

Matter of Leadingage N.Y., Inc. v Shah

2014 NY Slip Op 32236(U)

August 13, 2014

Supreme Court, Albany County

Docket Number: 5352-13

Judge: Jr., George B. Ceresia

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**STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY**

In the Matter of the Application of

LEADINGAGE NEW YORK, INC., NEW YORK STATE HEALTH FACILITIES ASSOCIATION, INC., SOUTHERN NEW YORK ASSOCIATION, INC., GREATER NEW YORK HEALTH CARE FACILITIES ASSOCIATION, INC., EMPIRE STATE ASSOCIATION OF ASSISTED LIVING, INC., HOME CARE ASSOCIATION OF NEW YORK STATE, A. HOLLY PATTERSON EXTENDED CARE FACILITY, AARON MANOR REHABILITATION AND CONTINUING CARE CENTER, ABSOLUT CENTER FOR NURSING AND REHABILITATION AT ALLEGANY LLC, ABSOLUT CENTER FOR NURSING AND REHABILITATION AT AURORA PARK LLC, ABSOLUT CENTER FOR NURSING AND REHABILITATION AT DUNKIRK LLC, ABSOLUT CENTER FOR NURSING AND REHABILITATION AT EDEN LLC, ABSOLUT CENTER FOR NURSING AND REHABILITATION AT ENDICOTT LLC, ABSOLUT CENTER FOR NURSING AND REHABILITATION AT GASPORT LLC, ABSOLUT CENTER FOR NURSING AND REHABILITATION AT HOUGHTON LLC, ABSOLUT CENTER FOR NURSING AND REHABILITATION AT SALAMANCA LLC, ABSOLUT CENTER FOR NURSING AND REHABILITATION AT THREE RIVERS LLC, ABSOLUT CENTER FOR NURSING AND REHABILITATION AT WESTFIELD LLC, ACHIEVE REHABILITATION AND NURSING FACILITY, ADIRONDACK MANOR HOME FOR ADULTS, AUBURN NURSING HOME, AVALON ASSISTED LIVING AND WELLNESS CENTER, AVON NURSING HOME LLC, BAINBRIDGE NURSING AND REHABILITATION CENTER, BARNWELL NURSING AND REHABILITATION CENTER, BAYBERRY CARE CENTER, BEECH

Index No. 5333-13
RJI No. 01-13-ST5056
Action No. 1

TREE CARE CENTER, BELAIR CARE CENTER, BLOSSOM HEALTH CARE CENTER INC., BLOSSOM VIEW NURSING HOME, BORO PARK CENTER FOR REHABILITATION AND HEALTH CARE, BRIARWOOD MANOR INC., BRIDGEWATER CENTER FOR REHABILITATION AND NURSING, THE BRIGHTONIAN, BRIDY HEALTH CARE FACILITY, BRONX CENTER FOR REHABILITATION AND HEALTH CARE, BROOKLYN-QUEENS NURSING HOME, BROOKLYN ADULT CARE CENTER, BROOKLYN CENTER FOR REHABILITATION AND HEALTH CARE, BUSHWICK CENTER FOR REHABILITATION AND HEALTH CARE, CAMILLUS RIDGE TERRACE, CAPITAL LIVING NURSING AND REHABILITATION CENTRE, CAPSTONE CENTER FOR REHABILITATION AND NURSING, CARILLON NURSING AND REHABILITATION CENTER, CEDAR MANOR NURSING AND REHABILITATION CENTER, CENTRAL ASSISTED LIVING, LLC, CENTRAL PARK REHABILITATION AND NURSING CENTER, CHESTNUT PARK REHABILITATION AND NURSING CENTER, CHITTENANGO CENTER FOR REHABILITATION AND HEALTH CARE, CLIFFSIDE REHABILITATION AND RESIDENTIAL HEALTH CARE CENTER, CLOVE LAKES HEALTH CARE AND REHABILITATION CENTER INC., COLD SPRING HILLS CENTER FOR NURSING AND REHABILITATION, COLONIAL PARK REHABILITATION AND NURSING CENTER, CONESUS LAKE NURSING HOME, CORNING CENTER FOR REHABILITATION AND HEALTH CARE, CORTLAND PARK REHABILITATION AND NURSING CENTER, CORTLANDT HEALTH CARE, COUNTRY MANOR NURSING AND REHABILITATION CENTRE, CRESTVIEW MANOR ALP, THE CROSSINGS NURSING AND

REHABILITATION CENTRE, CROWN NURSING AND REHABILITATION CENTER, DAUGHTERS OF JACOB NURSING HOME COMPANY INC., DOCTOR WILLIAM O. BENENSON REHABILITATION PAVILION, DUTCHESS CARE, DUTCHESS CENTER FOR REHABILITATION AND HEALTH CARE, EAST HAVEN NURSING AND REHABILITATION CENTER, EAST NECK NURSING AND REHABILITATION CENTER, ELANT, INC., ELCOR NURSING AND REHABILITATION CENTER, THE ELIOT AT ERIE STATION, ELM MANOR NURSING HOME, ELMHURST CARE CENTER, ELM YORK, LLC, EPISCOPAL SENIORLIFE COMMUNITIES, EVERGREEN COMMONS, FAWN RIDGE ASSISTED LIVING, FLUSHING MANOR CARE CENTER INC., FLUSHING MANOR NURSING AND REHABILITATION INC., FOREST VIEW CENTER FOR REHABILITATION AND NURSING, FOUR SEASONS NURSING AND REHABILITATION CENTER, FRIEDWALD CENTER FOR REHABILITATION AND NURSING, FULTON CENTER FOR REHABILITATION AND HEALTH CARE, GLEN COVE CENTER FOR NURSING AND REHABILITATION, GOLD CREST CARE CENTER, GOWANDA REHABILITATION AND NURSING CENTER, GRAND MANOR NURSING AND REHABILITATION CENTER, HARBOR TERRACE ASSISTED LIVING PROGRAM, HEDGEWOOD HOME FOR ADULTS, HIGHLAND NURSING HOME INC., HIGHLAND PARK REHABILITATION AND NURSING CENTER, HILAIRE REHABILITATION AND NURSING, HILLSIDE MANOR REHABILITATION AND EXTENDED CARE CENTER LLC, HOLLIS PARK MANOR NURSING HOME INC., HOLLISWOOD CARE CENTER, HORIZON CARE CENTER, HORNELL GARDENS, HUDSON PARK REHABILITATION AND NURSING CENTER,

HUDSON POINTE AT RIVERDALE CENTER FOR NURSING AND REHABILITATION, HUDSON VALLEY REHABILITATION AND EXTENDED CARE CENTER, HUNTINGTON HILLS CENTER FOR HEALTH AND REHABILITATION, THE HURLBUT, INDIAN RIVER REHABILITATION AND NURSING CENTER, KINGS HARBOR MULTICARE CENTER, KINGSBRIDGE HEIGHTS REHABILITATION AND CARE CENTER, KINGSWAY ARMS NURSING CENTER INC., LAKEVIEW REHABILITATION AND CARE CENTER, L'DOR ADULT HOME, LUTHERAN CARE CENTER AT CONCORD VILLAGE, LUTHERAN SOCIAL SERVICES GROUP, INC., MADISON YORK REGO PARK, LLC, MADISON YORK ASSISTED LIVING COMMUNITY, LLC, THE MAPLEWOOD NURSING AND REHABILITATION, MARQUIS REHABILITATION AND NURSING CENTER, MEADOWBROOK HEALTHCARE, MIDDLETOWN PARK REHABILITATION AND HEALTH CARE CENTER, MILLS POND NURSING AND REHABILITATION CENTER, MOHEGAN PARK HOME FOR ADULTS, MONTGOMERY NURSING AND REHABILITATION CENTER, MORNINGSIDE HOUSE NURSING HOME COMPANY, INC., MORRIS PARK NURSING HOME, MOSHOLU PARKWAY NURSING AND REHABILITATION CENTER, MOUNTAIN VIEW NURSING AND REHABILITATION CENTRE, NESCONSET CENTER FOR NURSING AND REHABILITATION, NEWMONSEY PARK HOME FOR ADULTS, NEW ROCHELLE HOME FOR ADULTS, NEW VANDERBILT REHABILITATION AND CARE CENTER, NEWARK MANOR NURSING HOME, NIAGARA REHABILITATION AND NURSING CENTER, OAK HILL MANOR NURSING HOME, OAK HOLLOW NURSING CENTER, OCEANVIEW MANOR HOME FOR

