

<b>Pacheco v Baruch Coll.</b>
2022 NY Slip Op 30638(U)
March 2, 2022
Supreme Court, New York County
Docket Number: Index No. 150952/2022
Judge: Arlene Bluth
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE BLUTH PART 14

Justice

-----X

JUANA PACHECO,

Petitioner,

- v -

BARUCH COLLEGE AND THE CITY UNIVERSITY OF
NEW YORK

Respondents.

-----X

INDEX NO. 150952/2022

MOTION DATE 3/2/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1-36
were read on this motion to/for ARTICLE 78.

The cross-motion by respondents to dismiss the petition is granted.

Background

Petitioner commenced this proceeding for a writ of mandamus that she has completed all
of the requirements for a master's degree in Public Administration from respondent Baruch
College and that respondents issue her a degree. She also seeks costs, sanctions and legal fees
based on the alleged frivolous conduct of respondents.

Petitioner explains that she pursued this degree in 1993 and 1994 and insists she
completed all of the coursework for the degree. She claims she has a certificate confirming that
she completed the required courses and that she walked at a graduation ceremony, although she
never claims she received her actual degree at that time. Petitioner explains that nobody ever
asked her for a physical copy of her degree until 2014. She claims that when she requested a
copy from respondents, they asserted that she did not complete two courses. Petitioner argues
that even though she believed she had taken the courses, she offered to take one of the classes
again.

In opposition and in support of their cross-motion to dismiss, respondents contend that the instant proceeding is time barred and that petitioner simply did not earn the master's degree. They question why petitioner waited over 25 years to bring this proceeding and points to an affidavit from Professor Friedman (who teaches one of the courses that petitioner purportedly did not take) who claims that petitioner did not complete his class. Professor Friedman explains that petitioner was in his class in 1994, but never finished the coursework and that his records support this contention (NYSCEF Doc. No. 24 at 2-3). Respondents acknowledge that the other professor who taught the remaining course at issue has passed away.

They assert that even if the statute of limitations did not apply here, the doctrine of laches should compel the Court to dismiss the proceeding. Respondents argue that it is manifestly unfair to require them to search for documents from decades ago and where the vast majority of people who might have first-hand knowledge have passed away, retired or moved on.

Respondents argue that attendance at a graduation ceremony or being listed in a graduation booklet are not the equivalent of earning a degree. They maintain that a graduate student has to submit an application for a degree and that petitioner never did this. The application process involves the registrar comparing the student's academic record with the program requirements, which would have resulted in a denial because petitioner did not complete all of the required courses.

With respect to the certificate, respondents maintain that it was presented by the National Urban Fellows Program and not respondents and should not be confused with role of the registrar. Respondents also point out that petitioner's record indicated that she was Administratively Withdrawn for certain courses because she never submitted proof of

vaccination for measles, mumps and rubella as required during that academic year, another reason why petitioner was not issued a degree.

Petitioner did not submit opposition to the cross motion or a reply. When respondents filed the cross-motion, the Court *sua sponte* adjourned the return date of this proceeding (which was commenced by order to show cause) and set a deadline of March 1, 2022 by 5 p.m. for petitioner to file a reply/opposition (NYSCEF Doc. No. 36). Instead of filing opposition, petitioner's attorney uploaded a letter at 4:14 p.m. on March 1, 2022 that sought an adjournment in order to settle (NYSCEF Doc. No. 37). Respondents then sent in their own letter objecting to the adjournment (NYSCEF Doc. No. 38). The Court declines to grant an adjournment to settle a case where one side objects and where that request was filed at the very last moment. Moreover, the Court observes that petitioner commenced this proceeding by order to show cause. Clearly, petitioner believed this was an emergency and so the Court will issue a prompt decision.

### **Discussion**

As discussed above, petitioner did not submit any opposition to the cross-motion. Therefore, the Court grants that application and the petition is dismissed.

However, even if the Court were to consider the merits, the Court would reach the same conclusion. The fact is that this case is time-barred. Petitioner allegedly completed the coursework, according to petitioner, in 1994. That she never had a reason to ask for a physical copy of the degree does not somehow extend the statute of limitations for decades. Petitioner's failure to follow up does not help her avoid the four-month limitations period.

Moreover, petitioner admits that she realized she was never awarded the degree in 2014 (NYSCEF Doc. No. 3, ¶ 11) and did not commence this proceeding until 2022. Even assuming there was some way to suspend the statute of limitations until petitioner finally realized she

didn't have the degree, she did not bring this proceeding within four months of that realization. She waited another 8 years. The Court agrees with respondents that the doctrine of laches provides another basis to dismiss this proceeding; it would be ridiculous to expect respondents to compile a complete record from nearly 30 years ago. That petitioner was negotiating with respondents about a possible resolution over the last few years does not save this proceeding. The prospect of a potential settlement does not suspend the CPLR.

The Court also finds that respondents' actions were neither arbitrary nor capricious. This Court cannot substitute its own judgment in place of educators (*Matter of Wagschal v Bd. of Examiners of Bd. of Educ. of City of New York*, 69 NY2d 672, 674, 511 NYS2d 836 [1986]). The fact is that, here, Professor Friedman attached his records that show petitioner never completed his course (one of two that petitioner did not finish). He explains that his marking of 80% in his records for petitioner meant she completed 80% of the course and the absence of a letter grade means he never issued one.

Respondents also attached the affidavit of a senior registrar at Baruch College who explains that not only did petitioner not complete the coursework, but she also failed to provide proof of immunizations for measles, mumps and rubella as required in the 1993-94 academic year (NYSCEF Doc. No. 25, ¶ 5). This resulted in petitioner receiving an Administratively Withdrawn marking (*id.* ¶ 6). The registrar noted that when petitioner reached out in 2014, his office located the grades for each of her courses and found that she did not receive grades for two courses (*id.* ¶ 12).

In other words, setting aside the fact that petitioner did not bother to oppose the cross-motion, respondents met their burden to dismiss this proceeding both on statute of limitations grounds and on the documentary evidence they submitted. It is not this Court's role to second

guess the decision of a university not to issue a degree where they submitted evidence that petitioner did not meet the requirements. This is not a situation where some trivial and meaningless obstacle is at issue; rather, respondents argue that petitioner did not meet the requirements.

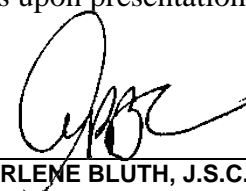
The Court also recognizes that it appears respondents tried to work with petitioner over the last few years in order to reach some sort of resolution that involved petitioner possibly taking the required courses (despite not completing the degree within the required six-year time period). Respondents' willingness to devote substantial resources reviewing petitioner's claims and exploring a compromise was admirable. Contrary to petitioners' assertions, those efforts did not suspend the statute of limitations or constitute an admission by respondents that petitioner is entitled to the degree. In fact, the emails between the parties make it abundantly clear the purpose for statutes of limitation; petitioner asked respondents to go back decades (see e.g., NYSCEF Doc. No. 11). Here, respondents went back as best they could and were able to show that petitioner never earned a master's degree in Public Administration from respondents.

Accordingly, it is hereby

ORDERED that the cross-motion by respondents to dismiss the petition is granted; and it is further

ADJUDGED that the petition is denied, this proceeding is dismissed and the Clerk is directed to enter judgment accordingly with costs and disbursements upon presentation of proper papers therefor.

3/2/2022  
DATE

  
ARLENE BLUTH, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input checked="" type="checkbox"/>	OTHER
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: