SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
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In the Matter of the Application of

MOTHER ZION TENANT ASSOCIATION, MARITZA CARMONA, DEBORAH TAYLOR LOW & JULLIE ANN YOUNG,

*Petitioners*,

For a Judgment Pursuant to Article 30 and 78 of the Civil Practice Law and Rules

-against-

SHAUN DONOVAN, as Commissioner of the New York City Department of Housing Preservation and Development; and MOTHER ZION ASSOCIATES L.P.,

*Respondents*.

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Index No. 402239/06

(Shafer, J.)

**REPLY MEMORANDUM IN SUPPORT OF RESPONDENT SHAUN DONOVAN'S MOTION TO DISMISS THE PETITION**

On behalf of Shaun Donovan, Commissioner of the New York City Department of Housing Preservation and Development ("HPD"), the Corporation Counsel of the City of New York submits this Reply Memorandum of Law in further support of its motion to dismiss the petition for failure to state a cause of action pursuant to CPLR §3211(a)(7) and CPLR §7804(f).

## PRELIMINARY STATEMENT

Local Law 79 is preempted in all its substantive provisions by state and/or federal law. This case, which involves an expiring contract for federal project-based Section 8 housing, illustrates the infirmities of the law. Local Law 79 would take title to the Mother Zion Apartments from the current owner for a public purpose by a procedure that is preempted by the

New York State Eminent Domain Procedure Law. It is this very taking the petition seeks to have ordered. In the alternative, it would alter the structure and terms of the federal Section 8 program, offending the Supremacy Clause of the Constitution. Either way, it would establish new rent restrictions in violation of the New York State Urstadt Law. HPD is dedicated to helping tenants in this tough housing market, but it must act within the bounds of state and federal law. Local Law 79 simply cannot be validly implemented.

Prior to passage of Local Law 79, a property owner such as Mother Zion Associates held full title to its property, which it operated for a finite time period under restrictions agreed to in a Section 8 contract. The owner did not, by voluntarily participating in the federal assisted housing program, permanently forfeit its property rights. When the contract expired, the restrictions ended. Instead, Local Law 79 would force such voluntary participants to use their property solely and permanently as government assisted low-income housing. If the owner wishes to exercise its right to use its property for any other purpose, it faces a forced sale of the property to another party. The owner would thus be stripped of title by Local Law 79.

Dispositively, the New York State Eminent Domain Procedure Law sets out the "exclusive procedure" for any such taking. Local Law 79 establishes a distinctly different procedure. Local Law 79 is therefore preempted by state law.

Local Law 79 is also preempted by federal law. The Section 8 program is established and defined by federal law. Contract renewals occur or do not occur according to federal statutes and regulations. Detailed federal statutes and regulations establish the obligations of participating building owners, the local administering housing authority—here, the New York City Department of Housing and Preservation ("HPD")—and the United States Department of Housing and Urban Development ("HUD"). Local Law 79 attempts to redefine

the obligations of owners, HPD, and HUD with respect to such renewals and undercut the program established by Congress. It is preempted by federal law.

Finally, prior to passage of Local Law 79, a property that reached the end of its participation in a federal or state assisted housing program could leave the program as of right. Local Law 79 demands that such properties maintain restricted "affordable" rents. If the property is to be converted to market rents, Local Law 79 creates a new rent restriction for the six month period after conversion. These restrictions did not exist prior to passage of Local Law 79. The New York State Urstadt Law prohibits any local law or ordinance that would establish new rent regulations. Local Law 79 violates the Urstadt Law.

