

Matter of Cange v New York State Educ. Dept.
2025 NY Slip Op 35531(U)
January 14, 2025
Supreme Court, Albany County
Docket Number: Index No. 901225-24
Judge: E. Danielle Jose-Decker
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At a Term of the Supreme Court of the
State of New York, held in and for the
County of Albany at Monticello, NY, on
December 6, 2024

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

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In the Matter of the Application of

**PIERRE CANGE, FOLAKE BUSRAH KOLAWOLE-AGNAI
and FABIOLA QUATORZE,**

Petitioner,

For a Judgment Pursuant to CPLR Article 78

Against

**NEW YORK STATE EDUCATION DEPARTMENT;
BETTY A. ROSA, in her capacity as COMMISSIONER
OF THE NEW YORK STATE EDUCATION
DEPARTMENT; NEW YORK STATE OFFICE OF THE
PROFESSIONS; DAVID HAMILTON, in his official
capacity as DEPUTY COMMISSIONER OF THE NYS
DEPT. OF EDUCATION and as the official heading the
OFFICE OF THE PROFESSIONS; and OWEN
DONOVAN, in his official capacity as the ASSISTANT
COMMISSIONER FOR PROFESSIONAL LICENSING
AND PRACTICE FOR NYS DEPT. OF EDUCATION
OFFICE OF PROFESSIONS,**

Respondents.

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JOSE-DECKER, AJSC.

Petitioners, PIERRE CANGE, FOLAKE BUSRAH KOLAWOLE-AGNAI and FABIOLA QUATORZE, through counsel, filed a Verified Petition on or about January 31, 2024 pursuant to Article 78 of the CPLR seeking a writ of mandamus compelling Respondents to return Petitioners' nursing licenses [CPLR Section 7803(1)] permitting Petitioners to resume their livelihood and a writ of prohibition against Respondents from taking Petitioners' licenses in the future without due process [CPLR Section 7803(2)]. In response, Respondents filed a Notice of

Motion seeking dismissal of the Verified Petition pursuant to CPLR Section 3211 (a) (2), (5), and (7). Respondents also seek leave pursuant to CPLR Section 7804(f) to serve an answer. Petitioners opposed Respondents' motion to dismiss. Respondents filed a reply.

Oral argument was held on October 31, 2024. Thereafter, by way of a Stipulation of Partial Discontinuance entered into in counterpart on December 16, 2024 and December 19, 2024 respectively, the matter as to Petitioner PIERRE CANGE was discontinued.¹ The matter is now deemed fully submitted for the Court's review and consideration.

Background

Petitioner Kolawole-Ajani attended the Sunshine Academy located in the State of Florida and in or about April 8, 2019 obtained her LPN with the New York State Education Department (hereinafter "NYSED"). Petitioner is also an LPN in the State of Pennsylvania. Petitioner passed the NCLEX-PN in or about November 16, 2018.

Petitioner Quatorze attended the Quisqueya Healthcare Academy, LLC located in the State of Florida in or about June 7, 2021 and obtained her LPN with NYSED.

By way of correspondence dated February 7, 2023, NYSED notified Petitioners that the Quisqueya School of Nursing LLC/Quisqueya Healthcare Academy/Sunshine Academy were closed and that NYSED received "reliable information that the owners of the program you attended were engaged in a scheme to sell fraudulent nursing degree diplomas and transcripts" and that Petitioners' "name was provided to the Department as an individual who allegedly did not actually complete the program hours/courses and clinical training to earn a degree." NYSED advised Petitioners that within 14 days they could either surrender their licenses or

¹ Pursuant to the Stipulation, Respondents agreed to remove the "voluntary surrender-non-disciplinary" status on Petitioner Cange's RN license and reactivate same, without prejudice to Respondents' rights to pursue any administrative or disciplinary proceedings.

provide alternative proof of qualifications. If no action was taken, NYSED could cancel Petitioners' NCLEX scores and administer various other disciplinary actions that would negatively impact Petitioners' professional licenses. *See* Petitioners' Exhibit Q @ NYSCEF Document No. 18. The Federal investigation into these schools was referred to as "Operation Nightingale."

In response, Petitioners Kolawle-Ajani and Quatorze both mailed in their LPN licenses in or about February 2023. Thereafter, through counsel, both Petitioners sought return of their licenses from NYSED. *See* NYSCEF Document Nos. 19, 26, 27, and 28. Ultimately, NYSED failed to return and/or reinstate Petitioners' LPN licenses, and this Article 78 proceeding ensued.

Respondents submit in the motion to dismiss that to protect the public health, safety and welfare, NYSED sent letters to individuals identified through Operation Nightingale as those who had obtained fraudulent nursing licenses. Respondents maintain that Petitioners, in response to NYSED's February 7, 2023 letter, chose to voluntarily surrender their LPN licenses and that Petitioners lack standing to bring the action due to the voluntary surrenders and that the petition is untimely because it was brought after the four month post-surrender period. Respondents further submit that mandamus to compel the reinstatement of Petitioners' nursing licenses is not a viable claim as the issuance of a professional license is discretionary. Lastly, Respondents submit that as there are no further actions pending against Petitioners, the seeking of a writ of prohibition is not ripe.

