

**Baroi-Errichiello v New York City Dept. of Health & Mental Hygiene**

2022 NY Slip Op 33972(U)

November 21, 2022

Supreme Court, New York County

Docket Number: Index No. 652154/2022

Judge: Sabrina Kraus

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. SABRINA KRAUS PART 57TR**

*Justice*

-----X

MAUSHUME SARA BAROI-ERRICHELLO,

Plaintiff,

INDEX NO. 652154/2022

MOTION DATE 01/02/2023

MOTION SEQ. NO. 001

- v -

NEW YORK CITY DEPARTMENT OF HEALTH AND  
MENTAL HYGIENE, DIEGO ERRICHELLO

Defendant.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

**BACKGROUND**

Petitioner commenced this proceeding pursuant to CPLR article 78 to challenge the December 10, 2021, determination of New York City Department of Health and Mental Hygiene (NYCDHMH) that rejected Petitioner’s application to correct the death certificate of Marco Vincenzo Errichiello (MVE).

Petitioner asserts there are three inaccuracies on the death certificate for MVE. First, Petitioner maintains she married MVE on January 31, 2020, however the death certificate provides that MVE was never married and therefore also omits Petitioner’s name as surviving spouse, the second inconsistency. The third inaccuracy is the spelling of MVE’s mother’s last name. Petitioner asserts it should read “DiMasi” instead of “DeMasi”.

The information for the death certificate was provided by Respondent Diego Errichiello (DE), MVE’s brother.

On December 10, 2021, although Petitioner submitted adequate proof of marriage to MVE, NYCDHMH declined to make the corrections to the death certificate based upon DE's opposition to the proposed amendments. NYCDHMH argues that without the consent of the informant, they are unable to make any corrections to the death certificate without court order. In addition, as to the correction of MVE's mother's last name, NYCDHMH asserts Petitioner failed to provide sufficient documentation in support of her request to correct the spelling.

The Amended Notice of Petition was returnable on November 3, 2022.

NYCDHMH submitted opposition on October 27, 2022.

DE has failed to appear or submit opposition.

On November 15, 2022 the petition was submitted for the courts determination.

### DISCUSSION

Judicial review of an administrative determination pursuant to CPLR article 78 is limited to whether the determination was arbitrary and capricious or rationally based on the record, *Matter of Peckham v Calogero*, 12 NY3d 424 (2009); *Pell v Bd. of Educ.*, 34 NY2d 222 (1974); *Hushes v Doherty*, 5 NY3d 100 (2005). "The arbitrary and capricious test chiefly relates to whether a particular action should have been taken or is justified ... and whether the administrative action is without foundation in fact. Arbitrary action is without sound basis in reason and is generally taken without regard to the facts." *Matter of Pell v. Bd. of Ed. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 N.Y. 2d 222, 230 (1974). The court in deciding the petition my only review "the facts and record adduced before the agency" when the administrative determination was rendered, *Fanelli v New York City Conciliation & Appeals Bd.*, 90 AD2d 756, 757 (1st Dept. 1982).

NYCDHMH admits that in support of her application for corrections to the death certificate of MVE, Petitioner submitted a certificate of marriage, an apartment lease listing both Petitioner and MVE as tenants, federal and state tax returns wherein Petitioner and MVE filed as married, Petitioner's passport listing MVE as her spouse, MVE's drivers license and social security card. NYCDHMH attaches copies of these documents to the opposition for the court's review.

NYCDHMH suggests in their opposition that but for the disapproval of DE, the informant on the death certificate, Petitioner's application would have been granted to the extent of amending the marital status and surviving spouse's information. NYCDHMH does not state what the basis was for DE to oppose the changes and DE has not appeared in this action.

In regard to the application to amend the spelling of MVE's mother's last name, NYCDHMH states that no evidence of the correct spelling was submitted by Petitioner, nor does Petitioner submit any evidence of the same in support of the within application.

Based upon the forgoing, the court finds the decision by NYCDHMH to deny Petitioner's application to amend the death certificate of MVE to reflect that he was married, and that Petitioner was his surviving spouse was arbitrary and capricious and not based upon the facts as they were presented. NYCDHMH's denial in regard to the spelling MVE's mother's last name was however rationally based on the record and the court denies that portion of the petition.

**CONCLUSION**

Wherefore, it is hereby

ORDERED the petition is granted to the extent ordering NYCDHMH to issue an amended death certificate for Marco Vincenzo Errichiello indicating that he was married and listing Petitioner, Maushume Sara Baroi-Errichiello, as the surviving spouse; and it is further

ORDERED the balance of the petition is denied; and it is further

ORDERED that, within 20 days from entry of this order, petitioner shall serve a copy of this order with notice of entry on all respondents and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address [www.nycourts.gov/suptctmanh](http://www.nycourts.gov/suptctmanh)); and it is further

This constitutes the decision and order of the court.

11/21/2022  
DATE

  
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SABRINA KRAUS, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	DENIED
			<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT