| **Real Estate Bd. of N.Y. Inc. v Council of the City of N.Y.** |
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| 2006 NY Slip Op 30798(U) |
| June 7, 2006 |
| Supreme Court, New York County |
| Docket Number: 114459/05 |
| Judge: Marilyn Shafer |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK; IAS PART 62
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REAL ESTATE BOARD OF NEW YORK INC.,

Plaintiff,

--against--

COUNCIL OF THE CITY OF NEW YORK,THE CITY OF NEW YORK and NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Defendants

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Index No 114459/05



SHAFER,M, JSC

Defendant Council of the City of New York (Council) moves, pursuant to CPLR 3211 (a) (2), (3), and (7), to dismiss the complaint. The complaint seeks a declaratory judgment that Local Law 79 (Law), enacted on August 17, 2005, codified at Administrative Code of the City of New York § 26-801, et seq., and effective on November 15, 2005, is invalid, and a preliminary and permanent injunction barring its implementation. The Council argues that this action is not ripe, and that plaintiff lacks standing to bring it.

The Law seeks "to provide a mechanism to help safeguard against the loss of affordable housing and to ensure that the assisted rental stock is maintained for the people of New York." See Report of the Committee on Housing and Buildings, dated August 17, 2005, adopted by the Council on that same date, at 3. The Law requires every owner of an "assisted rental housing" project



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(Housing Project), who intends to withdraw the building, or buildings, from an assisted housing program (Conversion), to give at least 12 months notice of the Conversion to the tenants. New York City Administrative Code (Code) § 26-802. Housing Projects are defined to include Mitchell-Lama projects occupied after January 1, 1974, programs providing project-based assistance under Section 8 of the United States Housing Act of 1937, and housing programs governed by Sections 202, 207, 221, 232, 236, or 811 of the National Housing Act. Code § 26-801 (c). Generally, those statutes provided incentives to private developers to build multiple-dwelling stock, and to offer the dwelling units therein at below-market rents. The statutes also provide that, after a certain number of years, and after the fulfillment of certain conditions, the owners of such housing stock may remove the dwelling units from the applicable program, and offer them at market rents. The Law provides that, within 60 days of receipt of a notice of Conversion, the tenants association, or other qualified entity (collectively, Association), of a Housing Project may exercise a "right of first opportunity to purchase" (Code § 26-806), whereupon the New York City Department of Housing Preservation and Development will convene an advisory panel that, within 30 days of the Association's notice, will determine the appraised value of the Housing Project. Code § 26-804. Within 120 days of such determination, the Association may submit an offer to purchase at the appraised value. Code § 26-805 (b). The owner is required to accept any such offer. Code § 26-806 (d).

The Law also provides that if an owner of a Housing Project receives a bona fide offer to purchase from a third party, and intends to consider the offer, or respond to it, the owner must provide the tenants with notice of the offer, within 15 days of receipt thereof. Code § 26-803. The Association may then, within 120 days of its receipt of the owner's notice, submit an offer to purchase (Code § 26-805 [c]), which the owner is required to accept. Code § 26-805 (e).

The Law requires an Association that purchases a Housing Project, pursuant to Code § 26-805 or § 26-806, and its successors in interest, to maintain "affordable" rents (Code § 26-808), as that term is defined at Code § 26-801 (a). Finally, the Law requires that, where an Association does not purchase the Housing Project, pursuant to either Code § 26-805 or Code § 25-806, and where the owner takes such action as results in a Conversion, the owner, or a bona fide purchaser, must allow the then-current tenants to remain in their dwelling units for the longer of six months from the date of the Conversion, or until the applicable leases expire, at the same terms and conditions as before the Conversion. Code § 26-810.

The Council argues that this action, which was commenced on or about October 18, 2005, approximately one month before the effective date of the Law, is not ripe, because no owner had yet been adversely affected by the Law, and because any future injury to any owner is speculative. Plaintiff's first cause of action alleges that the Law is inconsistent with, and, therefore, is

preempted by, the Mitchell-Lama Law, Private Housing Finance Law § 10, et seq. Plaintiff contends that the Mitchell-Lama Law generally gives owners of Housing Projects an unfettered right to receive title to their properties in fee, after a 20-year period. The Council's own Declaration of legislative findings and intent (Declaration) recites that "[p]rivate owners are electing to ... opt out of project-based subsidy programs at an alarming rate." Declaration § 1. Marolyn Davenport, a senior vice president of plaintiff, avers in her affidavit that "[n]umerous REBNY members have indicated that it had been their intention to take their assisted housing programs out of the affordable housing market as soon as possible." Davenport Aff., at 5. As a result of the enactment of the Law, owners who, previously, were free, under the Mitchell-Lama Law, to convert their properties (see 2550 Olinville Ave., Inc. v Crotty, 185 AD2d 200 [1st Dept 1992]), now must comply with the requirements of Code § 26-802 to give notice and to undergo a one-year waiting period. Accordingly, the first cause of action, at least, is ripe. Moreover, the remaining causes of action, like the first, raise exclusively legal issues, as to which an actual controversy is presented (see Subcontractors Trade Assn. v Koch, 62 NY2d 422 [1984]), and declaratory relief is available to adjudicate rights before a "wrong" occurs. Two Twenty East Ltd. PartnersHip v New York State Dept. of Taxation and Fin., 185 AD2d 202 (1st Dept 1992).

A membership organization, such as REBNY, has standing to litigate on behalf of its members, if at least some of its members

have standing, if the interests that the organization seeks to protect in the litigation are germane to its purposes, and if the participation of individual members of the organization is not required by either the relief requested or the claims asserted. Matter of Society of Plastics Indus., Inc. v County of Suffolk, 77 NY2d 761 (1991); Matter of Dental Socy. v Carey, 61 NY2d 330 (1984). As mentioned above, Ms. Davenport avers that there are REBNY members who wish to convert their properties. Such members, who now must comply with the requirements of Code § 26-802, would clearly have standing to challenge the validity of those requirements, Even a cursory glance at the two cases that REBNY has brought, prior to this one, shows that one of REBNY's primary purposes is to advance the economic interests of residential and commercial landlords. See Real Estate Bd. of N.Y. v City of New York, 157 AD2d 361 (1st Dept 1990) (seeking to reverse zoning amendment intended to preserve garment manufacturing district from further conversion of industrial loft space into office space); Liotta v Rent Guidelines Bd., 547 F Supp 800 (SD NY 1982) (seeking to enjoin enforcement of a rent guideline order providing less profitable increases to residential landlords than those granted in the preceding year). It is beyond dispute that REBNY's participation in this lawsuit is germane to that purpose. Finally, inasmuch as the relief sought by REBNY is exclusively declaratory and injunctive, and inasmuch as the issues raised by the complaint are questions of law, the participation of individual members of REBNY is not necessary here, and, would serve no purpose.

Accordingly, it is hereby

ORDERED that the motion is denied, and it is further

ORDERED that defendant will serve its answer within 10 days of service upon it of a copy of this order with notice of entry.

Dated: 6/7/06

ENTER:

J.S.C.

HON. MARILYN SHAFER, JSC