## ARGUMENT

### POINT I: LOCAL LAW 79 IS PREEMPTED BY THE NEW YORK STATE EMINENT DOMAIN PROCEDURE LAW

#### A. Local Law 79 Effects a Taking of Property

No real question can be raised in the present litigation that Local Law 79 would effect a taking of property. Petitioners seek an order directing HPD to convene an appraisal panel so that the Mother Zion Tenant Association can "exercise its rights under §26-806 of Local Law 79." Verified Petition ¶65. Petitioners also seek a judgment that Mother Zion Associates is "subject to the requirements of Local Law 79." Verified Petition ¶66. Section 26-806 seeks to create a right to purchase the property now owned by Mother Zion Associates, and the requirement placed on Mother Zion Associates by Local Law 79 is that it sell. Local Law 79 would effect an involuntary transfer of title from the current owner to another, with compensation to be paid at a governmentally appraised value. This is, without doubt, an exercise

of the power of eminent domain. *See, e.g., Hawaii Housing Authority v. Midkiff,* 467 U.S. 229 (1984) (holding as a valid exercise of *eminent domain* a Hawaii law that, for public purpose, forced landowners to sell to their tenants upon petition by the tenants to purchase). Petitioners' arguments that the takings authorized by Local Law 79 need not comply with the Eminent Domain Procedure Law fail.

Petitioners state that because events leading to a forced sale under §26-806 would "involve voluntary action" on the part of Mother Zion Associates, a taking will not have occurred when Mother Zion Associates is forced by law to sell. Petitioners' Memorandum of Law in Opposition to Motion to Dismiss ("Petitioners' Memo") at 22. The "voluntary action" pointed to by Petitioners is in fact no action at all—forced sale is triggered for Mother Zion Associates by letting lapse an expired federal housing subsidy contract. None of the cases cited by Petitioners support its argument that a sale executed against a property owner's wishes is not a taking. [1] If the sale sought under §26-806 were voluntary, Petitioners would not now be seeking a court order to force transfer of title from Mother Zion Associates to the Mother Zion Tenant Association.

There is nothing voluntary about the forfeiture of an owner's property rights under Local Law 79. This property, according to the law, will be used as affordable housing, no matter the current owner's wishes. Addressing a similar law passed in an effort to curb

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[1] Three of the cases cited by Petitioners simply contrast, in contexts wholly unrelated to the instant case, a voluntary *transfer of title* with an involuntary taking by eminent domain. *Kohl Industrial Park v. County of Rockland*, 710 F.2d 895, 901 (2d Cir. 1983); *New York Telephone Co., v. Mobil Oil Corp.*, 99 A.D.2d 185, 190 (1st Dept. 1984); *In re City of New York*, 46 Misc. 2d 14, 33 (Sup. Ct. N.Y. County 1964). In the fourth, the court declined to include in the compensation award for a taking by eminent domain certain costs that were voluntarily incurred by the property owner and not necessitated by the condemnation. *Chili Plaza, Inc. v. New York*, 42 Misc. 2d 861, 864 (Ct. of Claims 1964). Notably, the court in that case awarded damages for temporary restriction by the state of the uses to which the owner could put his property. *Id.* at 865.

homelessness by requiring owners of single-room occupancy ("SRO") dwellings to maintain their buildings as such, the Court of Appeals wrote:

> Unlike the regulatory actions in [*Penn Central* and *Keystone*], which simply limited the owners' conduct, Local Law No. 9 not only prohibits conduct but affirmatively requires that the owners dedicate their properties to a public purpose. . . .
>
> No one disputes the City's authority, under the police power, to require SRO owners to put their properties to this use. As an exercise of authority, however, the stringent obligations imposed by Local Law No. 9 without any offsetting provision for fair payment . . . amount to an unconstitutional confiscation of the owners' property.

*Seawall Assoc. v. City of New York et. al.,* 74 N.Y.2d 92, 144-15 (1989). Similarly, Local Law 79 affirmatively requires building owners to use their properties for the public purpose of providing affordable housing, or sell to those who will. That an owner can avoid a forced sale of its property by signing away its right to freely rent the property does not render the forced sale less of a taking. *See*, *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 439n17 (1982) (compensation for a physical occupation of property is constitutionally required, even where owner could avoid the physical occupation by putting property to a different use). *See also Cienega Gardens v. United States*, 331 F.3d 1319, 1328 (Fed. Cir. 2003) (holding that a taking occurred when owners were prevented from exiting a federal housing program by prepaying a federally subsidized mortgage, a right guaranteed by contract).[2]

Petitioners also suggest that because the taking under §26-806 would be compensated, it is not a taking at all. Petitioners' Memo at 27. Compensation merely renders the taking constitutional, it does not redefine the act of taking. This is fundamental. The Fifth

[2] Petitioners state that the court "limited its [Cienega's holding] applicability to the facts before it in that case." Petitioners' Memo at 27. This is incorrect. Rather, the court was concerned that certain plaintiffs had not established the necessary facts on the record—specifically, economic damages caused by a temporary delay in program exit—to establish a compensable taking. *Chancellor Manor v. United States*, 331 F.3d 891, 904-05 (Fed. Cir. 2003). The principle that a taking might occur as a result of required participation in a federal housing program was not limited.