ADULTS, THE ORCHARD NURSING AND REHABILITATION CENTRE, PALATINE NURSING HOME, PALISADE GARDENS HOME FOR ADULTS, PARKER JEWISH INSTITUTE FOR HEALTH CARE AND REHABILITATION, PARKVIEW HOME FOR ADULTS, PENFIELD PLACE LLC, PETITE FLEUR NURSING HOME, PINE VALLEY CENTER FOR REHABILITATION AND NURSING, THE PINES AT GLENS FALLS CENTER, THE PINES AT POUGHKEEPSIE CENTER, THE PINES AT UTICA CENTER, PINEVIEW COMMONS ALP LLC, PONTIAC CARE AND REHABILITATION CENTER, PORT JEFFERSON REHABILITATION AND NURSING, PUTNAM RIDGE, QUEENS ADULT CARE CENTER, QUEENS CENTER FOR REHABILITATION AND HEALTH CARE, RAMAPO MANOR CENTER FOR REHABILITATION AND NURSING, REGAL HEIGHTS REHABILITATION AND HEALTH CARE CENTER, REGEIS CARE CENTER, RENAISSANCE REHABILITATION AND NURSING CARE CENTER d/b/a HYDE PARK NURSING HOME, RICHMOND CENTER FOR REHABILITATION AND HEALTH CARE, RIVER RIDGE LIVING CENTER, RIVERSIDE CENTER FOR REHABILITATION AND NURSING, RIVERVIEW MANOR HEALTH CARE CENTER, ROME CENTER FOR REHABILITATION AND HEALTH CARE, ROSS HEALTH CARE CENTER, SANS SOUCI REHABILITATION AND NURSING CENTER, SEA CREST HEALTH CARE CENTER, SENECA NURSING AND REHABILITATION CENTER, SHORE VIEW NURSING HOME, SHORE WINDS, SOMERS MANOR NURSING HOME INC., SOUTH SHORE HEALTH CARE, THE SPRINGS NURSING AND REHABILITATION CENTRE, ST. JOHNSVILLE REHABILITATION AND NURSING CENTER INC., ST. MARY'S EPISCOPAL CENTER INC., ST.

REGIS NURSING HOME INC., THE STANTON NURSING AND REHABILITATION CENTRE, SUFFOLK CENTER FOR REHABILITATION AND NURSING, TEN BROECK COMMONS, TERRACE HEALTH CARE CENTER INC., UNITED HELPERS MANAGEMENT COMPANY INC., UNIVERSITY NURSING HOME, VESTAL PARK REHABILITATION AND NURSING CENTER, THE WARTBURG HOME OF EVANGELICAL LUTHERAN CHURCH, WATERFRONT HEALTH CARE CENTER, WAVECREST HOME FOR ADULTS, WAYNE CENTER FOR NURSING AND REHABILITATION, WEDGEWOOD NURSING HOME, WESTGATE NURSING HOME, INC., WILLIAMS BRIDGE MANOR NURSING HOME, WINGATE AT DUTCHESS, WINGATE AT ULSTER, WOODCREST REHABILITATION AND RESIDENTIAL HEALTHCARE, WOODSIDE MANOR INC., and WORKMAN'S CIRCLE MULTICARE,

Petitioners-Plaintiffs,

-against-

NIRAV SHAH, in his official capacity as Commissioner of the New York State Department of Health, and ANDREW CUOMO, as Governor of the State of New York,

Respondents-Defendants.

For an Order and Judgment Pursuant to CPLR Article 78 and Other Relief.

