeding, the petitioner agreed to adjourn the

¹The foregoing is only a brief synopsis of the events which transpired since the petitioner submitted his application for restoration of his license in April of 2003.

proceeding to permit respondents to complete their review of his application. A final determination denying his application was made by the Board of Regents on February 8, 2011, and by the Commissioner of Education on March 8, 2011. The respondents have made a motion to dismiss the petition by reason that the matter is now moot. The motion is unopposed.

The relief sought by petitioner is in the nature of mandamus to compel. Mandamus is an extraordinary remedy, available, as against an administrative officer, only to compel the performance of a duty enjoined by law (see, Klostermann v Cuomo, 61 NY2d 525, 539, 540). It is only appropriate where the right to relief is "clear" and the duty sought to be enjoined is performance of an act commanded to be performed by law, purely ministerial and involving no exercise of discretion (Matter of Glenman Industrial & Commercial Contracting Corporation v New York State Office of the State Comptroller, 75 AD3d 986, 989 [3rd Dept., 2010]; Mtr Hamptons Hosp v. Moore, 52 NY2d 88, 96 [1981]; Matter of Legal Aid Socy. Of Sullivan County v Scheinman, 53 NY2d 12, 16; Matter of Maron v Silver, 58 AD3d 102, 124-125 [3rd Dept., 2008], lv to app denied 12 NY3d 909). "The general principle [is] that mandamus will lie against an administrative officer only to compel him [or her] to perform a legal duty, and not to direct how he [or she] shall perform that duty'" (Klostermann v Cuomo, supra, p. 540, quoting People ex rel. Schau v McWilliams, 185 NY 92, 100).

With regard to the motion to dismiss, "it is a fundamental principle of our jurisprudence that the power of a court to declare the law only arises out of, and is limited to, determining the rights of persons which are actually controverted in a particular case

pending before the tribunal” (see Hearst Corp. v Clyne, 50 NY2d 707, at 713 [1980], citations omitted; see also Matter of City of New York v New York State Public Employment Relations Board, 54 AD3d 480, 481-482 [3rd Dept., 2008]). “This principle, which forbids courts to pass on academic, hypothetical, moot, or otherwise abstract questions, is founded both in constitutional separation-of-powers doctrine, and in methodological strictures which inhere in the decisional process of a common-law judiciary” (id., at 713-714; see also Saratoga County Chamber of Commerce v Pataki, 100 NY2d 801, 810-811 [2003], cert denied 540 US 1017; Matter of NRG Energy, Inc. v Crotty, 18 AD3d 916, 918-919 [3rd Dept., 2005]; Matter of Orsi v Board of Appeals of the Town of Bethlehem, 3 AD3d 698, 700-701 [3^d Dept., 2004]).

In view that a final determination on petitioner’s application to restore his medical license has been made, it appears that the petitioner has received all of the relief to which he would be entitled, if the petition was to be granted. As such the motion must be granted and the petition dismissed.

Accordingly, it is

ORDERED, that respondent’s motion to dismiss the petition is granted; and it is

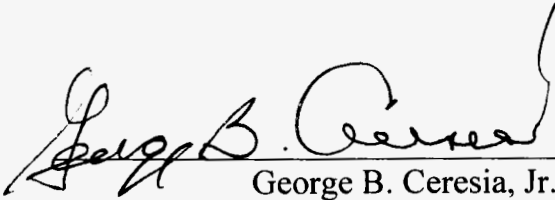
ORDERED and ADJUDGED, that the petition be and hereby is dismissed.

This shall constitute the decision, order and judgment of the Court. The original decision/order/judgment is returned to the attorney for the respondents. All other papers are being delivered by the Court to the County Clerk for filing. The signing of this decision/order/judgment and delivery of this decision/order/judgment does not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable

provisions of that rule respecting filing, entry and notice of entry.

ENTER

Dated: June 22, 2011
Troy, New York



George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. Notice of Petition dated October 5, 2010, Petition, Supporting Papers and Exhibits
2. Respondent's Motion to Dismiss, dated April 18, 2011
3. Affirmation of James J. Seaman, Esq., Assistant Attorney General dated April 18, 2011.
4. Affirmation of Seth Rockmuller, Esq., Associate Attorney for the Office of Professions of the New York State Education Department, dated April 14, 2011.