

Comptroller of the City of N.Y. v City of New York

2020 NY Slip Op 34303(U)

December 16, 2020

Supreme Court, New York County

Docket Number: 452285/2020

Judge: Lyle E. Frank

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART IAS MOTION 52EFM

Justice

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THE COMPTROLLER OF THE CITY OF NEW YORK

Petitioner,

- v -

THE CITY OF NEW YORK,

Respondent.

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INDEX NO. 452285/2020
MOTION DATE 12/15/2020
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58

were read on this motion to/for SUBPOENA

Upon the foregoing documents, the decision/order of this Court is as follows:

Preliminarily, this Court finds that the investigation, underlying the instant petition, is well within the rights of the New York City Comptroller pursuant to the New York City Charter (the "Charter"). The language of Charter § 93 (b), as will be discussed more below, is extremely broad, and this Court does not question the intent of the breadth of this provision. This Court takes judicial notice of the devastating impact this pandemic has had on the New York City economy. As such, it is certainly appropriate for the Comptroller to investigate the City's response, and to make recommendations for the future.

As to the portion of the respondent's cross-petition that seeks to quash the subpoenas of the two identified City officials, the petition is denied. While there may be some duplication in these witnesses as to other witnesses, this Court will defer to the Comptroller as to the need for these witnesses to be deposed. Again, the Court refers to the broad power of the Comptroller under Charter § 93 (b), which provides in pertinent part that the Comptroller "examine and take

the testimony under oath of such persons as the Comptroller may deem necessary.” There has not been a sufficient showing that these witnesses were not involved in decision-making through the course of the pandemic to override the Comptroller’s ability to examine witnesses the it deems necessary. This Court also notes that none of the exceptions brought by the respondents addresses the issue of safety in this regard, so the Court need not address that here.


Additionally, respondents cross-petition seeks to quash the subpoena as it relates to any documents from Health and Hospitals Corporation “H and H”. Respondents argue that the authority to investigate only extends to agencies of the City of New York and that the Health and Hospitals Corporation is not an agency of the City. In support of its position respondents cite to § 93(e) of the New York City Charter, however the Comptroller relies on § 93(b) to support its investigative authority. The Court agrees with the Comptroller that the Charter § 93 (b) confers investigative authority onto the Comptroller that would include the oversight being sought here. In relevant part §93 (b) grants the Comptroller the “power to . . . investigate all matters relating to or affecting the finances of the City,” and as discussed above, to compel testimony and the production of documents as part of any such investigation “from such persons as the [C]omptroller may deem necessary.” Charter § 93(b). Accordingly, the Court denies respondent’s cross-petition as it relates to documents from Health and Hospitals. The Court’s judicial notice of the financial aspect of this pandemic extends to the City’s public hospitals. For the Comptroller to investigate the actions or inactions that were taken by this entity seems wholly appropriate.

Lastly, the portion of the City’s cross-petition to quash the subpoena as it relates to communication between the mayor, or Deputy Mayor Fulehan, and others, is granted. While there is an interest in transparency, it is this Court’s position that as to these documents only (i.e.

documents either sent by the mayor or Deputy Mayor Fulehan or received by one of them with regard to the pandemic) the interest in such unvarnished opinions outweighs the Comptroller's right to have this information. This pandemic is one of the deadliest and economically devastating tragedies to hit New York City in at least one hundred years. If such an event were to occur again, and pointedly as this pandemic continues, one would want there to be open and honest communication between the top elected official, their top deputy, and others who are providing them advice. It is well established that the determination of whether such a privilege applies is a fact specific determination, accordingly this decision is limited to the unique facts of this case. *See Steering Comm. v Port Auth. (In re World Trade Ctr. Bombing Litig.)*, 93 NY2d 1 [1999]; *Cirale v 80 Pine St. Corp.*, 35 NY2d 113 [1974].

In determining the above, the Court now turns to the timeliness of the disclosure. The Court is mindful that at the time of the drafting of this decision, the respondent is faced with a dual concern: how to roll out the vaccine for the virus and how to handle what appears to be a second wave of this pandemic. The Court is also aware that the number of documents is quite large. Therefore, a gradual disclosure of the documents is warranted. The Court therefore orders that documents be provided on a rolling basis monthly on or before the 15th of every month commencing in March 2021. The Court directs that all documents be provided with an update on the status of the disclosure and exchange of the remaining documents. The Court directs that all such documents be provided on or before July 15, 2021.

The foregoing constitutes the decision and order of the Court.

<u>12/16/2020</u> DATE	 LYLE E. FRANK, J.S.C. HON. LYLE E. FRANK J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
	<input type="checkbox"/> GRANTED			

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE