

**Matter of Bloomberg v Liu**

2014 NY Slip Op 32565(U)

September 30, 2014

Supreme Court, New York County

Docket Number: 401122/2013

Judge: Margaret A. Chan

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: Hon. Margaret A. Chan**  
*Justice*

**PART 52**  
**INDEX 401122/2013**

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**IN THE MATTER OF THE APPLICATION OF  
MICHAEL R. BLOOMBERG, as Mayor of the City  
of New York, and the NEW YORK CITY  
DEPARTMENT OF HOMELESS SERVICES,**

**Petitioners,**

For a Judgment pursuant to Article 78 of the Civil Practice  
Law and Rules,

- against -

**JOHN C. LIU, as Comptroller of the City of New  
YORK,**

**Respondent.**

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**NEIGHBORHOOD IN THE NINETIES, INC.**

**INDEX 156382/2013**

**Plaintiff,**

- against -

**THE CITY OF NEW YORK; MICHELE OVESEY,  
Commissioner for the New York City Department  
of Homeless Services; JOHN C. LIU, Comptroller  
of the City of New York, and AGUILA, INC.**

**Defendants.**

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The above-captioned matters are before this court for an order permitting the Council of the City of New York to intervene as a party in this proceeding, reargument, and renewal. At the heart of the two cases is a homeless shelter located in the Upper West Side of Manhattan in the City of New York. The matter under Index number 401122/2013 was brought by former Mayor Michael

Bloomberg and the New York City Department of Homeless Services (DHS) to compel former Comptroller John Liu to register two contracts between the DHS and Aguila, Inc., which operates the shelters for homeless families. The two contracts at issue concern shelters located at 1625-1631 Fulton Street (Fulton Residence) in the borough of Bronx, and 316 and 330 West 95<sup>th</sup> Street (Freedom House), in the borough of Manhattan. In the second matter under Index 1563882/2013, Neighborhood in the Nineties, Inc. (Neighborhood), a not-for-profit corporation representing block associations, residents, retailers and property owners between West 90<sup>th</sup> and West 97<sup>th</sup> Streets between Riverside Drive and Amsterdam Avenue, sought to enjoin the Comptroller from registering the contract for Freedom House. As the facts relevant to Neighborhood's case are fairly much the same as those to the proceeding brought by Mayor Bloomberg, the two cases were consolidated for only the purposes of deciding these parties' motions. The Decision and Order of this court on the prior motions was rendered on March 12, 2014, wherein Mayor Bloomberg's motion to compel the Comptroller to register the contracts was granted and Neighborhood's motion to enjoin the Comptroller from registering the contract for the Upper West Side shelter was denied. Said Order also found that Local Law 57 and Administrative Code § 21-312 were preempted by State law.

On April 9, 2014, the Council of the City of New York (the Council) resolved to intervene in both of the proceedings to address the validity of Administrative Code § 21-312 and to reargue the injunction based on this court's finding in March 12, 2014 Decision and Order that Administrative Code § 21-312 was preempted by State law (motion sequence #3). Bill De Blasio, the current Mayor of New York, Gilbert Taylor, the Commissioner for the New York City Department of Homeless Services, and the City of New York (collectively, the City) cross-moved for leave to renew said Decision and Order (motion sequence #4). The City partially opposes the Council's motion to reargue. Neighborhood in the Nineties (Neighborhood) also partially opposed the Council's motion to reargue as well as the City's cross-motion for renewal. The motion and cross-motion concern the limited issue of this court's prior finding that Local law 57 Administrative Code § 21-321[2][b] was preempted by State law.

#### Motions to Intervene, Reargue and Renew

At the onset, there is no opposition to the Council's motion to intervene. As this court's March 14, 2014 Decision and Order found Local Law 57 and Administrative Code § 21-312 to have been preempted by State law, this finding not only necessarily affect the Council's interest in upholding local law but may bind the Council in future decisions. Thus, its motion for intervention is granted (*see* CPLR § 1012 [b]).

A motion to reargue will be granted upon a showing that the court overlooked or misapprehended relevant facts or misapplied the law (*see* CPLR § 2221[d][2]). The Council's motion for reargument, as limited by its brief, is granted as the Council properly pointed out that this court overlooked the legislative history, intent and purpose of Local Law 57 in applying the Administrative Code § 21-312 [2][b] to the subject homeless shelters.

A motion to renew will be granted upon a showing that new facts not offered in the prior motion would change the prior determination and that there was a justifiable reason for not offering them in the prior motion (*see* CPLR § 2221[e][2], [3]). The new fact that the City presented for its motion to renew is the Department of Homeless Services' (DHS) commitment to reducing the size

of Freedom House from 400 persons to 200 persons by November 2014 (City's Motion to Renew, Gilbert Aff., ¶ 4). This agreement between DHS and the Comptroller was reached after the March 14<sup>th</sup> Decision and Order (*id.*) As the number of adults in a homeless shelter was a major factor involving Admin Law § 21-312, this new fact necessarily affects the prior determination. Thus, the City's motion for renewal is granted as well.

### State Law Preemption

Both the Council and the City proffer that Administrative Code § 21-312[2][b] does not apply to the adult family shelters such as Freedom House on the Upper West Side of Manhattan. Rather, Administrative Code § 21-312[2][b] applies to single adult shelters and limits the number of beds to 200. Initially, the number of beds at Freedom house was 400, and therefore, in the prior motions, the Comptroller and Neighborhood relied on Administrative Code § 21-321[2][b] to invalidate former Mayor Bloomberg and DHS' contract to operate Freedom House as a 400 bed adult family shelter.

Subsequent to this court's March 14<sup>th</sup> Decision and Order, an agreement was reached on April 14, 2014, by current office holders, Mayor Bill DeBlasio, New York City Comptroller Scott Stringer and Manhattan Borough President Gale Brewer, to operate Freedom House as a 200 bed adult family shelter. In a press release, the officials indicated that the emergency contract that had started the operation of Freedom House as a 400 bed shelter for adult families on a temporary basis will expire at the end of October 2014, and starting November 1, 2014, Freedom House will operate as a 200 bed shelter for adult families and had set the wheels in motion to effectuate the new plan. With this new reduction in the number of beds in Freedom House, there is no need for the parties to claim violation of Administrative Code § 21-321[2][b], which permits 200 beds in an adult family shelter. Thus, there is no reason or need to invoke Administrative Code § 21-321[2][b] in either of the two proceedings.

Given the resolution above, the issue of whether Administrative Code § 21-321[2][b] is preempted by State law need not be addressed. Therefore, the court retracts from the March 14, 2014 Decision and Order, the holding that found Administrative Code § 21-321[2][b] to have been preempted by State law. The March 14<sup>th</sup> Decision and Order, otherwise, remains unchanged.

By so retracting the Administrative Code § 21-321[2][b] preemption holding, a discussion on its application and the associated Local Law 57, which the Council claims this court overlooked, becomes an academic exercise. However, Neighborhood opposes the part of the City and Council's respective motions that argue that Administrative Code § 21-321[2][b] does not apply to family shelters such as Freedom House claiming that both the City and Council failed to acknowledge the plain language in the statute. Neighborhood also opposes the City's argument on mootness as to whether Administrative Code § 21-321[2][b] applies to family shelters. In short, Neighborhood wants this court to find that Administrative Code § 21-321[2][b] applies to all shelters so to prevent future litigation on this issue<sup>1</sup> should the City put more beds beyond the 200 limit in Freedom House.

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<sup>1</sup>Neighborhood has filed a Notice of Appeal to the Appellate Division, First Department on April 2, 2014, appealing each and every part of this court's March 12, 2014 Decisions and Order.

The City's mootness argument has merit as one of the Neighborhood's claim was that a adult family shelter should not have more than 200 beds. Since the Freedom House will not have more than 200 beds as of November 1, 2014, Neighborhood's claim is moot. Neighborhood's request to have an adjudication on the application of Administrative Code § 21-321[2][b] to all shelters is no longer an issue in this case. Therefore, Neighborhood's intent for a ruling to stave off future potential litigation is speculative and not ripe for judicial review (*see Essex County v Zagata*, 91 NY2d 447 [1998]).

Accordingly, it is

ORDERED, that the Council of the City of New York's motion to intervene is granted as is its motion to reargue; it is further,

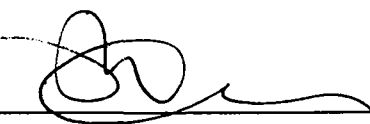
ORDERED, that upon reargument, the Council of the City of New York's motion to retract the prior determination in this court's Decision and Order dated March 14, 2014 regarding State law preemption of Administrative Code § 21-321[2][b] is granted; it is further

ORDERED, the City's cross-motion to renew is granted, and upon renewal, the holding regarding State preemption of Administrative Code § 21-321[2][b] is retracted; and it is further

ORDERED, that except for the holding concerning Administrative Code § 21-321[2][b], this Court's March 14, 2014 Decision and Order otherwise remains unchanged.

This constitutes the decision and order of the court.

**Dated: September 30, 2014**

  
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**Margaret A. Chan , J.S.C.**