After the Court's review of the aforementioned filings and exhibits thereto and having considered the points raised during the October 31, 2024 oral argument, the Court shall hold in abeyance the relief requested in Petitioner's Article 78 Petition, deny Respondents' motion for dismissal and grant leave for Respondents to file an Answer.

Analysis

Pursuant to CPLR Section 3211, Respondents seek dismissal upon the following provisions:

- (a) Motion to dismiss cause of action. A party may move for judgment dismissing one or more causes of action asserted against him on the ground that:
2. the court has no jurisdiction of the subject matter of the cause of action; or
 5. the cause of action may not be maintained because of arbitration and award, collateral estoppel, discharge in bankruptcy, infancy or other disability of the moving party, payment, release, res judicata, statute of limitations, or statute of frauds; or
 7. the pleading fails to state a cause of action.

Notably, Respondents argue that the matter is untimely filed due to Petitioners' voluntary surrender of their LPN licenses in or about February 2023, which Respondents present as a final determination and/or date of accrual for the four-month statute of limitations in which to file an Article 78 proceeding, while also simultaneously arguing that due to Petitioner's voluntary surrender no final determination has been made, so mandamus cannot lie. However, this argument does not pass muster under CPLR Section 3211 (a) (5), as the statute of limitations has not yet been triggered.

Respondents' choice to short-circuit formal professional misconduct proceedings against Petitioners and as required by NY Education Law Section 6510 arguably resulted in a denial of due process to Petitioners. The denial of the concomitant due process protections afforded to Petitioners by NY Education Law Section 6510 can be said to have caused actual injury to Petitioners due to the loss of their LPN licenses.² Based on the totality of the circumstances, the categorization of Petitioners' actions as "voluntary" in "surrendering" their LPN licenses is a misnomer as Petitioners' receipt of Respondents' February 7, 2023 letter was the precipitous

² Obtaining a license fraudulently is defined as a form of misconduct pursuant to New York Education Law Section 6509(1).

event which caused Petitioners to relinquish their LPN licenses. The Court cannot countenance such administrative overreach as to the imposition of such severe penalties to Petitioners, which are explicitly governed by New York Education Law Section 6511 and triggered only after a guilty finding of professional misconduct, which is not the case here. As such, the Court has jurisdiction given that Petitioners have set forth a claim for mandamus in Respondents having “failed to perform a duty enjoined upon it by law.” See CPLR Section 7803 (1). Therefore, Respondents’ motion to dismiss pursuant to CPLR Section 3211 (a) (2) fails.

Additionally, it appears that Respondents have not complied with 8 NYCRR Section 17.6 which sets forth the procedure for a surrender of a professional license as no disciplinary proceedings were filed against Petitioners, no investigation of Petitioners was conducted and no application to surrender a license submitted. Additionally, the voluntary non-disciplinary surrender of a license is specific to situations involving drug and alcohol abuse as set forth in New York Education Law Section 6510-d and is inapplicable to the case at bar.

Petitioners’ claim for mandamus lies in Respondents having “failed to perform a duty enjoined upon it by law.” See CPLR Section 7803 (1)-namely Respondents’ circumvention of New York Education Law Section 6510. As such, Petitioners adequately set forth a cause of action that Respondents may have acted in the absence of any authority under New York Education Law, and created a legal fiction where Respondents have summarily deemed Petitioners to have voluntarily surrendered their licenses and prevented return of same to Petitioners, which would be patently unjust and unfair.

For the reasons set forth above Respondents’ motion pursuant to CPLR Section 3211 (a) (2) (5) and (7) is denied. Petitioners have pled viable causes of action seeking both a writ

mandamus and prohibition pursuant to CPLR Section 7803 (1) and 7803 (2). The Court will grant leave to Respondents to pursuant to CPLR Section 7804(f) to serve an answer.

Accordingly, it is hereby,

ORDERED that the relief requested in Petitioners' Article 78 Petition is held in abeyance pending Respondents' filing an Answer and the matter being fully submitted; and it is further

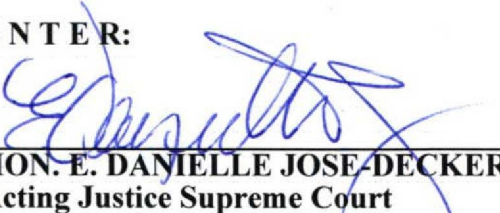
ORDERED that Respondents' application seeking dismissal of Petitioners' Verified Petition is denied; and it is further

ORDERED that Respondents are granted leave to file a Verified Answer and must do so by February 14, 2025.

This memorandum shall constitute the Decision and Order of this Court. The original copy of this Decision and Order is being filed on the New York State Courts Electronic Filing (NYSCEF) system. Counsel are not relieved from the provisions of CPLR §2220 regarding service with notice of entry.

Dated: January 14, 2025

ENTER:


HON. E. DANIELLE JOSE-DECKER
Acting Justice Supreme Court



Papers Considered: NYSCEF Document Nos: 1-32, 35-41, 51-61

01/21/2025