

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.,

Petitioner,

- against -

**VERIFIED
PETITION**

METROPOLITAN TRANSPORTATION
AUTHORITY a.k.a. MTA, NEW YORK TRANSIT
AUTHORITY, Peter S. Kalikow, Chair/Commissioner
of the Metropolitan Transportation Authority and
Lawrence G. Reuter, as President of MTA New
York City Transit Authority,.

Index:
Purchased: 4/30/03

Respondents.

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Petitioners, by and through their attorneys, do hereby complain of defendants as follows:

PARTIES

1. Petitioners New York Public Interest Research Group Straphangers Campaign, Inc. (“Straphangers”) is a domestic not-for-profit corporation authorized to do business in the State of New York on August 8, 1972 with its principle place of business in this County located at 9 Murray Street, New York, New York 10007. Straphangers is a organization which advocates for quality, fully accessible public mass transportation services at reasonable fares for the residents of New York City.

2. Respondent Metropolitan Transportation Authority (“MTA”) is a domestic

government corporation registered with the New York Secretary of State on June 1, 1965 with its principle place of business in this County at 347 Madison Avenue, New York, New York, 10017.

3. Respondent New York City Transit (“Transit”) is a domestic government corporation with its principle place of business in this County located at 370 Jay Street, Brooklyn, New York. Transit is an subsidiary agency of MTA and operates subways and buses in the jurisdiction of the City of New York.

4. Respondent Peter S. Kalikow (“Kalikow”) is Chair and Commissioner of the Metropolitan Transportation Authority and is sued in his official capacity.

5. Respondent Lawrence G. Reuter is President of Respondent Transit and is sued in his official capacity.

JURISDICTION, VENUE AND STANDING

6. This action is equitable in nature and plaintiffs are not required to file a Notice of Claim prior to commencing this action.

7. Venue is proper as New York County is the county in which the cause of action arose and the county where the principle place of business for MTA and transit Respondents is located.

8. Plaintiffs herein seek a declaratory judgment as to the legal relations of the parties pursuant to C.P.L.R. §3001 and the New York State Finance Law, §123-b.

C.P.L.R. §3001 states in pertinent part:

“The Supreme Court may render a declaratory judgment having the effect

of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed.”

9. State Finance Law, §123-b states in pertinent part:

“Notwithstanding any inconsistent provision of law, any person who is a citizen taxpayer, whether or not such person is or may be affected or specially aggrieved by the activity herein referred to, may maintain an action for equitable or declaratory relief, or both, against an officer or employee of the state who in the course of his or her duties has caused, is now causing, or is about to cause a wrongful expenditure, misappropriation, misapplication, or any other illegal or unconstitutional disbursement of state funds or state property...”

STATUTES AT ISSUE

10. The New York State Public Authorities Law, N.Y. Pub. A (Mc Kinney’s 2004), governs financial operation of the MTA, Transit and its affiliated subsidiaries.

11. In enacting that Public Authorities Law, the legislature of New York State stated in pertinent part:

“The urgent and immediate need for the stabilization, strengthening and improvement of commuter services for the transportation of person in the metropolitan area can be met by the creation of a public authority to serve as the state’s instrument for the carrying out of programs designed to continue and improve commuter services”(emphasis added). See Id., §1260(6).

12. To facilitate the statutory purpose of the Public Authorities Law, the Legislature empowered the MTA to engage in certain fiscal activities.

13. These activities were codified in Public Authorities Law §1266, et seq. As relevant herein, the legislature authorized the MTA to engage in the following activities:

“The authority establish, levy and collect or cause to be established, levied and collected and, in the case of a joint service arrangement, join with others in the establishment, levy and collection of such fares, tolls, rentals, rates, charges and

other fees as it may deem necessary, convenient or desirable for the use and operation of any transportation facility and related services operated by the authority or by a subsidiary corporation”. Id., §1266-3.

14. The Public Authorities Law statutorily mandates a process for establishing fares and fees. Section 1266-3, states in pertinent part:

“Any such fares, tolls, rentals, rates, charges or other fees for the transportation of passengers shall be established and changed only if approved by resolution of the authority adopted by not less than a majority vote of the whole number of members of the authority then in office, with the chairman having one additional vote in the event of a tie vote, and only after a public hearing...

Such fare, tolls, rentals, rates, charges and other fees shall be established as may in the judgment of the authority be necessary to maintain the combined operations of the authority and its subsidiary corporations on a self-sustaining basis. The said operations shall be deemed to be on a self-sustaining basis as required by this title, when the authority is able to pay or cause to be paid from revenue and any other funds or property actually available to the authority and its subsidiary corporations (a) as the same shall become due, the principal of and interest on the bonds and notes and other obligations of the authority and of such subsidiary corporations, together with the maintenance of proper reserves therefor, (b) the cost and expense of keeping the properties and assets of the authority and its subsidiary corporations in good condition and repair, and (c) the capital and operating expenses of the authority and its subsidiary corporations”(emphasis added). Id.

15. Prior to a public hearing, notice of same must be provided pursuant to Public Authorities Law, §1263(9) which states in pertinent part:

“Whenever the authority causes notices of hearings on proposed changes in services or fares to be posted pursuant to this section or any statute, regulation, or authority policy, or where it voluntarily posts such notices, such notices shall: (a) be written in a clear and coherent manner using words with common and every day meaning; (b) be captioned in large point type bold lettering with a title that fairly and accurately conveys the basic nature of such change or changes; (c) where such change involves a proposed change in levels of fare, include in its title the range of amounts of fare changes under consideration; (d) contain, to the extent practicable, a concise description of the specific nature of the change or changes, including but not limited to a concise description of those changes that affect the largest number of passengers; (e) where such change involves a change in the nature of a route, contain, to the extent practicable, a clear graphic illustration of such change or changes; and (f) where such change involves a partial or complete station closing,

such notice shall be posted at the affected station with a clear graphic illustration depicting the nature of any closing for such station”.

16. Aside from the procedural safeguard of a public hearing process after clear and concise notice to the public, the Public Authorities Law requires mandate financial accounting practices and access to same by the public at large.

17. Public Authorities Law §1269(d) requires the MTA to submit a five year plan on at least an annual basis to the Governor. As relevant herein, §1269(d) require:

“1. Submi[ssion] to the Governor [of] a strategic operation plan for the five year period commencing January first of the following year...The plan may be amended as required but shall be updated at least annually”. The plan shall include, but need not be limited to, the following:

- a. Long-range goals and objectives for the operation of services and facilities;
- b. Planned service and performance standards for each year of the period covered by the plan....
- c. Level and structure of fares projected for each year of the period covered by the plan;
- d. Estimated operating and capital resources anticipated to be available from internal sources as well as from federal, state, regional and local sources;
- e. Estimated operating and capital costs to satisfy planned standards of performance and service.
- f. Strategies to improve productivity; control cost growth...;
- g. Specific allegation of operating and capital resources by mode and operation, including funds, personnel, and equipment;
- h. Configuration by mode, operation and route of the services to be provided and the facilities to be operated, identifying major planned changes in service and routes; and the MTA.
- i. Identification of the operating and capital costs as compared to the revenues anticipated from system users for the metropolitan transportation authority and its subsidiaries and the New York City Transit Authority and its subsidiaries.
- j. An analysis of the relationship between specific planned capital

elements contained in approved capital program plans and the achievement of planned service and performance standards.

2. Each annual update of the plan shall include a status report summarizing the extent to which planned service and performance standards developed for the previous year were achieved, the causes of any failure to achieve projected standards of service, and corrective measures the authority intends to take to avoid non-achievement to projected standards in the upcoming year.

3. The Metropolitan Transportation Authority shall take into consideration any petitions from local elected officials for improved services, including how these service improvements relate to the service and performance standards described above, and shall consult with appropriate elected officials in its preparation and periodic updates to the operation plan”.

FACTS AND CIRCUMSTANCES GIVING RISE TO COMPLAINT

MTA and the purported \$2.8 Billion Deficit

18. On November 22, 2002, the MTA publically announced a two year budget deficit for fiscal years 2003 and 2004 totaling \$2.8 billion dollars.

19. On December 18, 2002, the MTA approved an interim financial plan for fiscal years 2003-2004 (“December Plan”).

20. Pursuant to the December Plan, the MTA alleged that the \$2.8 billion dollar deficit would be reduced to, upon information and belief, \$951 million based upon cost saving measured enacted within the MTA and its subsidiaries.

21. To remedy the remaining purported deficit, the MTA issued a Notice of Public Hearing (hereinafter “Deficit Notice”).

22. The Deficit Notice was entitled “Notice of Public Hearings on Proposed

MTA Fare Increases, Fare Policy Changes, Subway Station Booth Closings and Toll Increases”.

23. The contents of the Deficit Notice were widely disseminated in the print and television media and over the internet.

24. The Deficit Notice in its introduction and overview stated:

“In November 2002, the MTA published its two-year Financial Plan for 2003 and 2004 in which it projected a combined gross deficit of \$2.8 billion. Numerous internal actions have been identified, including administrative reductions and cost-saving measures such as the closing of some token booths and the elimination of the token, as a means to reduce this deficit to an estimated \$1 billion. This remaining deficit is proposed to be addressed by one of three options described below, which include combinations of fare and toll increases, service reductions, and/or increased governmental assistance. Public comments are being solicited on these proposals through a series of hearings throughout the region as noted below (emphasis added).”

25. In the Deficit Notice, the MTA proposed the following options as the only viable means of closing the \$1 billion deficit.

26. The options contained in the Notice were as follows:

“OPTION A
NYC Transit

- Increase the subway, bus and paratransit base fare from \$1.50 to \$1.75 with an increase in MetroCard passes such that the average fare would increase by 10% from \$1.04 to \$1.14.
- Increase the one-way Express Bus fare from \$3.00 to \$4.00.
- Reduce weekend bus and subway service by 10% and reduce weekday service by 2%”.

“OPTION B

- Increase the subway, bus, and paratransit base fare from \$1.50 to \$2.00 with an increase in MetroCard passes such that the average fare would increase by 20% from \$1.04 to \$1.25.
- Increase the one-way Express Bus fare from \$3.00 to \$4.00.”

“OPTION C

- Increase the subway, bus, and paratransit base fare from \$1.50 to \$2.00 with an increase in Metrocard passes such that the average fare would increase by 33 1/3% from \$1.04 to \$1.39.
- Increase the one-way Express Bus fare from \$3.00 to \$4.00.”

27. The Deficit Notice also predicated the need for various closure of token booths on the need to reduce the purported overall deficit. .

28. Pursuant to the Deficit Notice, public hearings were held throughout the five boroughs of New York City.

29. Upon information and belief, public attendance at the hearings pursuant to the Deficit Notice were under-attended by the public based upon the chilling effect of the enormity of the purported \$2.8 billion dollar deficit.

30. As a result of the public hearings held pursuant to the deficit notice, on March 6, 2003, the Board of Directors of the MTA voted to approve a fare hike from \$1.50 to \$2.00 for riders of New York City Transit buses and subways.

31. After the Deficit Notice was issued and after the conclusion of the hearings held pursuant to the Deficit Notice, the MTA revised the December Plan and financial forecasts for the agency.

32. On March 27, 2003, the Board of Directors of the MTA voted to approve a revised financial plan (hereinafter the “March Plan”).

33. Unlike the December Plan, the March Plan projected a surplus of \$59.8 by the end of 2004.

**AUDITS BY NEW YORK STATE COMPTROLLER ALAN HEVESI AND NEW
YORK CITY COMPTROLLER WILLIAM THOMPSON QUESTION THE
UNDERLYING LEGITIMACY OF THE PURPORTED \$2.8 BILLION DOLLAR
DEFICIT AND DECEMBER PLAN**

34. The New York State Comptroller commenced an audit of the finances of the MTA and its subsidiaries on or about late 2002 or early January 2003 (“Hevesi Audit”). Annexed as Exhibit A.

35. The New York City Comptroller commenced an audit of the finances of Transit on or about late 2002 or early January 2003 (“Thompson Audit”). Annexed as Exhibit B.

36. Both audits disputed the legitimacy of the \$2.8 billion deficit as claimed in the Deficit Notice and December Plan upon which it was based.

37. Both audits were critical of cooperation with the State and City Comptrollers to prepare the audit.

38. Upon information and belief, as public officials of a State agency, the agents of MTA and Transit Respondents had and have a fiduciary duty to make financial records available to the public.