In the Matter of the Application of

COALITION OF NEW YORK STATE PUBLIC HEALTH PLANS, NEW YORK STATE COALITION OF MANAGED LONG TERM

Index No. 5352-13
RJI No. 01-13-ST5058
Action No. 2

DECISION/ORDER

George B. Ceresia, Jr., Justice

In January 2012, respondent-defendant Governor Andrew Cuomo issued Executive Order No. 38 declaring that the State “has an ongoing obligation to ensure that taxpayers’ dollars are used properly, efficiently and effectively,” but that “in certain instances providers of services that receive State funds or State-authorized payments have used such funds to pay for excessive administrative costs and outsized compensation for their senior executives.” Accordingly, the Executive Order directed agencies that provide State funds to service providers to promulgate regulations: (a) requiring that at least 75% of the funds be used for direct care or services; and (b) prohibiting the use of such funds for executive compensation in excess of \$199,000 per year. In May 2013, 13 State agencies, including respondent-defendant Department of Health (hereinafter DOH), adopted final regulations imposing caps on administrative costs and executive compensation paid by “covered providers”¹ (see 10 NYCRR part 1002). A violation of these regulations can lead to the termination of a provider’s participation in the Medicaid program.

In Action No. 1, petitioners-plaintiffs LeadingAge New York, New York State Health Facilities Association, Southern New York Association, Greater New York Health Care Facilities Association, Empire State Association of Assisted Living and Home Care Association of New York State are trade associations, which currently collectively represent the interests of over 1,000 for-profit and not-for-profit care providers, including long-term

¹ A “covered provider” is an entity that, during the previous two years, received more than \$500,000 annually in State funds or State-authorized payments, and at least 30% of its in-State revenue from State funds or State-authorized payments (10 NYCRR § 1002.1[d]).

care and skilled nursing facilities, senior housing providers, adult care and assisted living communities within the State of New York. The remaining petitioners-plaintiffs in Action No. 1 are covered providers within the meaning of 10 NYCRR § 1002.1(d).

Turning to Action No. 2, petitioners-plaintiffs New York State Coalition of Managed Long Term Care/PACE Plans (hereinafter MLTC) and Coalition of New York State Public Health Plans (hereinafter PHP) are unincorporated associations of healthcare plans. MLTC's members are 18 non-profit, provider-sponsored managed long-term care and program of all-inclusive care for the elderly (PACE) plans that provide coverage for 92% of the elderly and disabled New Yorkers enrolled in managed long-term care or PACE. PHP's members are non-profit, publicly focused health plans that serve the safety net population. They include nine plans serving over 2.5 million people, or approximately two-thirds of the children and adults enrolled in New York's Medicaid managed care, Family Health Plus, and Child Health Plus programs. PHP's member plans are sponsored by or affiliated with public and not-for-profit hospitals, community health centers, and physicians. Plaintiff-petitioner New York Health Plan Association (hereinafter HPA) is a not-for-profit corporation that serves as an advocate for managed care organizations across New York State. Its members include the majority of managed-care plans in New York, including health maintenance organizations, prepaid health service plans, and managed long-term care plans. HPA's members consist of both for-profit and not-for-profit health plans.

In September 2013, petitioners-plaintiffs commenced these hybrid CPLR article 78 proceedings and declaratory judgment actions to challenge Executive Order No. 38, together with the associated regulations, claiming that they violate the separation of powers doctrine,

and are arbitrary and capricious. The LeadingAge petitioners-plaintiffs further claim that 10 NYCRR part 1002 (hereinafter Regulations) violates providers' substantive due process rights, and is preempted by both the federal Medicaid Act and State laws governing the Medicaid program in New York. Petitioners-plaintiffs also seek an order enjoining respondents-defendants from enforcing Executive Order No. 38 and the Regulations. Respondents-defendants now move to dismiss the petitions/complaints pursuant to CPLR 3211(a)(7). Petitioners-plaintiffs submitted papers in opposition. Given the existence of common questions of law and fact, the Court consolidated the proceedings/actions.

DISCUSSION

Since this matter involves a motion to dismiss for failure to state a cause of action, the Court must liberally construe the pleadings, grant petitioners-plaintiffs the benefit of each favorable inference, and limit its review to a determination as to whether the facts alleged fall within a cognizable legal theory (see CPLR 3211[a][7]; Leon v Martinez, 84 NY2d 83, 88 [1994]).

Bearing this standard in mind, the Court first addresses petitioners-plaintiffs' assertion that the Executive Order and Regulations are directly contrary to statutory authority and, therefore, impermissibly usurp the Legislature's role. To this end, "the constitutional principle of separation of powers, implied by the separate grants of power to each of the coordinate branches of government, requires that the Legislature make the critical policy decisions, while the executive branch's responsibility is to implement those policies" (Bourquin v Cuomo, 85 NY2d 781, 784 [1995] [internal quotation marks and citations omitted]; see Saratoga County Chamber of Commerce v Pataki, 100 NY2d 801, 821 [2003];

Ellicott Group, LLC v State of N.Y. Exec. Dept. Off. of Gen. Servs., 85 AD3d 48, 54 [2011]). Although “there need not be a specific and detailed legislative expression authorizing a particular executive act as long as ‘the basic policy decisions underlying the [executive action] have been made and articulated by the Legislature’” (Bourquin v Cuomo, 85 NY2d at 785, quoting Matter of New York State Health Facilities Assn. v Axelrod, 77 NY2d 340, 348 [1991]), “when the Executive acts inconsistently with the Legislature, or usurps its prerogatives, . . . the doctrine of separation is violated” (Clark v Cuomo, 66 NY2d 185, 189 [1985]; see Bourquin v Cuomo, 85 NY2d at 785; Roberts v Health & Hosps. Corp., 87 AD3d 311, 322 [2011], lv denied 17 NY3d 717 [2011]).

Many decades ago the Legislature delegated DOH the broad authority to “regulate the financial assistance granted by the state in connection with all public health activities” and “to receive and expend funds made available for public health purposes” (Public Health Law § 201[1][o], [p]). DOH is also empowered to:

[E]nter into such contracts or agreements . . . as may be deemed necessary and advisable to carry out the general intent and purposes of the public health law and the sanitary code. Such contracts may provide for payment by the state, within the limit of funds available, for materials, equipment or services.

(Public Health Law § 206[3]). DOH is further authorized to enter into subcontracts with non-profit corporations established to provide home care for the sick and disabled, and may establish the fees charged for such services (see Public Health Law § 206[6]). Equally significantly, DOH is the “single state agency” charged by the Legislature with the responsibility of supervising and implementing the federal Medicaid Act (Public Health Law § 201[1][v]).

The petitioners-plaintiffs argue that the Public Health Law does not grant DOH the authority to control the manner in which private entities expend funds they receive from other revenue sources. They point out that the management of for-profit corporations, not-for-profit corporations² and limited liability companies remains vested in the governing body of the organization (see Business Corporation Law §§ 701, 702; N-PCL 701, 702; Limited Liability Company Law § 401). Of particular relevance here, an entity's authority to manage its affairs includes the power to hire and fix compensation for officers, directors and employees (see Business Corporation Law § 202[10]; N-PCL 202; Limited Liability Company Law § 202[h]). In this regard, petitioners-plaintiffs submitted sworn testimony indicating that salaries for senior health plan executives regularly exceed \$199,000. They maintain that while the Regulations allow DOH and the Director of the Division of the Budget to issue a waiver upon a showing of good cause, there is no guarantee that a waiver will be granted (see 10 NYCRR § 1002.4). To the extent that the petitioners-plaintiffs allege that Executive Order and Regulations contravene the aforementioned provisions of the Business Corporation Law, Not-For-Profit Corporation Law, Limited Liability Company Law and the business judgment rule, the Court finds that petitioners-plaintiffs have sufficiently stated a cause of action grounded upon a separation of powers violation.

The Court next turns to allegations that DOH exceeded its statutory authority and usurped the policy-making role of the Legislature in promulgating the Regulations. Petitioners-plaintiffs rely upon Boreali v Axelrod (71 NY2d 1 [1987]), the landmark decision

² The only limit imposed by the Legislature pertains to not-for-profit corporations, and requires only that compensation be reasonable and commensurate with services performed (see N-PCL § 202[12]).

regarding constitutional separation of powers, to support their argument that the Regulations are invalid. For their part, respondents-defendants argue that Boreali is inapplicable. In Boreali, the Court of Appeals held that the Public Health Council went beyond its lawfully delegated authority when it promulgated regulations prohibiting smoking in a wide variety of indoor areas open to the public (see Boreali v Axelrod, 71 NY2d at 14). The Court reasoned that the regulations were invalid because the Public Health Council “stretched th[e] [Public Health Law] beyond its constitutionally valid reach when it . . . draft[ed] a code embodying its own assessment of what public policy ought to be” (Boreali v Axelrod, 71 NY2d at 9).

