

**Matter of Giamo v City of New York**

2014 NY Slip Op 30313(U)

January 24, 2014

Sup Ct, New York County

Docket Number: 101318/13

Judge: Jr., Alexander W. Hunter

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

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

Index Number : 101318/2013  
GIAMO, PETER ANTHONY  
vs  
CITY OF NEW YORK  
Sequence Number : 001  
ARTICLE 78

PART 33

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

**ALEXANDER W. HUNTER, JR.**

The following papers, numbered 1 to 20, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). 1-14  
Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). 15-19; 20  
Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is

*decided in accordance with the  
Order and Judgment annexed hereto.*

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

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 1/24/14

  
**ALEXANDER W. HUNTER JR.**, J.S.C.

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER  
 DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 33**

-----X

In the Matter of the Application of  
Peter Anthony Giamo,

Index No.: 101318/13

Petitioner,

Order and Judgment

-against-

The City of New York, and The New York City  
Department of Health and Mental Hygiene,

Respondents.

-----X

**HON. ALEXANDER W. HUNTER, JR.**

Two separate applications were filed in this matter under motion sequences #1 and #2. The application under motion sequence #1 will be decided herein.

The application of petitioner for an order, directing respondent the New York City Department of Health and Mental Hygiene (“DOHMH”) to produce a current birth certificate of petitioner and to amend or correct the birth certificate to bear his true and correct name of “Peter Anthony Giamo,” is granted. The cross-motion by respondents to dismiss the petition is denied.

In his verified petition, sworn to on August 23, 2013, petitioner asserts that he was born at Bellevue Hospital in New York, New York on August 16, 1952. Petitioner avers that he was born to Lena Burger and Peter Giamo and that his birth certificate indicates that his name is “Male Berger.” Petitioner asserts that he and his family lived in New York until 1957, when his father died and his family moved to Bristol, Pennsylvania. His mother died in 1977. Petitioner avers that since his childhood, and throughout his life, he has been identified and known as Peter Anthony Giamo.

In support of his application, petitioner submits his grade school records, which identify him as “Peter A. Giamo” or “Peter Anthony Giamo.” The records identify his father as Peter Giamo and his mother as Lena Berger. Some references in the school records include the name “Berger” in parentheses after “Giamo.” Petitioner submits an affidavit of his half-brother William Berger. William Berger attests that he has known petitioner his entire life and confirms that petitioner has always been known as “Peter Giamo.”

Petitioner submits a copy of his criminal record, which identifies him as “Peter Anthony Giamo.” On February 4, 1992, petitioner pled guilty in Pennsylvania state court to charges of rape, statutory rape, and involuntary deviate sexual intercourse, and received a sentence of five to twenty years imprisonment. This followed an earlier conviction in Pennsylvania state court, on February 3, 1984, for aggravated assault and other charges. As a result of his 1992 conviction,

petitioner was incarcerated through September 4, 2011. His records of incarceration identify him as “Peter Giamo.” Upon release from prison, petitioner was listed in the Megan’s Law sex offender registry maintained by Pennsylvania State Police, which identifies him as “Peter Anthony Giamo, Sr.”

Petitioner submits documents from the Social Security Administration and the Centers for Medicaid and Medicare Services, which identify him as “Peter Giamo” or “Peter Anthony Giamo.” Petitioner also submits life insurance documents, health insurance documents, and medical records that identify him as “Peter Giamo.”

Petitioner resides at 1634 South Lindenwood Street in Philadelphia, Pennsylvania. The documents that petitioner submitted in support of his application reflect this address.

As a result of his inability to produce a birth certificate bearing his true and correct name, petitioner avers that he is unable to: (1) secure crucial benefits; (2) obtain a Pennsylvania State driver’s license or photo identification; (3) open a bank account; (4) obtain a replacement copy of his social security card; or (5) apply for a job or an apartment in his own name. Petitioner has attempted to procure a copy of his birth certificate from DOHMH, however, DOHMH failed to produce the birth certificate due to his inability to submit identification matching the name that appears on the birth certificate, “Male Berger.”

DOHMH cross-moves to dismiss the petition on the grounds that it fails to state a cause of action and that petitioner failed to exhaust his administrative remedies. DOHMH avers that it has no record of ever receiving a request from petitioner for neither a copy of his birth certificate nor an amendment of his birth certificate. DOHMH further avers that petitioner does not offer an explanation as to why his birth certificate lists his name as “Male Berger.” DOHMH notes that petitioner has the ability to change his name under common law, to which it poses no objection. DOHMH defers to the court as to whether petitioner has satisfied the criteria to change his name under common law, or pursuant to Article 6 of the Civil Rights Law.

Petitioner opposes the cross-motion to dismiss on the grounds that the administrative procedures of respondents provide no mechanism for petitioner to amend his birth certificate and there are no administrative remedies to be exhausted.

“Under the common law a person may change his or her name at will so long as there is no fraud, misrepresentation or interference with the rights of others. The statute affirms this right and the two procedures exist side by side supplementing each other.” **Matter of Sara R. Halligan**, 46 A.D.2d 170, 171 (4th Dept. 1974) (internal citation omitted). A change of name is “accomplished by usage or habit. When the statutory procedure is followed, a court order and public record verify the change.” **Id.** at 171. “Section 63 of the Civil Rights Law provides that upon presentation of an application for a name change if the court shall determine that the petition is true and that there is “no reasonable objection” to the change, it “shall make an order” granting the petition.” **Id.**

“No application shall be approved unless the Commissioner or the Commissioner’s designee is satisfied that the evidence submitted shows the true facts and that...the name of a person name in a birth certificate has been changed pursuant to court order.” 24 RCNY § 207.01(c).

This court is satisfied that petitioner has consistently utilized the name “Peter Anthony Giamo.” This court finds that there is no evidence of fraud, misrepresentation, or likely interference with the rights of others. Thus, in the absence of a reasonable objection, the petition is granted.

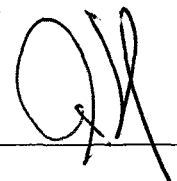
Accordingly, it is hereby

ADJUDGED that the application is granted; and it is further,

ORDERED that petitioner shall file a certified copy of this order and judgment with the New York City Department of Health and Mental Hygiene, which shall amend the official records pertaining to the aforesaid birth certificate in accordance with this order and judgment.

Dated: January 24, 2014

ENTER:



J.S.C.

**ALEXANDER W. HUNTER, J.S.C.**

**UNFILED JUDGMENT**

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).