



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES  
ATTORNEY GENERAL

DIVISION OF STATE COUNSEL  
LITIGATION BUREAU

October 18, 2021

Via ECF

Honorable Mae A. D'Agostino  
United States District Court  
Northern District of New York  
James T. Foley - U.S. Courthouse  
445 Broadway, Room 509  
Albany, NY 12207-2924

Re: *New Hope Family Services, Inc. v. James, et al.*, 21-CV-1031 (MAD)(TWD)

Dear Judge D'Agostino:

This Office represents Defendants Letitia James, in her official capacity as New York State Attorney General, Licha Nyiendo, in her official capacity as New York Division of Human Rights ("DHR") Commissioner for Enforcement<sup>1</sup>, Melissa Franco, in her official capacity as DHR Deputy Commissioner for Enforcement, Gina Martinez, in her official capacity as DHR Deputy Commissioner for Regional Affairs, and Julia Day, in her official capacity as DHR Syracuse Regional Director (collectively "State Defendants"), in the above-referenced action. I write pursuant to Your Honor's Individual Rules and Practices to outline the arguments that State Defendants intend to raise in their motion to dismiss Plaintiff's Complaint (ECF. No. 1, "Compl.") pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

Factual Background and Allegations

Plaintiff, New Hope Family Services, Inc. ("New Hope"), is a religious non-profit

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<sup>1</sup> Licha Nyiendo is no longer the DHR Commissioner.

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corporation incorporated under the laws of New York. Compl. ¶ 4. New Hope operates as a New York voluntary adoption provider and is authorized to place children with New York State residents. Compl. ¶ 14. Pursuant to its policies, New Hope will not consider unmarried or same sex couples as prospective adoptive parents. Compl. ¶ 22. DHR is a New York State agency mandated to receive, investigate, and resolve complaints of discrimination under the New York State Human Rights Law (“HRL”). N.Y. Exec. Law ¶¶ 293, 295, 297. A complainant or respondent aggrieved by a DHR final order may seek judicial review in state supreme court under the provisions of N.Y. Exec. Law § 298.

On or about August 23, 2021, an individual filed a complaint with DHR alleging that New Hope’s policy is discriminatory. Compl. ¶¶ 83, 87. Pursuant to its statutory authority, DHR served the administrative complaint on New Hope and directed a response. *See* N.Y. Exec Law § 297.1; Compl. ¶ 86. New Hope alleges that DHR’s administrative investigation of the complaint violates New Hope’s rights under the First and Fourteenth Amendments. Compl. ¶¶ 104-127.

The Court Should Abstain Under *Younger v. Harris*

Younger abstention is a threshold issue to be addressed before reaching the merits of a case. *See Spargo v. N.Y. State Comm’n on Judicial Conduct*, 351 F.3d 65, 75 (2d Cir. 2003). Younger abstention is mandatory when the federal lawsuit would interfere with an ongoing state court or state administrative proceeding that implicates an important state interest, and the federal plaintiff has an adequate opportunity to raise its constitutional claims in the state proceeding. *See id.* at 75; *see also Cecos Int’l, Inc. v. Jorling*, 895 F.2d 66, 70 (2d Cir. 1990). *See e.g. Jackson Hewitt Tax Serv. v. Kirkland*, 735 F. Supp. 2d 91, 95 (S.D.N.Y. 2010) (abstaining from hearing claim challenging DHR administrative proceeding) *aff’d* 455 F. App’x 16 (2d Cir. 2012). The issues that New Hope raises in this case, such as whether New Hope is a “public accommodation” under New York law and whether New Hope is entitled to a religious

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exemption under the HRL, are among the issues that will be determined by the DHR in the administrative proceeding. Compl. ¶¶ 87, 91. If New Hope is dissatisfied with the findings of DHR, it may challenge the DHR determination in state court. As a result, this Court should decline to hear Plaintiff's claims.

The Complaint Fails to State a Claim Against the New York Attorney General

The Complaint fails to state a claim against Attorney General James. The "Second Circuit has held that when '[t]he Attorney General has no connection with the enforcement of [the statute at issues, [s]he] cannot be a party to [the]suit.'" *Sabin v. Nelson*, 2014 U.S. Dist. LEXIS 88462, at \*5 (N.D.N.Y. June 20, 2014) (quoting *Mendez v. Heller*, 430 F. 2d 457, 460 (2d Cir. 1976)). See also *Chrysafis v. James*, 2021 U.S. Dist. LEXIS 72602, at \*\*45-63 (E.D.N.Y. April 14, 2021) (finding the Attorney General not a proper party in litigation challenging COVID foreclosure statute). Plaintiff is seeking to enjoin an administrative proceeding under the Human Rights Law. See Compl., generally. DHR, and not the Attorney General, is tasked with enforcing the HRL. *Sabin*, 2014 U.S. Dist. LEXIS, at \*\*5-6. In the administrative process at issue here, the Attorney General plays no role. Therefore, the Attorney General is not a proper party and the Complaint fails to state a claim against the Attorney General.

Accordingly, State Defendants respectfully request leave to file a motion to dismiss. In addition, since Plaintiff cannot succeed on the merits of its claims for the reasons discussed herein, Plaintiff's request seeking leave to move for preliminary relief should be denied as futile.

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Respectfully submitted,

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cc (via ECF): All counsel of record