Amendment's prohibition—"Nor shall private property be taken for public use, without just compensation"—would be nonsensical if no taking occurred with just compensation.

Petitioners misread *Parkridge Investors Ltd. P'ship v. Farmers Home Admin.*, 13 F.3d 1192 (8th Cir. 1994) as support for this argument, but the case is in fact illuminating in its parallels to this case. *Parkridge* concerned the Emergency Low Income Housing Preservation Act of 1987, Pub. L. No. 100-242, 101 Stat. 1815, 42 U.S.C. §1427(c) ("ELIHPA"), by which Congress limited prepayment rights granted in certain federally assisted housing program contracts. As the court observed, under ELIHPA, an owner wishing to withdraw from its federal housing program by prepayment of its federally subsidized loan was given financial incentives to continue participation. If it declined those incentives, it was required for a limited time period to offer its property for sale to a qualified non-profit or public agency purchaser at fair market value. If no offer came in during the time period, prepayment would be accepted and the owner's commitment to the federal housing program would come to an end.

The court recognized two potential takings that might occur under ELIHPA—the sale itself and the delay in the owner's right to exit the federal program. The former, as noted above, might be constitutional because compensated. As to the latter, the court concluded that the proper remedy for the delay would be a suit *for compensation* (the parties sought specific performance of the contract). *Id.* at 1200. The court acknowledged that Congress could legislate in ways that would overwrite the terms of the contract because it had the authority to modify a federal program. But, it recognized that a forced sale would and a *delay* in program exit could result in a taking. *Id. at 1199-1200*. The option to renew program participation voluntarily, and indeed to receive incentives for doing so, did not render either of the other results of the law any less a taking.

In the case of Local Law 79, a multitude of federal housing programs are being altered, not by Congress, but by a locality with no authority to overwrite federal program terms, as discussed in Point II. Local Law 79 does not offer incentives for continuing participation in the federal program, it mandates that the housing remain in the program or be sold, both recognized by *Parkridge* as takings. *Id.* At a minimum, the Mother Zion Associates will lose its exit right upon expiration of its federal contract. While Local Law 79 would compensate Mother Zion Associates for the forced sale it mandates in §26-806 and may therefore be constitutional, it would execute the sale in violation of New York State's Eminent Domain Procedure Law.

**B. Local Law 79 is Preempted by the Eminent Domain Procedure Law**

The New York State Eminent Domain Procedure Law states explicitly that it is the "exclusive procedure by which property shall be acquired by exercise of the power of eminent domain in New York State." N.Y. EDPL §101 (emphasis added). In spite of this clear language, Petitioners argue that Local Law 79 may utilize different procedures for the taking of property it authorizes. Their arguments are without merit.

Petitioners first argue that the hearings held prior to passage of Local Law 79 satisfied the hearing requirements of the EDPL. Petitioners' Memo at 29-32. Petitioners do not assert that the hearings conformed to the procedures set out in Article 2 of the EDPL; rather they argue that the hearings satisfy one of the exemptions in EDPL §206. EDPL §206(C), the only exemption potentially applicable, states that the condemnor shall be exempt from compliance when pursuant to other law, "upon notice to the public and owners of property to be acquired" it holds public hearings to consider factors outlined in §204(B). *See, e.g. City of Buffalo Urban Renewal Agency v. Moreton*, 100 A.D.2d 20, 24 (4th Dept. 1984) (holding that an alternative

hearing must satisfy the factors enumerated in §204 to warrant exemption under §206). One of the three key factors to be considered is: "the approximate location for the public project and the reasons for the selection of that location." EDPL §204(B)(2). Petitioners suggest the hearings must satisfy only two inquiries—public purpose and environmental impact—but the law, and indeed one of the cases they cite, clearly point to three, including location. EDPL §204(B); *City of Buffalo*, 100 A.D.2d at 24. Local Law 79 does not identify "the approximate location" or indeed any location of the property it will condemn, and therefore fails to meet the requirements of EDPL Article 2.

