

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

PRESENT: WILLIAM WEYCEL
Justice

PART JOE

Defendee ROSA GONZALEZ

INDEX NO. 107704/04

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

NYC Check

The following papers, numbered 1 to _____ were read on this motion to/for _____

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...

Answering Affidavits – Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED	

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion is granted
as indicated in decision
order of 8/6/04

So ordered
FILED
AUG 16 2004
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 8/6/04 [Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 50E

-----X

In the matter of the Application of :
DESIREE ROSA GONZALEZ :

Petitioner, : DECISION AND ORDER

for leave to change, amend or correct the records of : Index No. 107704/04
the City Clerk, City of New York in reference to :
Marriage License, Certificate of Marriage, :

-Against- :

NEW YORK CITY CLERK, :
Respondent. :

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For the Petitioner: Douglas M. Colbert, Esq.
350 Fifth Avenue - 72nd Floor
New York, New York 10118

For the Respondent: Michael A. Cardozo
Corporation Counsel of the
City of New York
100 Church Street
New York, New York 10007
By: Gabriel Taussig
Robin Binder
Amy J. Weinblatt
Of Counsel

WILLIAM A. WETZEL, J.:

“Nothing we do in this large department of ours is really very important,
and there’s never any rush. On the other hand, it’s important that we let
people know that we do a great deal of it. Don’t you agree?”

Catch - 22
Joseph Heller

In 1988, Petitioner and her intended, Joel (a/k/a “Goel”) Reinoso (a/k/a “Reynoso”), went

to the Bronx City Clerk's office and obtained a Marriage License. They were married, and the certificate was completed by the officiant and duly filed with the Bronx City Clerk on August 5, 1988. *See* Ex. 6 of Pet. Reply Aff. The couple had two children, Geoffrey Horacio Reynoso, born on December 2, 1988, and Epiphany Jo Reynoso, born on September 30, 1989. Those births were duly certified, recorded, and filed in the Office of Vital Records, Department of Health and Mental Hygiene, City of New York. *See* Ex. 1 of Pet. Reply Aff. Tragedy struck the family on July 29, 1995, when Petitioner's husband died in an accident. His death was duly certified, recorded, and filed with the Registrar of Vital Statistics of Nassau County, and with the State of New York Department of Health. *See* Ex. 2 of Pet. Reply Aff.

Petitioner met and fell in love with Yvens Brizard, and on September 3, 1998, the couple went to the Office of the City Clerk and obtained the requisite license. They were married on September 27, 1998, the certificate was completed by the officiant, and duly recorded by the City Clerk. *See* Ex. A of Pet. Petition. Unfortunately, the marriage was unsuccessful, and terminated in divorce filed with the County Clerk's Office on April 14, 2004. *Id.*

Petitioner now wishes to marry again. She took the familiar trip to the City Clerk's office to obtain a marriage license. Instead, she got the surprise of her life when she was informed that she was ineligible for another marriage license because according to the City Clerk's records she was concurrently married to two other men! The City Clerk had issued a marriage license to "Hector Fabio Saldarriaga" (place of birth: "Supia Caldas, Columbia" [sic]) and someone purporting to be Desiree Rosa Gonzalez on November 20, 1986, who married on November 21, 1986. That "marriage" presented no impediment to the City Clerk accepting Petitioner's money and issuing a license to her in 1988 when she married Joel Reynoso, of course, because "at that

time, there was no procedure in place to search for prior marriages when an applicant sought a license to marry,” Resp. Mem. Of Law at p. 3, and, as the Application for the Marriage License boldly proclaims, “The license will be issued solely upon the sworn statements of the applicants with no liability for the validity of the marriage assumed by the City of New York or the City Clerk.”

A second marriage license was issued on June 4, 1994, to “Guillermo T. Gutierrez” (place of birth: Ica, Peru) and again to someone representing herself as Desiree Rosa Gonzalez. That couple was married on June 12, 1996. Petitioner was in fact married to Joel Reynoso at the time the City Clerk issued that Certificate.

