

**Broadway Triangle Community Coalition v  
Bloomberg**

2010 NY Slip Op 31665(U)

June 28, 2010

Supreme Court, New York County

Docket Number: 112799/09

Judge: Emily Jane Goodman

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

26  
7-1-10

PRESENT: GOODMAN  
Justice

PART 17

Bwy TRINIDAD Community  
-v- COASTAL  
MICHAEL BLUMBERG

INDEX NO. 112799/09  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 3  
MOTION CAL. NO. \_\_\_\_\_

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...  
Answering Affidavits — Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

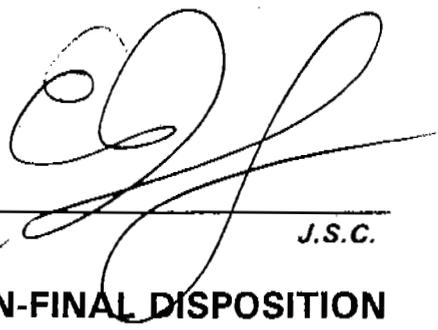
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is decided per  
attached

**FILED**  
JUL 02 2010  
COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 6/28/10

  
\_\_\_\_\_  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE  
 SUBMIT ORDER/JUDG.  SETTLE ORDER /JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK I.A.S. PART 17

-----X  
BROADWAY TRIANGLE COMMUNITY COALITION,  
An Unincorporated Association, By and In the name of  
its Chairman, Juan L. Ramos, et al

Petitioners,

Index No.112799/09

-against-

MICHAEL BLOOMBERG, as Mayor of the City of New  
York, City of New York, RAPHAEL E. CESTERO, as  
Commissioner of the New York City Department of  
Housing Preservation and Development,

Respondents.

**FILED**  
JUL 02 2010  
COUNTY CLERK'S OFFICE  
NEW YORK

-----X  
EMILY JANE GOODMAN, J.S.C.:

By Decision and Order dated May 20, 2010, this Court found that a hearing was required in order to render a decision on the motion for a preliminary injunction, especially in light of the particularly weighty issues involved. Familiarity with that 22-page decision is presumed. Prior to the hearing date, Plaintiffs/Petitioners<sup>1</sup> (hereafter Plaintiffs) brought an Order to Show Cause for discovery and therefore, an adjournment of the hearing.

In their papers, Plaintiffs maintain that they seek only that information which is not publically available. In their letter dated May 27, 2010, attached to the moving papers, Plaintiffs seek:

1. With respect to each of the following Williamsburg developments, the household

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<sup>1</sup>The matter involves both an action and proceeding.

racial composition for apartments, classified by the number of bedrooms:

- The affordable units at Schaeffer Landing
  - Jonathan Williams Plaza
  - Bedford Gardens
  - Independence Towers
  - Taylor Wythe House
  - Robert Clemente Plaza
2. The 2010 New York City Housing Authority waiting lists for Community District 1 and Community District 3 of Brooklyn separated into the following categories:
- Area Median Income (AMI) classification
  - Race/Ethnicity
  - Bedroom Size
- For each category, we are seeking the number and the percentage of applicants as they compare to the total waiting the list size.
  - For the best example of the type and format of data we seek, please refer to our Reply dated March 5, 2010, Exhibit A, "New York City Housing Authority Annual Plan for Fiscal Year 2010: Public Housing Waiting List."
3. With respect to Schaeffer Landing, the racial composition of the original applicant pool eligible for the affordable units of said development.
4. With respect of the affordable units at Schaeffer Landing
- The classification of apartments by number of bedrooms.

- The income eligibility requirements for each type of apartment.
  - The family size eligibility requirements for each apartment bedroom size.
5. The racial makeup of the 57,000 residents of Community District I (16% if the total population) who constitute large family households, defined as 5 people or more. See Court decision, May 20, 2010, Footnote 10, page 16.
- We are seeking racial composition for each category of family size, beginning with families of five.
6. Within Community District 1, the racial composition of apartments consisting of three bedrooms or more, categorized by apartment size. See Court decision, May 20, 2010, Footnote 10, page 16.

Plaintiffs also seek production of all regulatory agreements/exhibits (including the Commitment, the Distribution List by Bedroom Size and Rent, and the Marketing and Tenant Selection Plan) between Defendant Department of Housing Preservation and Development (HPD) and/or its subsidiary Housing Development Corporation and private developers (including but not limited to United Jewish Organization and Ridgewood Bushwick Senior Citizen's Council, Inc.) in Community Districts 1 and 3 for partially or wholly affordable housing developments. They also seek production of the addresses for partially or wholly affordable housing developments citywide, funded by HPD and/or its subsidiary Housing Development Corporation, with the number of bedrooms.

In opposition to the motion, Respondents/Defendants (Defendants), maintain, through its counsel, that (1) they cannot produce documents relating to New York City

Housing Authority (NYCHA) developments, because NYCHA is independent of the City, (2) HPD does not collect data in the form of “racial composition by apartment size” although that information was provided for Schaeffer Landing in the form of a one page chart for the initial rent up<sup>2</sup>, (3) the City does not have documents responsive to requests “regarding racial composition of CD 1 households of 5 people or more or of apartments of three bedrooms or more” and (4) that documents reflecting race and apartment size for NYCHA projects and Community District 1 affordable income projects are irrelevant to this lawsuit. Moreover, counsel to all Defendants stated at oral argument, on the record (transcript not produced), that any existing records or documents, could be in archives. The purpose of archives is to preserve important papers for future reference and research, and, therefore, retrieval.

### Discussion

Contrary to Defendants’ argument, documents reflecting race and apartment size for NYCHA, Mitchell-Lama projects in Williamsburg, and Community District 1 affordable income projects are discoverable because the documents may be directly relevant or reach the data which will assist the Court. The issue is whether the buildings at issue implicate intentional discrimination against non-whites, or would result in a discriminatory impact against non-whites. The factual allegation, which has been proven

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<sup>2</sup>The data from Schaeffer Landing (located in Williamsburg) may support Plaintiffs’ contention. It indicates that blacks and latino residents occupy 35 three or four bedroom apartments, while whites occupy 45 of those apartments.

in prior federal litigation involving NYCHA, is that Hasidim (who seek larger apartments due to large family size), are over-represented in Williamsburg (*see Ungar v NYCHA*, 2009 US Dist LEXIS 3578 *aff'd* 2010 US App. LEXIS 1666 [2d Cir 2010]). If that is so, what is the reason? At this time, the Court will limit document production involving NYCHA, to the Williamsburg area only (and not the entire City).

To avoid delay, Defendants are directed to make good faith and diligent efforts to produce the documents that reference NYCHA projects in Williamsburg. If documents cannot be located or secured, Defendants shall provide affidavits of its diligent and good faith efforts, including any facts surrounding any refusal to comply. Interestingly, at oral argument, Defendants offered the comment that, in order to obtain documents which they intended to produce at the hearing, concerning the scoring incentives for building larger apartments, they had “reached out” to another separate entity, the New York State Division of Housing & Community Renewal, which is more clearly distinct from the City than NYCHA. It strikes the Court as odd that Defendants have the ability and motivation to “reach out” to DHCR to obtain documents (and advise the Court that it is doing so because the Court wishes to see that information), but that Defendants cannot obtain information the Court also wishes to consider, i.e., with respect to NYCHA. The irony is compounded since Mayor Michael Bloomberg, as Defendant in this case, is represented by the same Corporation Counsel and appoints the Chairman of NYCHA as well as two other board members, and because Defendant City of New York subsidizes NYCHA.

It is hereby

ORDERED that Defendants are directed to make good faith and diligent efforts to produce the documents demanded that reference NYCHA projects in Williamsburg; if documents cannot be located or secured, Defendants shall provide affidavits of its diligent and good faith efforts, including any facts surrounding any refusal to comply; and it is further

ORDERED that Defendants are directed to produce or make available for review and copying the regulatory agreements/exhibits to the extent they are not publically available on the website; and it is further

ORDERED that Defendants are directed to provide affidavits, from persons with knowledge, attesting that, as stated by counsel, HPD does not collect, possess or have access to information based on racial composition by apartment size, with respect to the two-Mitchell-Lama housing developments (Bedford Gardens and Roberto Clemente Plaza), with respect to Schaeffer Landing as to the original applicant pool and on an ongoing basis, and, with respect to any other HPD funded project in Community Districts 1 and 3; and it is further

ORDERED that if counsel's representation in Defendants' opposition is incorrect, and HPD does in fact collect, possess or have access to the above described data, then all responsive documents shall be produced; and it is further

ORDERED that Defendants provide the addresses for partially or wholly

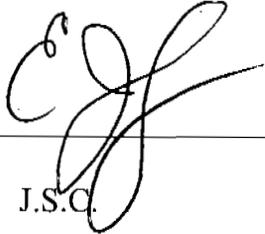
affordable housing developments citywide, funded by HPD and/or its subsidiary Housing Development Corporation, with the number of bedrooms; and it is further

ORDERED that in the event that documents/information are not susceptible to voluntary production, Plaintiff may seek the Court's consideration of non-party subpoenas; and it is further

ORDERED that the parties are directed to email Andrea Field, Principal Law Clerk at [afield@courts.state.ny.us](mailto:afield@courts.state.ny.us) and copy all counsel, to set the hearing date immediately upon compliance with the above.

Dated: June 28, 2010

ENTER:

  
\_\_\_\_\_  
J.S.C.

**FILED**  
JUL 02 2010  
COUNTY CLERK'S OFFICE  
NEW YORK