

To be Argued by:
NATHAN M. FERST
(Time Requested: 30 Minutes)

APL 2020-00161
New York County Clerk's Index No. 156196/18
Appellate Division—First Department Docket No. 2019-3801

Court of Appeals
of the
State of New York

In the Matter of the Application of
WEST 58TH STREET COALITION, INC., 152 W 58TH OWNERS CORP.,
SUZANNE SILVERSTEIN, CARROLL THOMPSON, XIANGHONG DI
(STELLA) LEE, DORU ILIESIU and ELIZABETH EVANS-ILIESIU,
Respondents-Appellants,

For an Order and Judgment Pursuant to CPLR Article 78

– against –

THE CITY OF NEW YORK, BILL DE BLASIO,
Mayor of the City of New York,

Appellants-Respondents,

– and –

(For Continuation of Caption See Inside Cover)

**BRIEF FOR APPELLANTS-RESPONDENTS NEW HAMPTON, LLC,
JOHN PAPPAS, PAUL PAPPAS, B GENCO CONTRACTING CORP.,
TMS PLUMBING & HEATING CORPORATION
AND BASS ELECTRICAL CORPORATION**

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SCOTT M. STRINGER, in his official capacity as Comptroller
of the City of New York, THE CITY OF NEW YORK DEPARTMENT OF
HOMELESS SERVICES (“DHS”), THE NEW YORK CITY HUMAN
RESOURCES ADMINISTRATION (“HRA”), THE NEW YORK CITY
DEPARTMENT OF BUILDINGS (“DOB”), STEVEN BANKS, in his official
capacity as Commissioner of DHS and Commissioner of HRA, JACQUELINE
BRAY, in her official capacity as Deputy Commissioner of HRA, NEW
HAMPTON, LLC, JOHN PAPPAS, PAUL PAPPAS, B GENCO
CONTRACTING CORP., TMS PLUMBING & HEATING CORPORATION
and BASS ELECTRICAL CORPORATION,

Appellants-Respondents,

– and –

WESTHAB, INC.,

Respondent.

In the Matter of the Application of
WEST 58TH STREET COALITION, INC., 152 W 58TH OWNERS CORP.,
SUZANNE SILVERSTEIN, CARROLL THOMPSON, XIANGHONG DI
(STELLA) LEE, DORU ILIESIU and ELIZABETH EVANS-ILIESIU,

Respondents-Appellants,

For an Order and Judgment Pursuant to CPLR Article 78

– against –

THE CITY OF NEW YORK, BILL DE BLASIO, Mayor of the City of New York,

Appellants-Respondents,

– and –

SCOTT M. STRINGER, in his official capacity as Comptroller of the City of New York, THE CITY OF NEW YORK DEPARTMENT OF HOMELESS SERVICES (“DHS”), THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION (“HRA”), THE NEW YORK CITY DEPARTMENT OF BUILDINGS (“DOB”),

STEVEN BANKS, in his official capacity as Commissioner of DHS and Commissioner of HRA, JACQUELINE BRAY, in her official capacity as Deputy Commissioner of HRA, NEW HAMPTON, LLC, JOHN PAPPAS, PAUL PAPPAS, B GENCO CONTRACTING CORP., TMS PLUMBING & HEATING CORPORATION and BASS ELECTRICAL CORPORATION,

Appellants-Respondents,

– and –

WESTHAB, INC.,

Respondent.

CORPORATE DISCLOSURE STATEMENT
PURSUANT TO RULE 500.1 (f)

Pursuant to Section 500.1(f) of the Rules of Practice of the New York Court of Appeals, counsel for **APPELLANTS-RESPONDENTS NEW HAMPTON, LLC, JOHN PAPPAS, PAUL PAPPAS, B GENCO CONTRACTING CORP., TMS PLUMBING & HEATING CORPORATION AND BASS ELECTRICAL CORPORATION** certifies that they have no corporate parents, subsidiaries or affiliates.

STATEMENT OF RELATED LITIGATION

There are no actions or proceedings pending in any court of this State related to this appeal at the time of filing this Brief.

Dated: February 12, 2021

LAW OFFICES OF NATHAN M. FERST
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Hampton, LLC, John Pappas, Paul Pappas,
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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
QUESTIONS PRESENTED.....	1
JURISDICTIONAL STATEMENT	1
ARGUMENT	2
POINT I	
THE DIRECTIVE OF THE APPELLATE DIVISION, FIRST DEPARTMENT THAT SUPREME COURT, NEW YORK COUNTY HOLD AN EVIDENTIARY HEARING IS AN IMPERMISSIBLE EXERCISE IN SELECTIVE ENFORCEMENT	2
CONCLUSION.....	2

TABLE OF AUTHORITIES

	Page(s)
Cases:	
<i>303 West 42nd v. Klein</i> , 46 N.Y.2d 686 (1979).....	2

PRELIMINARY STATEMENT

Respondents-Respondents New Hampton, LLC, John Pappas, Paul Pappas; B Genco Contracting Corp., TMS Plumbing & Heating Corporation, and Bass Electrical Corporation hereby expressly adopt and incorporate by reference the arguments and authorities cited by Appellants – Respondents The City of New York *et al* (“the Municipal Appellants”) in their submission to this Court.

Further, it is respectfully submitted that the directive in the August 13, 2020 Decision and Order of the Appellate Division, First Department appealed from that an evidentiary hearing be held by the Supreme Court of the State of New York, County of New York, constitutes an impermissible exercise in selective enforcement.

QUESTIONS PRESENTED

1. Does the directive in the August 13, 2020 Decision and Order of the Appellate Division, First Department appealed from that an evidentiary hearing be held by the Supreme Court of the State of New York, County of New York, constitutes an impermissible exercise in selective enforcement?

JURISDICTIONAL STATEMENT

This Court has jurisdiction to hear this appeal by virtue of Order dated February 4, 2021 of the Appellate Division, First Department granting these

appellants leave to appeal from the August 13, 2020 Decision and Order of the Appellate Division, First Department.

ARGUMENT

POINT I

THE DIRECTIVE OF THE APPELLATE DIVISION, FIRST DEPARTMENT THAT SUPREME COURT, NEW YORK COUNTY HOLD AN EVIDENTIARY HEARING IS AN IMPERMISSIBLE EXERCISE IN SELECTIVE ENFORCEMENT

Of all of the Class A multiple dwellings in the “R-2” occupancy group configured in the same or similar manner as the subject building, it seems that the subject building alone is singled out for a judicial evidentiary hearing concerning safety after issuance by the Department of Buildings of a Temporary Certificate of Occupancy. That, it is respectfully submitted, is because the subject building houses a stigmatized population, which is prohibited. *303 West 42nd v. Klein*, 46 NY2d 686 (1979).

CONCLUSION

This Court should modify the First Department’s order by (a) vacating the instruction remanding the proceeding for an evidentiary hearing, and

(b) dismissing the petition with prejudice.

Dated: New York, New York
February 12, 2021

Nathan M. Ferst
Attorney for Appellants New
Hampton, LLC; John Pappas; Paul
Pappas; B Genco Contracting Corp.;
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STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

ss.:

**AFFIDAVIT OF SERVICE
BY OVERNIGHT FEDERAL
EXPRESS NEXT DAY AIR**

I, Tyrone Heath, 2179 Washington Avenue, Apt. 19, Bronx, New York 10457, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above.

On February 12, 2021

deponent served the within: **Brief for Appellants New Hampton, LLC; John Pappas; Paul Pappas; B Genco Contracting Corp.; TMS Plumbing & Heating Corporation; And Bass Electrical Corporation**

upon:

SEE SERVICE LIST ATTACHED

the address(es) designated by said attorney(s) for that purpose by depositing **3** true copy(ies) of same, enclosed in a properly addressed wrapper in an Overnight Next Day Air Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of New York.

Sworn to before me on February 12, 2021



MARIA MAISONET

Notary Public State of New York

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