

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

PRESENT: HON. LYLE E. FRANK PART 52M

Justice

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NYC ORGANIZATION OF PUBLIC SERVICE RETIREES,
INC, LISA FLANZRAICH, BENAY WAITZMAN, LINDA
WOOLVERTON, ED FERINGTON, MERRI TURK LASKY,
PHYLLIS LIPMAN,

Petitioner,

- v -

RENEE CAMPION, CITY OF NY OFFICE OF LABOR
RELATIONS, CITY OF NEW YORK,

Respondent.

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INDEX NO. 158815/2021
MOTION DATE 10/20/2021
MOTION SEQ. NO. 001 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 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, 55, 56, 58, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 59, 60, 61, 62, 77, 78, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94

were read on this motion to/for MISCELLANEOUS.

Petitioners, on behalf of themselves and other Medicare-eligible retirees of the City of New York, bring the instant petition alleging that the respondents took an unauthorized, improper action that materially affected some 250,000 New York City government retirees. The petition seeks to annul the amending of the health insurance offered to New York City retirees to a Medicare Advantage Plan. The Court’s decision addresses the order to show cause seeking a preliminary injunction.

Motion Sequence 003

The motion by MLC is denied. CPLR §1013 states in relevant part that intervention

"may be permitted ... when the person's claim or defense and the main action have a common question

of law and fact. The court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party. "

The Court finds that allowing this entity to intervene is not appropriate, as the current respondents are more than capable of articulating the position of why the awarding of the retirees' health insurance went to the Alliance; however, MLC will be permitted to have the position of *amicus curiae* during this litigation, and the documents they have submitted to date have been considered. Moreover, MLC was given an opportunity to speak at the last oral argument.

Motion Sequences 002

"A movant's burden of proof on a motion for a preliminary injunction is particularly high" *Council of the City of NY v Giuliani*, 248 AD2d 1, 4 [1st Dept 1998]. A party seeking a preliminary injunction must clearly demonstrate (1) the likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the injunction is not issued; and (3) a balance of the equities in the movant's favor. (*Doe v Axelrod*, 73 NY2d 748 [NY 1988]; *Housing Works, Inc. v City of New York*, 255 AD2d 209 [1st Dept 1998]).

As to likelihood of success on the merits, the Court feels that the method of implementation of this plan at present has been irrational, and thus arbitrary and capricious. It is not in dispute that currently, in the midst of a pandemic, that has been hardest on the elderly and infirm, retirees have been given a deadline of October 31 to either do nothing in which case their health care plan will change, or to stay in their current plan in which they will likely have to pay what can only be described as a penalty. At the same time, there is little clarity as to which health care providers will be accepting this new Medicare Advantage Plan. It is simply irrational for retirees to have to make this decision as circumstances currently stand.

Petitioners argue that they will be irreparably harmed if forced to make a health care coverage decision by the October 31, 2021 deadline for the new Medicare Advantage Program which is due to begin January 1, 2022. As noted, it is undisputed that much of the program terms are still unsettled and unclear. At the oral argument held on October 20, 2021, the attorneys representing the respondents made clear that medical providers were still being contacted to see if they will agree to this plan. Moreover, it appears that a public hearing that was scheduled for October 28 has been cancelled. The respondents contend that fluidity of participation in the plan of healthcare providers is always subject to change but concedes that many other factors of the plan have not yet been determined. As noted above, once October 31 comes and goes, according to the way this plan is currently being implemented, there will be no turning back and the retirees will be bound by their decision. Any harm that they have suffered to have to decide without adequate information will be irreparable.

Petitioners argue, and the Court agrees that the balance of equities are in their favor. “The balancing of the equities requires the court to determine the relative prejudice to each party accruing from a grant or denial of the requested relief” (*Barbes Rest. Inc. v ASRR Suzer 218, LLC*, 140 AD3d 430, 432 [1st Dept 2016] internal citations omitted). Here it is clear that the potential for prejudice to the petitioners outweighs any prejudice to the respondents. No contract has been signed apparently between OLR and the respondents. This Court has upheld the process used to pick the Alliance, so the entire process will not need to begin anew.

In sum, while the Court has already determined that respondents’ ultimate determination of choosing a Medicare Advantage Plan provider was rational¹ and does not intend to disturb that determination, the Court finds that the implementation of its program is irrational and if the

¹ See the Decision and Order of the related action, AETNA 158216/2021.

petitioners and similarly situated individuals are required to opt-in or out of a medical program by the October 31, 2021 deadline there would certainly be irreparable harm. Accordingly, it is hereby

ORDERED that the respondents are enjoined from enforcing the October 31, 2021 Opt-Out/ Opt-In date; and it is further

ORDERED that petitioners maintain the status-quo enrollment in until the respondents cure deficiencies with the implementation of the proposed new Medicare Advantage Plan, and it is further

ORDERED that such new plan be sent to this Court for this Court to review and determine whether such plan cures the defects as indicated above, and it if further

ORDERED that such plan be sent to the petitioner’s counsel seven days prior to such submission to the Court and petitioner may then provide any input regarding the proposed new plan to the Court.


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10/21/2021
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART OTHER

APPLICATION:

- SETTLE ORDER
- INCLUDES TRANSFER/REASSIGN

- SUBMIT ORDER
- FIDUCIARY APPOINTMENT REFERENCE

CHECK IF APPROPRIATE: