

Granese v New York State Dept. of Health

2023 NY Slip Op 34775(U)

June 12, 2023

Supreme Court, New York County

Docket Number: Index No. 157401/2017

Judge: Nancy M. Bannon

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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. NANCY M. BANNON PART 42

Justice

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INDEX NO. 157401/2017

JUDITH GRANESE,

MOTION DATE _____

Petitioner,

MOTION SEQ. NO. 001 002

For a Judgment Pursuant to Article 78 of the CPLR

- v -

**DECISION, ORDER
and JUDGMENT**

NEW YORK STATE DEPARTMENT OF HEALTH,

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 5, 29, 32, 33, 34, 45

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 30, 35, 46, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 64, 65, 66, 67

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

The petitioner, Judith Granese, a Nevada resident seeking dual American/Italian citizenship, petitions this court, in effect, to determine her personal lineage and direct American and Italian governmental authorities to accept the same. Citing to CPLR article 78, she asks the court to examine a number of filed documents, including birth, marriage and death certificates, and, disregarding purported errors and inconsistencies in those documents, determine that the documents are authentic and establish her right to Italian citizenship, and directing the respondent New York State Department of Health to amend its records. More specifically, the petitioner seeks a judgment declaring that Eduardo Granese, Edward Granese and Edward C. Granese are "one and the same person" and that Ginevra Granese, Ginevra Palazzo, Jeanette Granese and Jeannette T. Palazzo are "one and the same person", since the "Italian Consular Services Coordinator" informed her in an email that such an order would be required by the Italian government. In the alternative, the petitioner seeks a judgment "in accordance with Public Health Law §4174 directing the respondent to (1) amend the specified New York State issued

birth, marriage and death certificates” and (2) “furnish the New York State Department of State with the requested amended vital certificates in a form allowing the United States Department of State to prepare an apostile in conformity with the governing international conventions, which will establish for Italian authorities that petitioner is a direct descendant of a natural born Italian citizen.” The respondent does not oppose the relief requested. The petition is denied.

“A CPLR article 78 proceeding seeking mandamus to compel the performance of a specific duty applies only to acts that are ministerial in nature and not those that involve the exercise of discretion.” Matter of Maron v Silver, 14 NY3d 230, 249 (2010). “Mandamus is available . . . only to enforce a clear legal right where the public official has failed to perform a duty enjoined by law.” New York Civil Liberties Union v State of New York, 4 NY3d 175, 185 (2005). That is not the case here. Nor does Public Health Law §4174, provide authority for and require a court to grant the relief requested here. The statute provides, in part, that the respondent shall issue certified records “pursuant to the order of a court of competent jurisdiction on a showing of necessity.” The respondent states in a letter to the court dated December 1, 2017, that it would amend records pursuant to a court order and upon payment of proper fees and satisfaction of other conditions. However, that alone does not establish a basis for or require the court to grant any particular relief, including the extraordinary relief sought herein – essentially a judgment declaring the petitioner’s lineage by declaring filed documents to be authentic, correcting or disregarding any errors and inconsistencies in the documents and directing the respondent to so amend its records in a manner that will satisfy Italian and American governmental authorities for purposes of granting dual citizenship. To the extent the petitioner seeks a declaratory judgment, the court cannot issue a declaration as to “the rights and other legal relations of the parties to a justiciable controversy” (CPLR 3001), since there is no justiciable controversy presented. See Touro Coll. v Novus Univ., 146 AD3d 679 (1st Dept. 2017). “A declaratory judgment is intended to ‘declare the respective rights of the parties based on a given set of facts, not to declare findings of fact.’” Id. at 679, *quoting Thome v Alexander & Lousia Calder Found.*, 70 AD3d 88, 100 (1st Dept. 2009) *lv. denied* 15 NY3d 703 (2010).

The court notes that the petitioner filed similar petitions and amended petitions under MOT SEQ 001 and MOT SEQ 002.

Accordingly, upon the foregoing papers, it is

ORDERED that the petition and amended petitions filed under MOT SEQ 001 are deemed withdrawn upon the filing of the petition and amended petitions under MOT SEQ 002, and it is further

ORDERED and ADJUDGED that the petition and amended petitions filed under MOT SEQ 002 are denied, and the proceeding is dismissed, without prejudice.

This constitutes the Decision, Order and Judgment of the court.

6/12/2023

DATE



NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE