

646-710-1183 (FAX)
212-408-1183 (Phone)

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At IAS Part 15 of the Supreme Court of the State of New York, County of Bronx at the Courthouse thereof, at 851 Grand Concourse, Bronx, New York, on the 3rd day of January 2007.

P R E S E N T :

Hon. MARY ANN BRIGANTTI-HUGHES

Justice

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

MARY MCKINNEY and MECHLER HALL
COMMUNITY SERVICES, INC.,

Plaintiffs,

-against-

THE COMMISSIONER OF THE NEW YORK STATE
DEPARTMENT OF HEALTH; THE NEW YORK
STATE DEPARTMENT OF HEALTH; and THE
STATE OF NEW YORK,

Defendants.

Index No. 6034/07

**ORDER TO SHOW CAUSE
FOR PRELIMINARY
INJUNCTION WITH
TEMPORARY
RESTRAINING ORDER**

UPON the Summons and Verified Complaint herein, the annexed Affirmation of Thomas E. Bezanson and Amanda Masters dated January 2, 2007, the annexed Affidavit of Mary McKinney, sworn to January 2, 2007, the Affidavit of Deacon Dhoel Canals, Executive Director of Mechler Hall Community Services, Inc., and the accompanying Memorandum of Law,

NOW, upon the motion of NEW YORK LAWYERS FOR THE PUBLIC INTEREST, INC. and CHADBOURNE & PARKE LLP, attorneys for plaintiffs Mary McKinney and Mechler Hall Community Services, Inc., it is hereby

ORDERED, that defendants Commissioner of the New York State Department of Health, New York State Department of Health, and State of New York show cause, if there be any, before this Court at IAS Part 15, Room 411 of the Courthouse located at 851 Grand Concourse, Bronx, NY, on January 29th, 2007 at 9³⁰ o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an order should not be entered pursuant to N.Y. C.P.L.R. §§ 6301 and 6311 (McKinney 2006) and N.Y. State Fin. Law § 123-e (McKinney 2002):

(1) preliminarily enjoining defendants, their agents, employees, and representatives during the pendency of this action from taking any action to implement the recommendations of the Commission on Health Care Facilities in the 21st Century (the "Commission"), including, but not limited to:

(a) administering any state funds, including those available pursuant to Section 2818 of the New York Public Health Law, to implement the recommendations of the Commission;

(b) rescinding, suspending, or in any way modifying operating certificates and establishment approvals issued to facilities selected for closure, downsizing, reconfiguration, conversion, or any other action by the Commission;

(c) coordinating with management and labor representatives of facilities targeted for closure by the Commission in order to implement the recommendations of the Commission; and

(2) granting such other and further relief as this Court deems just and proper.

IT BEING alleged in the Verified Complaint and in the aforesaid papers that temporary relief is necessary to prevent irreparable harm to plaintiffs pending the hearing and determination of the within motion for a preliminary injunction, and it appearing that plaintiff may be entitled to a preliminary injunction under N.Y. C.P.L.R. §§ 6301 and 6311 (McKinney 2002) and N.Y. State Fin. Law § 123-e (McKinney 2002) to enjoin defendants as stated above, it is further

ORDERED, that pending the hearing ~~and determination~~ of this motion for a preliminary injunction, defendants, and their agents

(1) are temporarily enjoined and restrained from:

(a) administering any state funds to implement the recommendations of the Commission; *to close Westchester Square Medical Center hereinafter "WSMC"*

(b) rescinding, suspending, or in any way modifying operating certificates and establishment approvals issued to ~~facilities targeted~~ *WSMC* for closure by the

Commission;

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(c) coordinating with management and labor representatives of ^{"WSMC"} facilities targeted for closure by the Commission in order to implement the recommendations of the Commission; and

(d) taking any other action to implement the recommendations of the Commission; ^{to close "WSMC"} and it is further

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ORDERED, that defendants' papers in opposition to plaintiff's motion, if any, shall be served by hand upon plaintiff's counsel on or before JANUARY 19, 2007 at 5:00 p.m.; and it is further

ORDERED, that plaintiffs' papers in reply, if any, shall be served by hand upon defendants' counsel on or before JANUARY 26, 2007 at 5:00 p.m.; and it is further

ORDERED, that personal service of a copy of this Order, and the papers upon which it is based, upon defendants' counsel so as to be received on or before JANUARY 5, 2007, shall be deemed good and sufficient service.

And it is further ordered that the status quo is preserved and that there has been no finding on the issue of constitutionality on the enactments of the Berger Commission and the New York Public Health Law.

ENTER:

Mary Ann Brigantti-Hughes

J.S.C.
MARY ANN BRIGANTTI-HUGHES