Stunned by this turn of events, Petitioner retained an attorney as well as a private investigator to straighten out this mess. The attorney obtained certified copies of all of these official documents, relating to virtually every certifiable event of Petitioner’s adult life. The private investigator went in search of Saldarriaga and Gutierrez (hereinafter “the phantom husbands”). Using the addresses provided when the phantom husbands obtained the marriage licenses, the investigator spoke with building owners (including an individual who owned the subject building from 1976 through 2000, which covers the relevant period during which the Clerk issued the marriage licenses to the phantom husbands) and tenants who reported that they did not rent apartments to, nor did they know “Guillermo Gutierrez” or “Hector Saldariagga.” *See* Pet. Aff. at Ex. E. The investigator discovered that “130-95 Atlantic Avenue” –the address provided to the Clerk by “Guillermo Gutierrez” when he obtained his marriage license–is an invalid address. *See* Pet. Aff. at Ex. G. In short, Petitioner has made heroic–and costly–efforts to extract herself from the Catch -22 that the City Clerk’s “take the money, issue the certificate,

vouch for nothing” attitude has created for her. Unfortunately, but understandably, she has been unable to track down the phantom husbands to clear her marital record.

RESPONDENT’S POSITION

“Are they [the verses] in the prisoner’s [the Knave’s] handwriting?” asked another of the jurymen. “No, they’re not,” said the White Rabbit, “and that’s the queerest thing about it.” (The jury all looked puzzled.) “He must have imitated somebody else’s hand,” said the King. (The jury all brightened up again.) “Please your majesty,” said the Knave. “I didn’t write it, and they can’t prove I did: there’s no name signed at the end.” “If you didn’t sign it,” said the King, “that only makes matters worse. You *must* have meant some mischief, or else you’d have signed your name like an honest man.” There was a general clapping of hands at this: it was the first really clever thing the King said that day. “That *proves* his guilt, of course,” said the Queen...

Alice’s Adventures in Wonderland
Lewis Carroll

Respondent cross-moves to dismiss the petition, alleging that the phantom husbands are “necessary parties to this proceeding” within the meaning of CPLR § 1001(a).¹ Respondent frets that “as apparent husbands of petitioner, they [Saldarriaga and Gutierrez] clearly might be inequitably affected if the Court voids the two marriage records bearing their names as petitioner’s husbands.”² Resp. Brief at p. 4. If the phantoms cannot be located and joined, declares the Respondent, “the proceeding must be dismissed. [Citations omitted].” In a nutshell, Respondent’s position is, “I just take the money and issue the certificate. Read the disclaimer,

¹It is notable that Respondent submits only a Memorandum of Law, but nevertheless challenges Petitioner’s factual allegations and attacks her credibility.

²I assume that the “inequitable effect” respondent fears is some compromise of their marital status, not arrest and imprisonment for immigration fraud, Unlawfully Procuring a Marriage License (*see* Penal Law § 255.10), Bigamy (*see* Penal Law § 255.15), or Adultery (*see* Penal Law § 255.17—yes, indeed, it is a crime in New York State!) or Offering a False Instrument for Filing (*see* Penal Law § 175.30). I would imagine that the phantom husbands themselves are rather more fearful of the possible criminal penalties, but I speculate here.

lady-‘The license will be issued solely upon the sworn statements of the applicants with no liability for the validity of the marriage assumed by the City Of New York or the City Clerk.’ If a problem arises, however, the burden shifts to **you** to resolve it.” Catch-22, got you, next in line with the money order, please.

If that were not dispositive, says respondent, there is the matter of “petitioner’s credibility [which] is, at best, questionable and thus her simple assertions, unsupported by persuasive documentation that she never married these two men, cannot be relied on.” Resp. Mem. Of Law at p.5. For an office that assumes (repeatedly, and in bold-face type) **no** responsibility whatsoever for the underlying validity of the information it “certifies” (after all, it was respondent who issued petitioner’s marriage licenses when, according to respondent’s own then-unsearchable records she was already married to two other men), Respondent holds petitioner to an extremely high test of credibility. Nonetheless, Petitioner has satisfied that test. As previously noted, Petitioner has attached as exhibits to her petition and reply certified copies of documents relating to just about every significant event of her adult life.

Respondent takes a jaundiced view of that documentation. First, Respondent is suspicious of the “uncertified” copy of Petitioner’s first husband’s death certificate³. Petitioner provided a second, certified copy of the certificate, *see* Pet. Reply at Ex. 2, complete with raised seal and all the trimmings. Still, respondent is not satisfied because Petitioner’s late husband’s name appears on the death certificate as “Joel Reynoso,” while it is “Goel Reinoso” on the marriage license.