Four “coalescing circumstances” persuaded the Court that “the difficult-to-define line between administrative rule-making and legislative policy-making ha[d] been transgressed” (Boreali v Axelrod, 71 NY2d at 11). Those circumstances are as follows: (1) whether the regulation is based solely upon economic and social concerns; (2) whether the regulation created a comprehensive set of rules in the absence of legislative guidance; (3) whether the executive branch was acting in an area in which the Legislature has repeatedly tried, but failed, to reach agreement; and (4) whether the regulation involved issues which required no special expertise or technical competence in the agency’s field (see Boreali v Axelrod, 71 NY2d at 10-14). No one factor may validate or invalidate a regulation; rather, the four factors must be viewed in combination (see Boreali v Axelrod, 71 NY2d at 11).

The petitioners-plaintiffs have alleged, *inter alia*, that Executive Order 38 and the Regulations contain exceptions based solely upon economic and social concerns (see e.g. 10 NYCRR §§ 1002.1[d]; 1002.4). They allege that respondents acted without legislative

guidance; and that they acted in an area in which the legislature has repeatedly attempted, but failed, to adopt legislation. Lastly, they maintain that no special expertise or technical competence in the field of health was involved in their formulation. The Court finds, for purposes of CPLR 3211(a)(7), and under the principles set forth in Boreali, petitioners-plaintiffs have sufficiently alleged that DOH overstepped the boundaries of its lawfully delegated authority.

Next, petitioners-plaintiffs assert that the Regulations are replete with arbitrary and capricious standards and exceptions that have no rational basis in fact or law, and are based on speculation and erroneous assumptions. “The arbitrary and capricious test chiefly relates to whether a particular action should have been taken or is justified . . . and whether the administrative action is without foundation in fact. Arbitrary action is without sound basis in reason and is generally taken without regard to the facts” (Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222, 231 [1974]; see Matter of New York State Assn. of Counties v Axelrod, 78 NY2d 158, 166 [1991]). According to respondents-defendants, the Regulations have a rational basis because they are related to the proper, efficient, and effective use of State funds. The petitioners-plaintiffs indicate that the Regulations do not govern the amount of money the State pays for any service; rather, they control the distribution of money within entities after the funds have been paid. As a consequence, they maintain that they will lose experienced executives, thereby hindering the Regulations’ stated purpose. To this end, petitioners-plaintiffs note that the \$199,000 compensation limit applies regardless of the size and complexity of the covered provider, *i.e.* from executives for multi-billion dollar health

plans to the executive of a sole proprietorship or small not-for-profit corporation, and there is no gradation whereby allowable compensation is lowered as the receipt of State funds increases. They assert that even if a provider qualifies for the exception outlined in 10 NYCRR § 1002.3(b), it must still limit compensation paid to the 75th percentile of market rate for comparable employees as determined by DOH.

The petitioners-plaintiffs maintain that a significant portion of the provider community, including government-run entities, pharmacies, and medical supply companies, is categorically excluded from the scope of the Regulations without explanation (see 10 NYCRR § 1002.1[d][6]). They contend that although the Regulations afford DOH and the Director of the Division of the Budget the opportunity to grant waivers, the factors used in evaluating such requests pertain to market compensation and the complexity of internal operations, topics arguably outside DOH's area of expertise. They further contend that the nature of the timing of the waivers could also conceivably lead to uncertainty regarding the propriety of compensation paid to an executive.

According to petitioners-plaintiffs every favorable inference, the Court finds that they have sufficiently stated a cause of action that the Regulations are arbitrary and capricious.

