



NEW YORK STATE SENATOR

Ruth Hassell-Thompson

## New York's High Court Knocks Department of Education for Discriminating Against a Formerly Incarcerated Person

RUTH HASSELL-THOMPSON April 5, 2011

| ISSUE: **JUDICIARY**

### Senator Ruth Hassell-Thompson Applauds Decision

April 3, 2011

New York's highest court found New York City's Department of Education guilty of employment discrimination when they used a thirteen year old felony conviction to deny employment to Madeline Acosta, a clerk employed by the Cooke Center for Learning and Development<sup>[i]</sup>. *Senators Ruth Hassell-Thompson, Bill Perkins, Thomas Duane, Liz Krueger, Carl Kruger, Velmanette Montgomery, Jose Peralta, Adriano Espallat and now Attorney General Eric Schneiderman, filed an amicus curiae brief in support of Madeline Acosta.*

When Madeline Acosta was seventeen years old she was convicted of the serious crime of first degree robbery. After serving three years in prison she was granted parole in December 1996. Since then, she has become a productive and law-abiding member of society. She earned a bachelor's degree in 2001 from the City University of New York, and, while working and attending classes at CUNY volunteered with an organization that provides assistance to inmates in developing skills that will help them reintegrate into society upon being released. After earning her college degree, in addition to starting a family, she worked in positions of responsibility at two law firms.

Desiring employment that would allow her to spend more time with her family, in 2006 Ms. Acosta left her law firm position and took a part-time position at the Cooke Center for Learning and Development. The Cooke Center provides pre-school special education services in New York City through a contract with the NYC Department of Education. Ms. Acosta worked four days per week and was engaged primarily in clerical activities with no responsibility for providing instruction to pre-school students.

In 2006, Ms. Acosta's supervisor asked her to be fingerprinted for DOE security clearance purposes and because of the conviction an interview was scheduled for September 28, 2006. At the interview, Ms. Acosta provided two letters of reference from the Cooke Center, as well as other documents evidencing her education, rehabilitation and volunteer work over the thirteen years since her conviction. One of the letters of reference from the Cooke Center specified that Ms. Acosta was hired, in part, on the basis of "her model references from past employers and colleagues".

By letter dated October 12, 2006, the DOE notified Ms. Acosta that her application for employment was denied. In the letter the DOE stated that because Ms. Acosta was convicted of multiple counts of first degree robbery, she posed an unreasonable risk to the safety and welfare of the school

community.

Writing for the Court of Appeals, Chief Judge Lippman declared the Department of Education's own statements demonstrated that it failed to comply with the law and acted in an arbitrary manner. The Court found that the DOE failed to look into stellar references from previous employers and that the record showed the selection process amounted to nothing more than a pro forma denial of Ms. Acosta's application. The court held that consideration of factors like: the age of the person at the time of the criminal offense, the time which has elapsed since the occurrence of the criminal offense, the specific duties and responsibilities necessarily related to the employment held by Acosta, and other public policy factors must be weighed before a license or employment could be denied. The Court found that DOE admittedly failed to weigh these factors but still denied Ms. Acosta employment.

After the decision, Senator Ruth Hassell-Thompson stated, "I commend the Community Service Society, the New York City Bar Association, Members of the New York State Senate and Assembly for their support of Madeline Acosta. Madeline Acosta is the poster-child for reflection and rehabilitation. She got in trouble when she was a teenager, she was never re-arrested, and she obtained her college degree and gainful employment in the legal community. After work she engaged in volunteer work to help other formerly incarcerated individuals get on their feet and live a law abiding life. We asked her to assume a law-abiding and productive life. She complied and was confronted by this senseless discrimination. The Court of Appeals has signaled that it takes employment discrimination against ex-offenders seriously. I applaud the decision of the Court".

Ms. Acosta was represented by MFY Legal Services Inc. of New York, New York.