³How ironic that Respondent, who issued a total of **four** “official”, facially valid marriage licenses to “Desiree Rosa Gonzalez,” thereby creating an “official record” that she was “married” to several men at the same time, now quibbles over the reliability of documents issued by other government agencies. “Chutzpah” does not even begin to adequately characterize the situation.

I don't think I need to order an exhumation to resolve this one. The "suspicious" marriage license appears at Ex. 6 of the Reply Affirmation. The **typed** section of the license spells the name "Goel Horacio Reinoso." Whoever typed the information—one of respondent's employees, perhaps?—spelled Mr. Reinoso's first name with a "G" instead of a "J". Mr. Reinoso **signed** the license "Joel Reinoso."⁴

Next, respondent questions the authenticity of petitioner's divorce from Yvens Brizard, noting that the divorce decree is "uncertified." In her Reply, Petitioner provides a duly certified copy, *See* Ex. 2 of Reply Aff, as well as an affirmation from her attorney that he actually handled the divorce matter.

Finally, in response to Petitioner's argument that the "Desiree Rosa Gonzalez" signatures on the "phantom husbands" licenses are dissimilar from her actual signature on the two valid licenses, respondent claims that "to the untrained eye, all four signatures are dissimilar. The signatures on the driver's license and the passport annexed to the petition are also dissimilar from one another. Even the manner of signing her name on the signatures on the two marriage licenses petitioner acknowledges are different from one another." *Resp. Mem. Of Law* at p. 4. Innuendo is not proof. If respondent has a point to prove here, he should obtain an opinion from a qualified handwriting expert. This court is not interested in the musings of the "untrained eye."

Petitioner has sworn that she never met or married the two phantom husbands. She has retained an attorney who represented Petitioner in her divorce proceeding, and who has obtained

⁴I would also note that Mr. Reynoso's first name was probably "Americanized" from Spanish. Spanish has no sound equivalent to the "J" as it sounds in "Joel," so the "J" and "G" were rough functional equivalents of the Spanish.

certified copies of all relevant events. He has corroborated Petitioner's factual assertions under penalties of perjury. Petitioner has hired a private investigator to attempt to locate the phantom husbands to satisfy Respondent. His investigation revealed that one of the phantoms provided a phony address to the Respondent when he obtained the marriage license. He was unable to gain any investigative leads on locating the two men.

Just how does one prove a negative? How does Petitioner prove to Respondent's satisfaction that she was never married to two men she swears that she never knew, much less married? This Court is satisfied that Petitioner has made every reasonable effort to remedy a problem that was created by Respondent's own institutional denial of responsibility for issuing contradictory records, its prior inability to effectively search its own records, and its steadfast refusal to assume any responsibility for the validity of the information it "certifies." In all fairness, there is a limit to the burden-shifting that this court will allow under these circumstances, and that limit has been reached.

If Respondent believes that Petitioner and/or her attorney have perjured themselves in their sworn statements, he should refer the matter to the New York County District Attorney for investigation. If he believes that Petitioner has offered a false instrument for filing, unlawfully procured a marriage license, or committed bigamy or adultery, he can refer those matters to the District Attorney as well. In the meantime, the Respondent's cross-motion to dismiss is in all respects denied.

While this court could stay these proceedings to allow Respondent an opportunity to vouch in the "two grooms," this would result in considerable delay to the Petitioner and more importantly, appears to be an exercise in utter futility. This court accepts the representations by

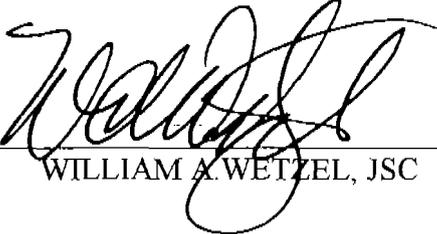
counsel and the affidavit of Petitioner that an exhaustive effort to locate them has been to no avail.

For the reasons stated herein, the petition is granted to the extent that the Respondent is ordered to process the Petitioner's marriage application without regard to the two marriages of record to the "phantom husbands." Those two marriage licenses are to be deemed a nullity, and Respondent is hereby ordered to mark its records accordingly.

This court reserves on the Petitioner's request for attorney's fees and invites both sides to exchange written briefs on this subject on or before September 15, 2004.

This constitutes the Decision and Order of this court.

Dated: New York, New York
August 6, 2004


WILLIAM A. WETZEL, JSC

FILED
AUG 16 2004
CLERK OF COURT