

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

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In re the application of:  
NEW YORK PUBLIC INTEREST RESEARCH  
GROUP/STRAPHANGERS CAMPAIGN, INC.,  
GENE RUSSIANOFF, COMMON CAUSE, INC.,  
RACHEL LEON, TRI-STATE TRANSPORTATION  
CAMPAIGN, INC., JON ORCUTT, LOCAL 100  
OF THE TRANSIT WORKERS UNION a/k/a  
TWU LOCAL 100, ROGER TOUSSAINT, et. al.,  
on their own behalf and on behalf of all straphangers  
and taxpayers in the City and State of New York  
similarly aggrieved,

Petitioners,

**SUPPLEMENTAL  
AFFIDAVIT OF  
GENE RUSSIANOFF**

For an order pursuant to Article 78 of the C.P.L.R.,

- against -

NEW YORK METROPOLITAN TRANSPORTATION  
AUTHORITY, PETER S. KALIKOW in his capacity of  
Chair/Commissioner of the Metropolitan Transportation  
Authority,

Index: 105292/05

Respondents.

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State of New York    }  
                                  } ss:  
County of New York }

GENE RUSSIANOFF, being duly sworn, deposes and says:

1. I am the staff attorney for the NYPIRG Straphangers Campaign. I submit this supplemental affidavit in support of the request of the petitioners that the Court set aside the results of the flawed and inadequate process initiated by the MTA through its February 22, 2005 Request for Proposals (“RFP”) for the sale of the John D.

Caemmerer West Side Yards (the “Rail Yards”). It is based on my personal knowledge and on a review of public documents relevant to the issues discussed herein.

2. The MTA has provided no explanation for the unusually short time given to bidders to respond to the February 22 RFP. Furthermore, it has failed to identify any other solicitation of bids by any public agency or authority in New York for a major real estate asset which set a deadline of only 27 days.
3. The MTA has also failed to explain how bidders were supposed to respond to an RFP that required them to indemnify the MTA for potential environmental liabilities, but provided no information about the exposure a bidder might face. The MTA has conceded that it did not post this critical information on its website until March 11, 2005—only ten days before the deadline for proposals (April 21, 2005 Affidavit of Roco Krsulic, ¶ 14).
4. The MTA has conceded that it “generally” takes 60 to 90 days to evaluate an RFP (April 22, 2005 Answer of MTA in Madison Square Garden v. MTA et al, Index No. 104644/05, ¶ 293). Yet the Authority has provided no explanation for the fact that the period for evaluation of the February 22 RFP--which sought proposals for the complex task of constructing a platform and developing the site over the thirteen acre Rail Yards—was cut to ten days. This is significant because MTA Board members were denied the time to independently assess the information provided to them by MTA management. As demonstrated by the submissions of petitioners and of Amici Curiae in this proceeding, there was a great deal of information about the proposals submitted to the MTA that may have influenced the votes of Board members if they

had a chance to evaluate and consider it.

5. The MTA knows how to design an RFP process that encourages the widest range of potential bidders and thereby maximize both the number and quality of bids for valuable real estate assets. Public authorities and agencies have been selling such assets through RFP's for decades. It is clear that the MTA chose to disregard decades of experience in the sale of the Rail Yards. I am unaware of any other RFP process for a major public asset in New York City over the last 30 years that has provided so little time and information to potential bidders.
6. For example, when the MTA's subsidiary, the Triborough Bridge and Tunnel Authority ("TBTA") issued an RFP to develop the site of the New York Coliseum, it provided a deadline of ninety days after the publication of the RFP. See Watt Aff. Ex. G.
7. In other cases, public authorities have used two stage processes to maximize the value of bids for public assets. When the Hudson River Park Trust (the "Trust") sold the rights for Pier 57 on the Hudson River it issued a Request for Expression of Interest ("RFEI") before even beginning its RFP process. The RFEI, which allowed developers to assess the complex possibilities for development on the pier and advise the Trust if they were interested in bidding, provided over four months for a response. Six months after these responses were due, the Trust issued an RFP with a five week deadline. See, Mastro Supp. Aff. Ex. 85 (Hudson River Park Trust Request for Expression of Interest, Sept. 16, 2003), 86 (Request for Proposals, Pier 57 – Hudson River, Manhattan, June 9, 2004).
8. Similarly, when the Empire State Development Corporation ("ESDC") sought bids

for the re-development of the James A. Farley Post Office Building, it utilized a two stage process. ESDC issued a Request for Qualifications with a six week deadline. Two months after the submissions in response to the RFQ, ESDC issued an RFP for qualified bidders and provided them with three months in which to submit proposals. See, Mastro Supp. Aff. Ex. 82 (Farley Post Office Building Request for Qualifications, July 12, 2004), 83 (Farley Post Office Building Request for Proposals, Oct. 28, 2004).

9. These examples demonstrate the creativity public agencies have shown in setting up bidding processes to maximize the benefit to the people of New York from the sale of valuable public assets. In the present case, the MTA demonstrated how to discourage bids and insure an inadequate price for its most valuable piece of property. The only credible explanation for the MTA's truncated RFP process is that the Authority wished to avoid bids higher than the paltry amount the New York Jets were prepared to pay for the Rail Yards. This is as clear a breach of a public authority's fiduciary duty to seek the most beneficial terms possible for the sale of a major asset as I have ever seen.
10. I urge the Court to reject this flawed process and its predictably disgraceful result. The only serious bids obtained by the MTA were from two corporations that had already developed proposals—the Jets and Madison Square Garden. The fact that no real estate developer in the world submitted a proposal for the most valuable undeveloped property in New York City confirms the inadequacies of the MTA's process. The MTA must, as petitioners have requested, be required to issue a new RFP with sufficient time and information for all potential bidders to compete for the

right to purchase the Rail Yards.

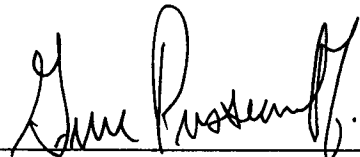
11. The MTA's obligation to obtain the best possible terms for the sale of the Rail Yards is not an abstract issue of fiduciary responsibility. The MTA is in the midst of a financial crisis. On Tuesday, April 26, 2005, I attended a meeting of the MTA Finance Committee. At the meeting, copies of a document entitled "Amendment: MTA 2005-2009 Capital Program, April 2005" (the "April Plan") were distributed. (A copy is attached as Ex. 1 hereto.)
12. The April Plan stated that the recently passed New York State Budget had only provided \$16 billion of the \$17.2 billion needed for the MTA's "core program." The core program includes such things as the purchase of new subway cars and buses, the rehabilitation of stations, the upgrading of yards and employee facilities, and the repair of infrastructure, such as track and signal replacement. At the conclusion of the April 26 meeting, the Finance Committee voted to approve the April Plan.
13. As a result of the \$1.2 billion shortfall described in the April Plan, New York City Transit will, among other things: cancel the rehabilitation of 12 subway stations (for a total cut of \$400.6 million); decrease subway communications signal work intended to assist customers and speed service (for a savings of about \$85.8 million); and defer tens of millions of dollars in repairs to employee facilities. The April Plan also called for twelve fewer M-7 electric cars on the Long Island Rail Road for a savings of \$27 million, and for the deferral of expansion and repairs of rail yards for a reduction of \$191 million. (See, Sewell Chan, "M.T.A., Adjusting Budget, Cuts Back Station Overhauls," N.Y. Times, April 26, 2005, attached as Ex. 2 hereto).
14. On Thursday, April 28, I attended a meeting of the full board of the MTA. At the

meeting, I spoke during the public comment period to urge additional capital funds and to warn: "While we posit ways to improve capital financing, things unfortunately can get worse. For example, you include \$1.4 billion in your capital plan from sale of assets and prior plan rollover. Sadly, you have negotiated little for the value of your Manhattan Western Yards site. We renew our request that this property be re-bid."


(See, Letter to Peter Kalikow, Chairman, Metropolitan Transportation Authority, April 27, 2005, attached as Ex. 3 hereto).

15. In my belief, if the MTA does not achieve substantially more than \$210 million from the sale of its Western Rail Yards, the MTA will have to make significant cuts, which will greatly inconvenience city transit riders and suburban commuters. I have been damaged personally by the conduct of the MTA as my subway fares have and will continue to rise, the quality of my subway is declining, the State of New York has raised my taxes and I will pay higher motor vehicle fees. The additional Petitioners are all similarly damaged.

Dated: New York, New York  
April 29, 2005

  
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GENE RUSSIANOFF

Sworn to before me this  
29th day of April, 2005

  
\_\_\_\_\_  
Notary Public

THOMAS D. SHANAHAN  
Notary Public, State of New York  
No. 02SH5083105  
Qualified in Richmond County  
Commission Expires August 4, 2006

In re the application of:  
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in his capacity of Chair/Commissioner of the Metropolitan Transportation Authority,

Respondents

**SUPPLEMENTAL AFFIDAVIT OF RUSSEANOFF  
SHANAHAN & ASSOCIATES, P.C.**

*Attorney(s) for*

Petitioners

*Office and Post Office Address, Telephone*

545 Fifth Avenue, Suite 1205  
NEW YORK, NEW YORK 10014  
PHONE (212) 867-1100  
FAX (212) 972-1787

To

Signature (Rule 130-1.1-a)

Print name beneath

Service of a copy of the within is hereby admitted.

Attorney(s) for

Dated:

**PLEASE TAKE NOTICE:**

NOTICE OF ENTRY

that the within is a (*certified*) true copy of a  
duly entered in the office of the clerk of the within named court on

NOTICE OF SETTLEMENT

that an order  
will be presented for settlement to the HON.  
within named Court, at  
on at M.

of which the within is a true copy  
one of the judges of the

Dated,

Yours, etc.

SHANAHAN & ASSOCIATES, P.C.