Petitioners also argue that the takings authorized by Local Law 79 are exempt from the hearing requirement under §206 (D) because the takings would be "de minimus." First, a total divestment of title is not a de minimus taking. Cases addressing this exception concern takings, often easements, that do not substantially affect the current landowner's use of the property. See, e.g. *Rockland County Sewer District No. 1 v. J.&J. Dodge, Inc.,* 213 A.D.2d 409, 410 (2d Dept. 1995); *Matter of Anderson v. National Fuel Gas Supply Corp,* 105 A.D.2d 1097, 1097 (4th Dept. 1984); *Matter of Matteson,* 94 A.D.2d 950, 950 (4th Dept. 1983). Second, as two law suits concerning Local Law 79 now before this court and frequent news coverage of New York's tight housing market attest, the issue of affordable housing in New York City is a matter of intense public interest. The potential sale by eminent domain of the Mother Zion Apartments—a 76-unit apartment building—would not be de minimus and thus not exempt from the EDPL public hearing requirement.

Apart from Article 2, the EDPL does not offer exemptions. Local Law 79 violates the EDPL in almost all its respects. For example, EDPL §401(A) establishes a limitations period for condemnations of three years after the Article 2 hearing is completed.

Local Law 79 has no time limitation. EDPL §402(B) would require the City, as condemnor, to file a verified petition with the supreme court to obtain an order to acquire the property and for permission to file an acquisition map. Under Local Law 79, no such order is required. The entirety of EDPL Article 5—which establishes, among other procedural and substantive requirements, jurisdiction, formal service of notice, service of note of issue, adoption of rules for filing and exchange of appraisal reports, and, most importantly, judicial determination of compensation due—is ignored or violated by Local Law 79. In lieu of these statutory requirements, Local Law 79 provides only for an Article 78 proceeding to challenge the appraised price for a property. §26-813. Petitioners suggest that the appraisal procedures of Local Law 79 should be deemed acceptable because they are "more protective of the property owners' rights than is the EDPL." Petitioners' Memo at 33. The judgment is debatable at best, but regardless, the New York State legislature specified the level of protection for owners' rights, and declared it "exclusive." EDPL §101.

Local Law 79 effects a taking of property contrary to the requirements of the Eminent Domain Procedure Law. It is therefore invalid.

## POINT II: LOCAL LAW 79 IS PREEMPTED BY FEDERAL HOUSING LAW

Local Law 79 attempts to redefine the terms of a federal housing program, and in so doing offends the Supremacy Clause. Local Law 79 specifically and intentionally alters the bargain struck by the federal government with certain private landlords under the Section 8 housing program, among others. Its stated purpose is to continue a program that under federal law, as applied to the Mother Zion Apartments, would come to an end. By operation of Local Law 79, the federal government is made to continue making project-based subsidy payments where by federal law it would transfer federal resources to tenant-based voucher payments. This

direct interference with the operation of a federal program is "the quintessential case of the *Supremacy Clause* in action." *Forest Park II v. Hadley*, 336 F.3d 724, 732 (8th Cir. 2003).

Federal housing programs are **not** a "field which states have traditionally occupied," which would be subject to a presumption against preemption. *See Medtronic Inc. v. Lohr*, 518 U.S. 470, 485 (1996). Rather, the renewal of Section 8 contracts is "inherently federal in character because the relationship originates from, is governed by, and terminates according to federal law." *See Buckman Co. v. Plaintiffs' Legal Comm.,* 531 U.S. 342, 347 (2001). In such circumstances, "no presumption against pre-emption obtains." *Id.* at 348.

Petitioners first argue that requiring renewal of Section 8 contracts does not impact the federal government's program because renewal is guaranteed at an owner's request. Petitioners' Memo at 18. This is incorrect. Most notably, in the provision Petitioners quote but elide to remove key language, federal law provides: "upon termination or expiration of a contract for project-based assistance under section 8 for a multifamily housing project . . . the Secretary shall, at the request of the owner of the project *and to the extent sufficient amounts are made available in appropriation Acts*, use amounts available for renewal…." Multifamily Assisted Housing Reform and Affordability Act ("MAHRA") §524(a)(1), Public Law 106-74, 113 Stat. 1110, 42 U.S.C. 1437f note. The HUD Secretary may also elect not to renew contracts if various program conditions are not met. MAHRA §524(a)(2). It is for the federal government to decide upon the continuation of this federal program.

Indeed, HUD is no longer authorized by Congress to offer new project-based Section 8 contracts. *See* Programs of HUD, Department of Housing and Urban Development (2005) at 72, available at http://www.huduser.org/whatsnew/ProgramsHUD05.pdf. Instead, Congress has chosen to provide continued assistance directly to tenants, under an enhanced

voucher program that permits tenants in expiring project-based housing to receive assistance untethered to a specific building. 42 U.S.C §1437f(t). By forcing renewals, Local Law 79 directly interferes with the functioning of the Section 8 program.

Petitioners argue that because Local Law 79 shares Congress' broad goal of aiding lower-income families, it must not be preempted. Petitioners' Memo at 14. The Supreme Court has instructed to the contrary:

> In determining whether state law 'stands as an obstacle' to the full implementation of a federal law, 'it is not enough to say that the ultimate goal of both federal and state law' is the same. A state law also is pre-empted if it interferes with the methods by which the federal statute was designed to reach that goal.

*Gade v. Nat'l Solid Wastes Mgmt Assoc.*, 505 U.S. 88, 103 (1992) (internal citations omitted). For the project-based Section 8 program, Congress chose as its method for providing housing assistance a partnership with private building owners structured by finite contracts. *See, e.g.,* 42 U.S.C. §1437f (d)(2)(a) ("Each contract for an existing structure entered into under this section shall be for a term of not less than one month nor more than one hundred and eighty months."). Congress did not ask participating landlords to give up all right to rent outside the program in perpetuity. By altering the bargain struck by the federal government, Local Law 79 directly interferes with the methods by which the federal Section 8 statute was designed to reach its goal.

Further, while the broad goal of the Section 8 program is, as noted by Petitioners, "aiding lower-income families in obtaining a decent place to live," Petitioners' Memo at 14, citing 42 U.S.C. 1437f(a), this is not the only purpose expressed by Congress. The federal law

that governs Section 8 renewals states other purposes, including:

> to protect the interest of project owners and managers, because they are partners of the Federal Government in meeting the affordable housing needs of the Nation through the *section 8* rental housing assistance program

MAHRA §511(b). Local Law 79 diminishes the interests of project owners, undercuts the partnership sought by the federal government, and therefore directly conflicts with the means by which Congress has sought to achieve its goals. It is preempted. *See, e.g., Int'l Paper Co. v. Ouellette,* 479 U.S. 481, 492 ("A state law is also preempted if it interferes with the methods by which the federal statute was designed to reach its goal.").

None of the cases cited by Petitioners support the validity of Local Law 79. For example, *Independence Park Apts. v. U.S.*, 449 F.3d 1235 (D.C. Cir. 2006), and *TOPA Equities, Ltd. v. City of L.A.*, 342 F.3d 1065 (9th Cir. 2003) both address the Los Angeles Rent Stabilization Ordinance ("LARSO"), a local rent control law of general applicability. Cited in Petitioners' Memo at 13, 17. Both courts found that participation in a federal housing program did not shield owners from laws *of generally applicability* after exit from the federal program. However, Local Law 79 is not a rent control law of general applicability that applies "equally to apartment owners who exit the federal program as well as other apartment owners." *TOPA Equities*, 342 F.3d at 1072. It directs itself solely and exclusively to owners participating in assisted housing programs.

Nor is Local Law 79 like the law upheld in *Kenneth Arms Tenant Assoc. v. Martinez,* 2001 U.S. Dist. LEXIS 11470 (E.D.Cal. 2001), also cited by Petitioners. Petitioners' Memo at 16. The California law challenged in *Kenneth Arms* established, for owners exiting assisted housing programs, certain notice requirements and a first opportunity for certain buyers

to purchase from an owner willing to sell. An owner's exit right and ownership rights were not forcibly taken by the state. The court explicitly noted that the California law did *not* inhibit Congress' intention to move from unit-based to tenant-based programs because the law did not prevent that shift. *Id.* at *28. Local Law 79 directly interferes with the shift from unit-based to tenant-based programs by requiring owners to renew their project-based contracts or face a forced sale of their properties.

Local Law 79 is like the law addressed in *Forest Park II,* 336 F.3d 724, which directly interfered with the withdrawal from federal housing programs established by Congress by enacting a longer notice period. The Eighth Circuit held that this law was preempted, emphasizing that direct interference with the operation of a federal program was "the quintessential case of the *Supremacy Clause* in action." *Forest Park II,* 336 F.3d at 732. It observed, "Despite the fact that the federal statute and the state statute may share the same objective, the state procedures interfere with the framework created by Congress." *Id.* at 734. With Section 8 project-based assistance, Congress established a program to contract with private landlords over the short term. Local Law 79 undercuts this goal by revoking those landlords' ownership rights. Owners such as Mother Zion Associates may no longer exit the federal program in possession of their property. The public-private bargain struck by the federal government is destroyed. [3]

The state supreme court cases, which Petitioners incorrectly characterize as upholding laws precisely analogous to Local Law 79, address anti-discrimination laws with an incidental effect on federal housing programs. Petitioners' Memo at 14-16, citing *Comm. On Human Rights v. Sullivan*, 739 A.2d 238 (Conn. 1999); *AG v. Brown,* 511 N.E.2d 1103 (Mass.

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[3] Petitioner's suggestion that forcing owners to sell their properties is somehow a benefit superior to mere continued ownership is absurd. Petitioners' Memo at 18.

1987); *Franklin Tower One v. NM,* 725 A.2d 1104 (NJ 1999). Each anti-discrimination law included a prohibition on excluding tenants because they receive public assistance. These laws had the incidental effect of potentially obligating landlords charging rents within range of the Section 8 program to participate in the program by accepting vouchers, when federal law did not require their acceptance of vouchers.[4] The state supreme courts agreed that preventing discrimination against those individuals who received federal government vouchers supported, rather than conflicted, with Congress' goals. The laws upheld in these cases bear no relationship to Local Law 79.

Local Law 79 is not an anti-discrimination law. It is not a law of general applicability with an incidental effect on a federal program. It is a law that seeks to rewrite the terms of a federal program by transforming short-term contracts into permanent revocations of property rights. The relationship between a landlord, HUD, and the local housing authority is the structural foundation of project-based Section 8 housing. Local Law 79 specifically targets and attempts to alter that relationship.

Mother Zion Associates has indicated a desire not to renew its Section 8 contract. Under federal law, the contract would terminate and the federal government would reallocate its resources into the tenant-based voucher program. MAHRA §524(d). Local Law 79 dictates that this contract instead will be renewed, that the budgetary authority should not be transferred, that the owner's interests are forfeit, that short term contracts are now to be perpetual so long as the

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[4] Specifically, 24 C.F.R. 982.302(a), indicating that tenants should find an owner "willing to lease the unit under the [Section 8] program," suggested that Congress intended the program to be voluntary for landlords. *See Franklin Tower*, 725 A.2d at 1107.

owner wishes to retain rights to its property.[5] Local Law 79 alters the means by which Congress has chosen to reach its goal, and it is therefore preempted.

## POINT III: LOCAL LAW 79 VIOLATES NEW YORK STATE'S URSTADT LAW

Local Law 79 violates New York State's Urstadt Law, which prohibits new rent regulation, in two ways. Section 26-810 creates a new six-month rent freeze after a building exits an assisted housing program. Section 26-808 imposes a new regime of rent regulations on tenant-owners who acquire property under §26-805 or §26-806. These provisions violate the Urstadt Law.

