

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: April 28, 2005

95600

In the Matter of AZRIEL
RECKLESS et al.,
Respondents,

v

MEMORANDUM AND ORDER

NEW YORK STATE COMMISSION ON
QUALITY OF CARE FOR THE
MENTALLY DISABLED,
Appellant.

Calendar Date: February 16, 2005

Before: Mercure, J.P., Peters, Rose, Lahtinen and Kane, JJ.

Eliot Spitzer, Attorney General, Albany (Kathleen M.
Treasure of counsel), for appellant.

Hinman Straub P.C., Albany (James T. Potter of counsel),
for respondents.

Peters, J.

Appeal from an order of the Supreme Court (Reilly Jr., J.),
entered September 26, 2003 in Schenectady County, which granted
petitioners' application to quash subpoenas duces tecum issued by
respondent.

Petitioners own and operate five adult homes. Through a
series of transactions, ownership of the homes was transferred to
five separately incorporated realty holding companies, each of
which were owned by petitioners. The properties were then leased
back to the adult homes and, between 1999 and 2001, were
refinanced by petitioners through their realty holding companies.

As a result of the refinancing, the debt on four of these properties increased by over \$10 million, causing an exponential increase in the rent charged to each of these adult homes.

Respondent discovered these rent increases when it commenced its review of these and other adult homes in which 25% or more of its residents either have or are receiving mental health services from an outside provider (see Mental Hygiene Law § 45.10 [a]). Upon learning of the rent increases, respondent requested access to each facility's mortgage and closing documents. Petitioners refused, contending that respondent did not possess the requisite authority to compel disclosure of financial documents held by the independent, separately incorporated, realty holding companies. When respondent issued separate subpoenas to each petitioner for these documents, this proceeding was commenced to quash them. Supreme Court granted petitioners' request and respondent appeals.

As aptly framed by Supreme Court, the issue here "distills to . . . whether respondent has the authority to compel the production of documents held by petitioners in their capacity as officers of the realty holding companies that own the land occupied and leased by the subject adult homes . . . and, if so, whether the issuance [of the subpoenas] was adequately justified." Upon our review of the relevant statutory authority, we agree with Supreme Court that the subpoenas reach beyond the scope of respondent's authority; the subpoenaed documents were executed by petitioners in their capacity as officers of the realty holding companies and the information sought related to their private finances.

Respondent's power to issue subpoenas is derived from the specific statutory grant of authority detailed in Mental Hygiene Law §§ 45.09 and 45.10; its power is only as broad as that authorized by the Legislature (see Matter of Irwin v Board of Regents of Univ. of State of N.Y., 27 NY2d 292, 296-297 [1970]; Matter of Whalen v John P., 72 AD2d 961, 962 [1979]). By amendment to the Mental Hygiene Law in 1994 (L 1994, ch 734, § 5), respondent was given the power to issue and enforce subpoenas in the "exercise of its functions, powers and duties" (Mental Hygiene Law § 45.09 [c]), which would include, as here


relevant, the examination of the "programmatic and financial operations" of these adult homes (Mental Hygiene Law § 45.10 [a] [2]). There is no authority permitting respondent to subpoena the financial records of third parties who lease the land and buildings to the adult homes. The fact that petitioners own both the individual holding companies and the adult homes will not expand this authority (see Mental Hygiene Law § 45.10 [a]).

With respect to the remaining contentions raised by respondent, they are either unpreserved for our review (see Matter of Harrison v Selsky, 2 AD3d 1232, 1232 [2003]) or are matters which are de hors the record (see Jackson v Dow Chem. Co., 295 AD2d 855, 857 [2002]).

Mercure, J.P., Rose, Lahtinen and Kane, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:



Michael J. Novack
Clerk of the Court

