

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

-----X

Application of the Japanese Educational Institute
of New York,

Petitioner.

For an order approving the sale of assets pursuant to
N-PCL §§ 510 and 511

Index No. 06-103400

IAS Part 13
Hon. Sheila Abdus-Salaam

AFFIDAVIT OF ATTORNEY
GENERAL

-----X

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

PAULA GELLMAN, being duly sworn, deposes and says:

1. I am an Assistant Attorney General in the Charities Bureau of the Office of ELIOT SPITZER, Attorney General of the State of New York. I submit this affidavit in connection with the application of the Japanese Educational Institute of New York (“JEI”) for authority to sell its property located at 270 Lake Avenue, Greenwich, Connecticut (the “subject property”) to the Westchester Fairfield Hebrew Academy for \$20 million.

2. After a review of the application, including the verified petition dated December 29, 2005 with annexed exhibits and the affirmation of Douglas T. Schwarz dated March 8, 2006 with annexed exhibits, this office concluded that the proposed sale satisfied the statutory requirements of Not-for-Profit Corporation Law (“NPCL”) §§ 510-511 and on March 9, 2006 issued a no objection endorsement on the proposed order.

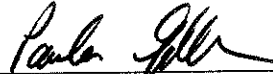
3. During the course of our review, we were contacted by Arthur R. Block, Esq., counsel for the Japanese School of New York PTA (the “PTA”), a parents group opposed to the

proposed sale. Before concluding our review of the application, we considered and reviewed the written objections and other documents submitted to this office on behalf of the PTA. Although we ultimately concluded that we had no objection to the proposed sale, we asked JEI to give notice of the return date of the petition to Mr. Block so that the PTA's objections could be heard and considered by this court. JEI agreed to do so, and the PTA received notice. Had JEI not agreed, we would have asked the court to direct notice to the PTA pursuant to NPCL § 511(b).

4. JEI challenges the PTA's standing as an interested person under NPCL § 511(b) on the grounds that such status is limited to members, officers or creditors of the corporation. The Attorney General - and the courts - have taken a broader view of the court's discretion under NPCL § 511(b). See In re Manhattan Eye, Ear & Throat Hospital, 186 Misc. 2d 126, 151, 715 N.Y.S.2d 575, 592 (Sup. Ct. N.Y. Co. 1999) (proposed purchaser, disappointed bidders, hospital's doctors, hospital workers' union all permitted to appear as interested persons); In re Sculpture Center, Inc., 2001 N.Y. Slip Op. 40368U, 2001 N.Y. Misc. LEXIS 1019 (Sup. Ct. N.Y. Co. Aug. 24, 2001) ("friends of" organization opposed to sale of building by not-for-profit sculpture center had standing to intervene in proceeding pursuant to NPCL §§ 510-511); In re StandUp Harlem, Inc., 2003 N.Y. Slip Op. 51494U, 1 Misc. 3d 904A, 781 N.Y.S.2d 628 (Sup. Ct. N.Y. Co. Oct. 16, 2003) (homeowners association permitted to intervene in opposition to proposed transfer of building by not-for-profit corporation). The Attorney General has also treated tenants of residential apartment buildings owned by not-for-profit corporations as interested persons for purposes of NPCL § 511(b).

5. Here, JEI's students, and their families, are the direct beneficiaries of the charitable purposes and activities of JEI, and thus are persons interested in any proposed sale of

the school property. The PTA, as representative of the student families, should be permitted to be heard in opposition to the sale pursuant to NPCL § 511(b). Although the Attorney General has no objection to the sale, we would urge the court to make a decision on the merits with the benefit of a full record.



Paula Gellman
Assistant Attorney General
Charities Bureau
120 Broadway
New York, NY 10271
212-416-8404

Sworn to before me this
1st day of April, 2006



Assistant Attorney General
(pursuant to Exec. L. § 73)

To: Douglas T. Schwarz, Esq.
Bingham McCutchen LLP
399 Park Avenue
New York, NY 10022
212-705-7000
Attorney for Petitioner

Arthur R. Block, Esq.
Szold & Brandwen, P.C.
14 Wall Street, 28th Floor
New York, NY 10005
212-732-0606
Attorney for Japanese School
of New York PTA