

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

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RECLAIM THE RECORDS,

Petitioner,

Index No. 153996/2019

- against -

Hon. J. Mabelle Sweeting

NEW YORK CITY DEPARTMENT OF HEALTH
AND MENTAL HYGIENE, NEW YORK CITY :
BUREAU OF VITAL STATISTICS, NEW YORK :
CITY BOARD OF HEALTH, OXIRIS BARBOT, :
in her official capacity as New York City
Commissioner of Health, GRETCHEN VAN WYE, :
in her official capacity as New York City Registrar,
and STEVEN P. SCHWARTZ, in his official :
capacity as former New York City Registrar,

Respondents.

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VERIFIED REPLY TO RESPONDENTS' VERIFIED ANSWER

Petitioner Reclaim the Records ("RTR"), by and through its undersigned counsel, hereby replies to Respondents' Verified Answer as follows:

1. The allegations in paragraph 77 are legal arguments to which no response is required. To the extent a response is required, Petitioner admits that Respondents have cited to the therein-mentioned provisions, respectfully refers the Court to such provisions in their entirety, and otherwise denies the allegations.

2. The allegations in paragraph 78 are legal arguments to which no response is required. To the extent a response is required, Petitioner admits that Respondents have cited to the therein-mentioned provisions, respectfully refers the Court to such provisions in their entirety, and otherwise denies the allegations.

3. The allegations in paragraph 79 are legal arguments to which no response is required. To the extent a response is required, Petitioner admits that Respondents have cited to the therein-mentioned provisions, respectfully refers the Court to such provisions in their entirety, and otherwise denies the allegations.

4. The allegations in paragraph 80 are denied, except Petitioner admits that on March 13, 2018, the Board of Health adopted a resolution regarding birth and death record accessibility, which was codified in New York City Health Code § 207.21.

5. The allegations in paragraph 81 are admitted to the extent that Respondents have accurately cited Health Code § 207.21, although Petitioners respectfully refer the Court to that section in its entirety.

6. The allegations in paragraph 82 are denied, except that Petitioner admits upon information and belief that the New York State Board of Health submitted a comment in connection with the promulgation of Health Code § 207.21.

7. The allegations in paragraph 83 are denied, except that Petitioner admits upon information and belief that the National Association for Public Health Statistics and Information Systems submitted a comment in connection with the promulgation of Health Code § 207.21.

8. The allegations in paragraph 84 are denied, except Petitioner admits that Health Code § 207.11 was revised; that prior to and after the revision, death records held by DOHMH for the years beginning in 1949 had not been publicly available; and that DOHMH added certain categories of family members as permissible requesters.

9. The allegations in paragraph 85 are denied, except Petitioner admits that comments on the proposed amendment to Health Code § 207.11 suggested that professional

researchers should have access to birth and death records, and that additional family and social relationships should be added to the list of individuals with access.

10. The allegations in paragraph 86 are denied, except Petitioner admits that a death certificate may contain the name of a decedent's next of kin, the decedent's usual residence, marital status, age, occupation, Social Security number, country of origin, parents' names and mother's maiden name, place of death, time of death, statement as to cause of death, and the name of the funeral director.

11. The allegations in paragraph 87 are denied insofar as the death certificates referenced therein and cited by Respondents appear to be, upon information and belief, the *current* formulation of New York City death certificates, and not the formulation that was used during 1949 to 1968. To the extent a response is otherwise required, the allegations are denied, except to the extent the paragraph includes legal conclusion, for which no response is required.

12. The allegations in paragraph 88 are denied, except Petitioner admits that Respondents' production of the requested documents may result in making public more than half a million death certificates.

13. Petitioner admits the allegations in paragraph 89 to the extent that it sent a FOIL request to DOHMH on February 7, 2019 and requested "one complete set of the digital scans, in uncertified form, previously made by [DOHMH] of all New York City death certificates issued between and including 1949 and 1968," and otherwise respectfully refers the Court to that document for an accurate description of such circumstances.

14. Petitioner admits the allegations in paragraph 90 to the extent that DOHMH's Records Access Officer denied RTR's FOIL request, and respectfully refers the Court to that document for an accurate description of such circumstances. To the extent that paragraph 90

raises legal arguments, no response is required, and to the extent a response is otherwise required, Petitioner denies the allegations in the paragraph.

15. Petitioner admits the allegations in paragraph 91 to the extent that RTR appealed DOHMH's denial on March 7, 2019, and respectfully refers the Court to that document for an accurate description of such circumstances.

16. Petitioner denies the allegations in paragraph 92 in regard to the allegation that DOHMH's Appeals Officer denied RTR's appeal in a timely denial on March 21, 2019. The Appeals Officer issued a denial on March 18, 2019, but he then informed RTR to disregard his denial, only to issue a more robust denial on March 21, 2019. (*See* Pet. ¶ 55.) To the extent that paragraph 92 raises legal arguments, no response is required, and to the extent a response is otherwise required, Petitioner denies the allegations in the paragraph.

17. Petitioner admits the allegations in paragraph 93 to the extent that it commenced this Article 78 proceeding on April 17, 2019, and respectfully refers the Court to its Petition for an accurate description of the contents thereof.

18. The allegations in paragraph 94 are legal arguments to which no response is required. To the extent a response is required, Petitioner denies the allegations in the paragraph, except admits that Respondents moved to dismiss the second through fourth causes of action of the Petition, and respectfully refers the Court to Respondents' filings.

19. The allegations in paragraph 95 are admitted to the extent that the Court issued a decision in this matter in which the Court granted in part and denied in part Respondents' motion to dismiss, and that the Court severed the challenge to Health Code § 207.21.

20. The allegations in paragraph 96 are legal arguments to which no response is required. To the extent a response is required, Petitioner denies the allegations in the paragraph.

21. The allegations in paragraph 97 are legal arguments to which no response is required. To the extent a response is required, Petitioner denies the allegations in the paragraph.

22. The allegations in paragraph 98 are legal arguments to which no response is required. To the extent a response is required, Petitioner denies the allegations in the paragraph.

23. The allegations in paragraph 99 are legal arguments to which no response is required. To the extent a response is required, Petitioner denies the allegations in the paragraph.

To the extent required, Petitioner denies each and every allegation, statement, matter, and thing in Respondents' Verified Answer not expressly admitted or qualified herein.

Dated: New York, New York
March 19, 2021

Respectfully submitted,

/s/ Michael D. Moritz
Michael D. Moritz
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East Rockaway, NY 11518
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michael.moritz@nyu.edu (*LLM candidate*)

Counsel for Petitioner

VERIFICATION

BROOKE SCHREIER GANZ, being duly sworn, deposes and says:

I am the President and Founder of Petitioner Reclaim the Records, a not-for-profit organization. I have read the foregoing Reply and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true. To the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of these papers or the contentions therein are not frivolous as defined in subsection (c) of section 130-1.1 of the Rules of the Chief Administrator (22 NYCRR).

Brooke Schreier Ganz

Brooke Schreier Ganz
President and Founder, Reclaim the Records

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF MARIN)

On March 18, 2021, before me, the undersigned, personally appeared Brooke Schreier Ganz, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

(Signature)

NOTARY PUBLIC, STATE OF CALIFORNIA

Printed Name: Martin Konopaski

