

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

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THE WESTCHESTER SQUARE/ZEREGA :  
IMPROVEMENT ORGANIZATION, INC., JOHN :  
BONIZIO, SANDI LUSK and HANNAH ACAMPORA, : Index No. 260573/09  
: Petitioners, :  
: **ORDER TO SHOW CAUSE**  
-against- :  
: ROBERT V. HESS, Commissioner of New York City :  
Department of Homeless Services, THE CITY OF NEW :  
YORK, SAINTS TOWER, LLC, and "JOHN DOE" and :  
"JANE DOE", :  
: Respondents. :  
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Upon the annexed Affirmation of Lewis S. Finkelman dated the 14th day of October 2009, and upon the pleadings, submissions and proceedings heretofore had herein,

Let Petitioners The Westchester Square/Zerega Improvement Organization, Inc., John Bonizio, Sandi Lusk and Hannah Acampora and Respondents Robert V. Hess, Commissioner of the New York City Department of Homeless Services, the City of New York, and Saints Tower, LLC, show cause at an IA Part \_\_\_\_\_ of this Court, to be held at the Courthouse thereof, Room \_\_\_\_\_, 851 Grand Concourse, Bronx, New York on the \_\_\_\_\_th day of October 2009 at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel may be heard why an order should not be entered herein pursuant to N.Y. C.P.L.R. § 1013 and/or § 7802(d), granting William C. Thompson, Jr., as Comptroller of the City of New York, as a matter of permission within the Court's discretion, the opportunity to appear and be heard in this proceeding as a party petitioner, together with such other and further relief as this Court may deem just and proper;

Sufficient cause appearing therefor it is

ORDERED, that service of this Order to Show Cause, Affirmation of Lewis S.

Finkelman dated the 14th day of October 2009, and accompanying submissions be deemed good and sufficient if served by \_\_\_\_\_, 2009, upon each of the above-referenced Petitioners and Respondents.

ENTER:

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J.S.C.



SUPREME COURT OF THE STATE OF NEW YORK  
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IMPROVEMENT ORGANIZATION, INC., JOHN  
BONIZIO, SANDI LUSK and HANNAH ACAMPORA,

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ROBERT V. HESS, Commissioner of New York City  
Department of Homeless Services, THE CITY OF NEW  
YORK, SAINTS TOWER, LLC, and "JOHN DOE" and  
"JANE DOE",

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:

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X

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**AFFIRMATION OF LEWIS S. FINKELMAN  
IN SUPPORT OF MOTION TO INTERVENE**

STATE OF NEW YORK )

ss.:

COUNTY OF NEW YORK )

LEWIS S. FINKELMAN, an attorney duly admitted to practice before the Courts of the  
State of New York, affirms, pursuant to Rule 2106 of the New York Civil Practice Law Rules  
("CPLR") and under the penalty of perjury, that the following is true and correct:

1. I am the Deputy Comptroller for Legal Affairs and General Counsel of the New York City Comptroller's Office. As such, I am fully familiar with the facts set forth herein.
2. I submit this affirmation in support of the motion by Proposed Intervenor William C. Thompson, Jr., as Comptroller of the City of New York (the "Comptroller"), pursuant to CPLR §§ 1013 and 7802(d), for permission to intervene in this proceeding, which challenges the legality of the City of New York's recent placement of homeless families at 1564 St. Peters Avenue in the Bronx.
3. As discussed below, the Comptroller's claim and the underlying proceeding present common questions of law and/or fact and the Comptroller's intervention in this proceeding will not unduly delay the determination of this proceeding or prejudice the substantial rights of any of the existing parties.

#### **This Proceeding**

4. Petitioners commenced this proceeding on or about September 17, 2009. The Petition, a copy of which is annexed hereto as Exhibit A, seeks a declaration that the City's placement of homeless families at the St. Peters site violates the Uniform Land Use Review Procedure ("ULURP") and the Fair Share requirements of the New York City Charter. The Petition also seeks a declaration that any contract entered into between the City and any other entities relating to the placement of homeless families at that location are void.

#### **The Comptroller's Claim**

5. The Comptroller, the independently elected Chief Fiscal Officer of the City, seeks to intervene in this proceeding in order to: (i) ensure that his statutory and discretionary

authority regarding the execution, registration and performance of contracts and the auditing and investigating of all matters relating to or affecting the finances of the City is respected and adhered to; and (ii) compel the City to comply with its statutory obligation to enter into a contract for the provision of such housing and shelter assistance services.

6. The City has readily acknowledged that, despite the undisputed fact that it has procured housing and shelter assistance services for homeless families at 1564 St. Peters Avenue, it has not entered into a contract for the provision of such services. See ¶3 of the Affirmation of Amanda C. Goad dated September 17, 2009 in Opposition to the Order to Show Cause (“As an initial matter, the first request [seeking an injunction voiding any contracts currently governing the operation of the St. Peter’s shelter] must be denied because *no such contract exists.*” (Emphasis added)).
7. The applicable statutory scheme makes clear that, in order to obtain the services in question, the City must follow the procurement requirements set forth in Chapter 13 of the New York City Charter and the New York City Procurement Policy Board Rules (the “PPB Rules”), which have the force of law pursuant to § 311 of the Charter. Specifically, § 310 of the Charter provides, in pertinent part, that “all goods, services or construction to be paid for out of the city treasury or out of moneys under the control of or assessed or collected by the city shall be procured as prescribed in this chapter.” Chapter 13 of the Charter then goes on to specify the various methods of procurement available to a City agency to procure any goods, services or construction.