On the other hand, the LeadingAge petitioners-plaintiffs' substantive due process claim fails because they are unable to establish a "vested property interest" in Medicaid reimbursements (Matter of Raynor v Landmark Chrysler, 18 NY3d 48, 59 [2011]). As the Appellate Division, Third Department recently reiterated, "Medicaid providers have no property interest in or contract right to reimbursement at any specific rate or, for that matter, to continued participation in the Medicaid program at all" (Matter of Concerned Home Care

Providers, Inc. v State of New York, 108 AD3d 151, 157 [2013], lv denied 22 NY3d 859 [2014] [internal quotation marks and citations omitted]). Similarly, the Court concludes that the LeadingAge petitioners-plaintiffs lack standing to pursue their federal preemption claim under 42 USC § 1396a. Indeed, the Appellate Division, Third Department has consistently held that where, as here, a provision of federal law was not intended to benefit health care providers, there is no private right of action enforceable within the context of a CPLR article 78 proceeding (see Via Health Home Care, Inc. v New York State Dept. of Health, 33 AD3d 1100, 1101 [2006]; Matter of St. Margaret's Ctr. v Novello, 23 AD3d 817, 819 [2005]).

Accordingly it is hereby,

ORDERED, that respondents-defendants' motion is granted insofar as the LeadingAge petitioners-plaintiffs' fourth and fifth causes of action are dismissed pursuant to CPLR 3211(a)(7), and is otherwise denied in all respects; and it is further

ORDERED, that respondents-defendants are directed to serve and file an answer within twenty (20) days of the date of this Decision/Order; and it is further

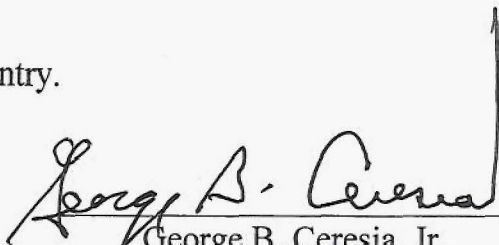
ORDERED, that respondents-defendants re-notice the proceeding in conformity with CPLR 7804(f); and it is further

ORDERED, that the proceeding after being re-noticed, shall be referred to the undersigned for disposition.

This Decision/Order is being returned to Hinman, Straub, P.C., attorney for the petitioners. The Court shall retain all original papers until final disposition of the proceedings/actions. The signing of this Decision/Order shall not constitute entry or filing under CPLR 2220. Counsel are not relieved from the applicable provisions of that rule

relating to filing, entry and notice of entry.

Dated: Troy, New York
August 13, 2014


George B. Ceresia, Jr.
Supreme Court Justice

Papers Considered:

1. Notice of Petition/Summons, dated September 25, 2013; Verified Petition and Complaint, dated September 25, 2013, with annexed exhibits; Affidavit of James Clyne in Support of Petition, sworn to September 20, 2013, with annexed exhibits; Affidavit of Richard J. Herrick, sworn to September 20, 2013, with annexed exhibits; Petitioners' Memorandum of Law in Support of their Petition, dated September 25, 2013;
2. Notice of Verified Petition, dated September 26, 2013; Verified Article 78 & Declaratory Judgment Petition, dated September 26, 2013, with annexed exhibits; Affidavit of Paul Macielak, sworn to September 26, 2013; Memorandum of Law in Support of Verified Article 78 and Declaratory Judgment Petition, dated September 26, 2013;
3. Notice of Motion, dated November 29, 2013; Memorandum of Law in Support of Respondents' Motions to Dismiss, dated November 29, 2013;
4. Reply Memorandum in Support of Verified Article 78 and Declaratory Judgment Petition, dated January 11, 2014, with annexed exhibits;
5. Petitioners' Memorandum of Law in Opposition to Respondents' Motions to Dismiss and in Further Support of the Petition, dated January 13, 2014; Reply;
6. Memorandum of Law in Further Support of Respondents' Motions to Dismiss, dated January 23, 2014;
7. Correspondence from David T. Luntz, Esq. Addressed to the Hon. George B. Ceresia, Jr., dated April 10, 2014, with enclosed Nassau County Supreme Court decision;
8. Correspondence from Douglas J. Goglia, Esq. Addressed to the Hon. George B. Ceresia, Jr., dated April 14, 2014; and
9. Correspondence from David T. Luntz, Esq. Addressed to the Hon. George B. Ceresia, Jr., dated June 27, 2014, with enclosed Court of Appeals decision.