

# *Office of the City Clerk v. Anonymous*

OATH Index No. 688/12 (Apr. 10, 2012)

On appeal from a preliminary denial of a domestic partnership registration, evidence showed that respondent was not the person who used her name to obtain a marriage license in 2005. Respondent, who may have been the victim of identity theft, should be allowed to apply for domestic partnership registration.

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## **NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**

*In the Matter of*

### **OFFICE OF THE CITY CLERK**

*Petitioner*

*- against -*

**ANONYMOUS<sup>1</sup>**

*Respondent*

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## **REPORT AND RECOMMENDATION**

**KEVIN F. CASEY**, *Administrative Law Judge*

This is an appeal, under section 4-03 of the rules of the City Clerk, title 51 of the Rules of the City of New York, from petitioner's preliminary denial of respondent's application for domestic partnership registration. While processing respondent's 2011 application, petitioner's staff discovered a marriage license, issued in 2005, to a person who provided the same name and birth date as respondent. Because there was no evidence of dissolution of the prior marriage, petitioner rejected respondent's application.

Respondent appealed the denial of her application and petitioner commenced this proceeding by serving and filing a petition with a copy of the 2005 marriage license and application (ALJ Ex. 1). Respondent filed an answer alleging that, except for a prior marriage that ended when her husband died in September 2003, she had never been married (ALJ Ex. 2). At a hearing on April 9, 2012, petitioner relied upon documentary evidence. Respondent testified, called another witness who testified by telephone, and relied on documentary evidence.

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<sup>1</sup> Respondent's name has been withheld from publication in accordance with section 3-243 of New York City's Administrative Code and Title 51 section 4-05 of the Rules of the City of New York, which provide for confidentiality of domestic partnership registration records.

At respondent's request, the record was left open for her to provide additional documents. On April 10, 2012, the record was closed after respondent submitted a signed undated lease confirming that she rented an apartment with her partner in Georgia.

For the reasons below, I find that petitioner failed to prove that respondent was the same person who received marriage licenses in 2005 and recommend permitting her to apply for domestic partnership registration.

### **ANALYSIS**

Petitioner denied respondent's application for a domestic partnership registration because someone with her name and date of birth received a marriage license in 2005 and there was no indication of dissolution of that marriage. However, respondent offered credible evidence to show that she is not the person who received marriage licenses. Thus, petitioner should grant respondent's application to apply for a domestic partnership registration.

It is petitioner's burden to prove by a preponderance of the evidence that the applicant should not be granted a domestic partnership. 51 RCNY § 4-03(3)(h). Petitioner relied primarily on a prior marriage application and license. Those documents show that a native New Yorker, with the same name as respondent, married a native of Jamaica in December 2005 (ALJ Ex. 1). Respondent and the bride listed on the 2005 application have the same name, date of birth, and mother's name (ALJ Ex. 1). Petitioner also noted that respondent's signatures on the 2011 application and her answer to the petition are similar to those on the 2005 application and marriage certificate (ALJ Exs. 1, 2).

Respondent testified and denied that she married anyone in 2005. She said that she had been married only once before and her husband died in September 2003. Respondent also noted that the disputed 2005 marriage application contained factual errors. First, it stated that her first husband died in Happaug, New York. In fact, he died in Hudson, New York, as confirmed by a death certificate produced by respondent (ALJ Ex. 2). Second, the 2005 application states that respondent was born in Brooklyn, but she was born in Trinidad, as shown on her birth certificate (Resp. Ex. 2).

At the hearing, respondent credibly testified that she did not know the person listed as the groom on the 2005 application, she never lived at the address provided by the bride on the 2005

application, and she never worked as a medical biller, the occupation listed by the bride on the 2005 application. Instead, respondent testified she and her partner became roommates in late 2003 and have lived together ever since. Respondent, who has never been convicted of a crime, testified that she is a high school graduate who attended one year of college. She worked for many years at large investment and commercial banks in New York, and a smaller real estate company in Brooklyn, before moving to Atlanta, Georgia, where she worked for a university.

Respondent's immediate family members did not approve of her current relationship and were unwilling to testify on her behalf. However, a long-term acquaintance, who shares respondent's interest in rock climbing and has communicated with her on the internet for about ten years, testified via telephone. Although he did not appear to know much about respondent's employment history, he confirmed that respondent's only prior marriage ended with death of her husband and she has lived for many years with her present partner.

Additional evidence furnished by petitioner, supported respondent's claim. Petitioner contacted the man identified as the groom on the 2005 marriage application. In response, petitioner received a letter from an attorney, on behalf of the 2005 groom, requesting documentation concerning this matter (Resp. Ex. 3). Petitioner complied with that request by mailing a copy of the petition to the attorney in November 2011. However, petitioner received no further communication from the 2005 groom or his attorney. Because the 2005 groom obtained counsel, offered no objection to respondent's application, and provided no further information, I drew a negative inference against him. If the groom had married respondent, then it would be natural for him to seek to be heard on this matter. On the other hand, if respondent did not apply for the 2005 marriage license and that marriage involved identify theft with the possible goal of obtaining citizenship for the groom, then it would make more sense for him to obtain counsel and refuse to cooperate in this matter.

On this record, despite the similarities in the information and signatures on the 2005 and 2011 applications, the evidence failed to show that respondent applied for and received a marriage license in 2005. Based on respondent's detailed, credible testimony, which was supported by documentary evidence and testimony of another witness, I find that respondent did not apply for or receive the 2005 license.

**FINDING AND CONCLUSION**

The evidence failed to prove that respondent was the person who obtained a marriage license in her name in 2005.

**RECOMMENDATION**

I recommend that respondent be permitted to apply for and receive domestic partnership registration.

Kevin F. Casey  
Administrative Law Judge

April 10, 2012

SUBMITTED TO:

**MICHAEL MCSWEENEY**  
*City Clerk*

APPEARANCES:

**PATRICK SYNMOIE, ESQ.**  
*Attorney for Petitioner*

**RESPONDENT**  
*Self-Represented*