Petitioners argue that the six month rent freeze established by §26-810 is not new because Real Property Actions and Proceedings Law §753 permits a court to stay the eviction of a holdover tenant under limited circumstances, subject to continued payment of rental charges, for a period of six months. Petitioners' Memo at 34. The fallacy of this argument is illustrated by a simple scenario: if a landlord commences eviction proceedings after the six-month rent freeze called for under Local Law 79 has elapsed, a court could order an **additional** six month rent period pursuant to RPAPL §753. Local Law 79 does not fall under the ambit of this existing law. Section 26-810 is a separate, new rent law. As such, it violates the Urstadt Law.

Petitioners further suggest that §26-810 falls under an unidentified exception to the Urstadt Law, because the new rent law is "de minimus" and "fully justified." Petitioners' Memo at 35. The only support offered for this supposed exception is *Corlear Gardens Housing Co., Inc. v. Ramos* 126 Misc. 2d 416 (Civ. Ct. Bx. County 1984). In that case, the Bronx Civil

[5] Petitioners interpret Local Law 79 to require the purchasing tenants to renew the Section 8 housing contract, rendering the contracts truly perpetual. Petitioners' Memo at 18. The language of the law suggests otherwise, as discussed in Part III. Regardless, the current owner's relationship with the federal government would be fundamentally altered by Local Law 79.

Court sensibly found that a law that protected tenants from being evicted for keeping pets did not offend the Urstadt Law's prohibition of new rent control regulations. *Id.* at 419. Local Law 79, by contrast, creates a rent cap on properties exiting an assisted housing program, which properties prior to passage of Local Law 79 could be rented at unrestricted rents during the six-month period. Section 26-810 violates the Urtsadt Law.

Petitioners also claim that §26-808 does not offend the Urstadt Law because it does not create any new rent restrictions. Rather, it "simply obligates the new tenant owners to maintain the property as affordable assisted housing subject to federal regulation." Petitioners' Memo at 34. This is not what the law says. Section 26-808 reads:

> A tenant association, or if applicable, a qualified entity, including all successors in interest, which chooses to exercise the rights provided for in section 26-805 or 26-806 of this chapter will be obligated to maintain the assisted rental housing as *affordable*.

(emphasis added). "Affordable," as defined by Local Law 79, means rents are strictly limited to the regime that existed "prior to conversion" or, in the alternative, are capped at 30 percent of the annual gross household income of existing tenants. §26-801(a). The plain language of the law would not require the new tenant-owners to renew the Section 8 contract. If it did, as discussed in Part II, the law would further interfere with the structure chosen by Congress to achieve its Section 8 housing program goals. As written, the law imposes a new rent regime, which may be modeled on the assisted housing program to which the housing was subject "prior to conversion." Section 26-801 thus also violates the Urstadt Law.

## CONCLUSION

The continued availability of affordable housing is a serious concern. Congress has chosen to address this concern in part through its Section 8 project-based and tenant-based

sistance programs. Mother Zion Associates signed a contract to participate in that program, which is set to expire in March of 2007. Local Law 79 attempts to block that expiration, but in so doing it directly interferes with the program terms chosen by Congress and it undercuts the means by which Congress sought to reach its Section 8 housing goals. It is preempted by federal law. Local Law 79 would also violate the New York State Eminent Domain Procedure Law by executing a forced sale without adhering to the exclusive procedure by which property may be taken by eminent domain in New York State. Finally, Local Law 79 violates the New York State Urstadt Law by establishing two new rent restrictions. For all the reasons stated herein, and the additional reasons outlined in the Memo of Law in Support of Respondent Shaun Donovan's Motion to Dismiss the Petition, Local Law 79 cannot validly be executed.

Dated: New York, New York
September 12, 2006

Respectfully submitted,

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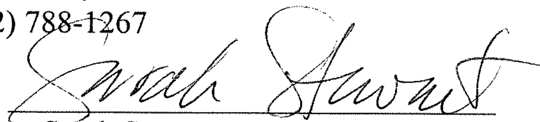
By: 
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