8. Section 1-02(a) of the PPB Rules likewise provides that: “Except as otherwise provided by law, these Rules shall apply to the procurement of all goods, services, and construction to be paid for out of the City treasury or out of monies under the control of or assessed or collected by the City.” Specifically included within the ambit of “services” subject to the procurement requirements of the PPB Rules is “Client Services,” which is defined in Section 1-01 of the Rules as encompassing “[p]rograms contracted for by the City of New York on behalf of third-party clients, including programs to provide . . . housing and shelter assistance services.”
9. The City’s procurement laws also provide that no contract can be implemented until it has been filed with the Comptroller and registered. Charter § 328(a) states:

No contract or agreement executed pursuant to this charter or other law shall be implemented until (1) a copy has been filed with the comptroller and (2) either the comptroller has registered it or thirty days have elapsed from the date of filing, whichever is sooner, unless an objection has been filed pursuant to subdivision c of this section, or the comptroller has grounds for not registering the contract under subdivision b of this section.

See also PPB Rules Section 2-12 (“Unless otherwise provided by the Charter or these Rules, all contracts, agreements, contract changes, change orders, agreements, modifications, contract time extensions, and ”Buy-Against” procurements shall be presented to the Comptroller for registration.”). The Comptroller’s registration of a contract serves the vital purpose of confirming that there remains unexpended and unapplied a balance of the appropriation or fund applicable thereto, sufficient to pay the estimated expense of executing such contract. See Charter §328 (b)(i) and Administrative Code §6-101 .


10. By letter dated September 10, 2009, a copy of which is annexed hereto as Exhibit B, the Comptroller advised the Commissioner of the City's Department of Homeless Services ("DHS") that no contract existed authorizing DHS to place homeless families at 1564 St. Peter's Avenue and insisted that, absent any such contract, DHS cease placing homeless families at that location and making any further payments for such unauthorized services.
11. The DHS Commissioner responded by letter dated September 22, 2009, a copy of which is attached as Exhibit C, claiming that, in conformity with a New York City Law Department opinion from 2003, DHS has the legal authority to place homeless families in St. Peter's without entering into a contract specifying the terms and conditions regarding the provision of such housing and shelter assistance services. In this regard, the DHS Commissioner readily acknowledged that it was paying, without contracts, for both housing services and the provision of social services to the families residing at that location.
12. It must be emphasized that DHS' procurement of housing and shelter assistance services without complying with its legal obligation to enter into a contract and file the contract with the Comptroller for registration is by no means an isolated instance. Thus, in an audit issued on October 1, 2003, a copy of which is annexed hereto as Exhibit D, this office found that DHS had paid \$96 million in Fiscal Year 2002 to 30 operators of hotels and scatter site apartments without complying with the statutory mandate that it enter into contracts for the provision of such housing services.
13. Attached as Exhibit E is the Comptroller's proposed intervention pleading, in which he seeks relief, in the nature of mandamus, compelling the City to comply with its

legal obligation to enter into a contract for the provision of housing and/or shelter assistance services at the St. Peter's site in accordance with the applicable procurement laws and/or a declaration that the City has violated the law by obtaining such services without entering into a contract in accordance with the applicable laws.

14. There can be no dispute that the Comptroller's proposed claim and the existing claims asserted by Petitioners raise common questions of fact and/or law and that the Comptroller's intervention will not unduly delay this proceeding or prejudice the substantial rights of any party. Accordingly, the Court should grant the Comptroller permission to intervene as a petitioner in this proceeding and serve a pleading in the form attached hereto.

15. There has been no previous application in this proceeding for the relief sought herein.

Dated: New York, New York  
October 14, 2009

  
\_\_\_\_\_  
Lewis S. Finkelman

# **Exhibit A**

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

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THE WESTCHESTER SQUARE/ZEREGA  
IMPROVEMENT ORGANIZATION, INC., JOHN  
BONIZIO, SANDI LUSK and HANNAH ACAMPORA,

Index No.:

Date Purchased:

Petitioners,

-against-

**PETITION**

ROBERT V. HESS, Commissioner of the New York City  
Department of Homeless Services, THE CITY OF NEW  
YORK, SAINTS TOWER, LLC, and "JOHN DOE" and  
"JANE DOE",

Respondents.

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Petitioners, John Bonzio, Sandi Lusk, and Hannah Acampora, by the undersigned,  
complaining of the Respondents herein, as and for their Petition allege as follows:

1. The Petitioners do, and at all times hereinafter mentioned did, reside in the section  
of the Bronx commonly known as Westchester Square/Zerega (hereinafter "Westchester  
Square/Zerega Community"), which is located within and subject to the jurisdiction of Bronx  
Community Planning Board No. 10.

2. Petitioner John Bonizio is the President of the Association of Merchants and  
Business Professionals of Westchester Square, Inc., and operates a retail store within the  
Westchester Square/Zerega Community.

3. Petitioner Sandi Lusk is President of the Westchester Square/Zerega Improvement  
Organization, Inc., an entity formed to promote the maintenance and improvement of the  
Westchester Square/Zerega Community.

4. Petitioner Hannah Acampora is a resident of the Westchester Square/Zerega  
Community and a member of Community Planning Board No. 10.

5. Respondent Commissioner Robert V. Hess (hereinafter "Hess") is, and at all times hereinafter mentioned was, the Commissioner of the New York City Department of Homeless Services, an agency of the Respondent City of New York (hereinafter "the City").

6. Respondent Saints Tower, LLC (hereinafter "Saints Tower") does and at all times hereinafter did, own a multifamily building at the premises commonly known as 1564 St. Peters Avenue, Bronx, New York (hereinafter the "Building") which is located within the Westchester Square/Zerega Community.

7. Respondents "John Doe" and "Jane Doe" (names being fictitious) are homeless individuals currently residing in the Building, having been placed there, within approximately the last thirty (30) days, at the direction of Respondent New York City Department of Homeless Services.

8. Westchester Square consists of approximately fifteen (15) blocks of small commercial businesses, which businesses cater to the residents of the Zerega Community, a community predominated with single family residences.

9. While the Westchester Square/Zerega Community has always had facilities to provide social services to members of its community, several years ago the New York State Department of Mental Health, and subsequently the City of New York, began licensing numerous organizations to provide social services, including residential services, within the community. There are currently more than 20 programs, already in existence, providing services within one mile of Westchester Square (see Exhibit "A").

10. In response to complaints from Westchester Square/Zerega Community and other communities, to the increasing number of public facilities within a specific city neighborhood, the City Planning Commission, pursuant to the mandates of the New York City Charter Section

203, adopted Criteria for the Location of City Facilities (hereinafter "Fair Share Criteria") in order to promote an equitable distribution of public facilities around city neighborhoods. The Fair Share Criteria requires that City agencies consider certain issues when they either select or substantially change sites for New York City facilities.

11. Respondent Saints Tower recently completed construction on what was to have been a 38 unit luxury rental building at 1564 St. Peters Avenue, Bronx, New York, within the Westchester Square/Zerega Community (see Exhibit "B").

It was anticipated that the building would provide a source of housing for the many middle income families who sought to relocate to or remain in the Westchester Square/Zerega Community. Rents for never before occupied apartments were to be \$1,400.00 per month for a two bedroom unit (see Alicea-Sanchez Affidavit). A large sign was placed on the facade of the building stating that a daycare was to be located in the Building, and thus the opening was anxiously anticipated by the community.

12. Rather than providing luxury housing for middle class families, as represented, Respondent Saints Tower, without any notice to the community, and thus in violation of the Fair Share Criteria, entered into an agreement with Respondents Hess and The New York City Department of Homeless Services/City of New York, to place homeless families in the building, at a rental of more \$2,700.00 per month per unit.

13. Without notice to the community, approximately thirty (30) days ago the New York City Department of Homeless Services began surreptitiously moving homeless families into the Building, and, upon information and belief, there are currently 10 homeless families already occupying the Building.

14. When members of the Westchester Square/Zerega Community learned what was happening, they contacted the local community planning board, Board No. 10, in order to determine why they had not received notice of this additional new facility within its midst. The Community Board was shocked to learn of the existence of the shelter and noted that the Respondents had failed to provide the Community with notification in order for there to be the requisite Fair Share Hearing; it sent a letter to Commissioner Hess seeking that he immediately explain his actions, cease from placing homeless families within the community (see Exhibit "C").

Commissioner Hess acknowledged that he failed to conduct the requisite Fair Share Hearing, but stated that he would do so in the future (see Exhibit "D"), reflecting his brazen disregard for the law and his intent to merely give it "lip service", after he had already inserted up to 38 additional homeless families within the Community – the very action which the New York City Charter Fair Share Criteria was meant to guard against. On August 28, 2009 Respondent Hess, at the request of Council Member James Vacca, State Senator Jeffrey Klein, and State Assemblyman Michael Benedetto acquiesced to meet with them, at which meeting he again acknowledged that he had not given any notice to the Community or permitted an opportunity for the requisite hearings and comments by the Community Board or others, and stated that he had already moved 10 families into the Building; he indicated that additional families would be moving in in the near future (see Affidavit of Council Member James Vacca).

15. Petitioners also learned that the contract between the City and the Respondents is being implemented through Basic Housing Inc. (hereinafter "Basic"); however, Basic has no contract to operate the shelter or any other program at the Building, and was recently charged with overbilling the City by more than \$1.9 million on other projects.