THE HEVESI AUDIT

39. On April 23, 2003, New York State Comptroller Alan Hevesi released an audit of the financial affairs of the MTA.

40. In the Hevesi Audit, the Comptroller “found that the MTA had two versions of its December Plan: the one it showed the public and the one it kept to itself.” See Hevesi

Audit, Page 1.

41. In the Hevesi Audit, the Comptroller stated that, “A review of the internal version of the December Plan revealed previously undisclosed transactions that moved resources off budget and from one year to another”. See Hevesi Audit, Page 1.

42. The Hevesi Audit concluded in part:

“These secret transactions had the effect of grossly reducing the projected size of the 2002 surplus by shifting resources to 2003 and 2004. If not for these transactions, the 2002 surplus would have totaled \$537.1 million, \$512.5 million more than acknowledged by the MTA. Of the undisclosed surplus, \$248.3 million was transferred to 2003 and \$264.2 million was transferred to 2004.” See Hevesi Audit, Page 1.

43. The Hevesi Audit concluded in part:

“Our examination also revealed the existence of hidden reserves in 2004, which inflated the budget gap by \$118.2 million. These reserves were funded with some of the resources that were shifted from 2002 to 2004...The resources that were shifted to 2004, combined with other undisclosed resources, would have been sufficient to avoid a fare hike in 2003. Use of these resources in 2003, however, would have widened the 2004 budget gap by an equal amount. While it would have been imprudent to use all of the surplus resources in 2003, there was far more flexibility in the size and timing of the fare hike than was acknowledged by the MTA”. See Hevesi Audit, Page 1.

44. The Hevesi Audit concluded in part:

“The MTA planned to transfer \$182.5 million from 2002 to an off-budget reserve that would be drawn down in 2003. The MTA also planned to transfer \$125 million from 2002 to another off-budget account that would be drawn down in 2004. In addition, the internal version of the December Plan revealed that the MTA intended to prepay future debt service costs in 2002 by \$205 million, which effectively transferred \$65.8 million to 2003 and \$139.2 million to 2004. These transactions effectively created the 2003 budget gap”. See Hevesi Audit, Page 2.

45. The Hevesi Audit concluded in part:

“The failure to disclose the availability of these resources to the public foreclosed any consideration of fare options other than those proffered by the MTA, which made the public hearing process a sham. Moreover, the MTA’s Director of Budgets and Financial Management testified that while he informed the Executive

Director of the transactions, he did not recall advising the Chairman or other members of the board. Whether the Chairman and other board members knew of these transactions is a question only they can answer". See Hevesi Audit, Page 2.

46. The Hevesi Audit concluded in part:

“The Comptroller’s examination also found that in a number of cases the MTA Budget Office did not maintain appropriate working papers. In some cases, MTA budget officials needed a calculator to recreate their analysis; in others they could not recall how they calculated a particular number; and in yet other cases they cited professional judgment as the sole basis for budget estimates. Several times, the working papers came close to the numbers in the December Plan but did not match”. See Hevesi Audit, Page 2.

HEVESI AUDIT CRITICAL OF MTA FOR FAILURE TO COMPLY WITH STATUTORY REQUIREMENT TO PREPARE A FIVE YEAR PLAN ANNUALLY

47. Public Authorities Law §1269(d) requires the MTA to submit a five year plan on

at least an annual basis to the Governor.

48. The Hevesi Audit disclosed that: “the last time the MTA released such a five-year plan was in September 1999, and the Plan covered only 2003 and 2004”. See Hevesi Audit, Page 3.

49. The State Comptroller demanded that the MTA produce a five year plan for review. See Affidavit of Alan Hevesi, ¶7.

50. According to the Hevesi Audit:

“The five-year plan produced by the MTA...uses different methodologies and assumptions than the December and March plans. For example, the five-year plan assumes that beginning in 2005 subway, bus, and commuter railroad fares will increase each year at the projected inflation rate—an unrealistic assumption—and shows balanced budgets through 2008. Consequently, the five-year plan sidesteps legitimate questions about whether fares will be raised again in 2005”. See Hevesi Audit, Page 3.

HEVESI AUDIT CRITICAL OF MARCH PLAN

51. At or about the time the Hevesi Audit was released, the MTA released the March Plan. The Hevesi Audit states:

“As we were preparing to conclude our examination of the December Plan, the MTA Board approved a revised financial plan on March 27, 2003 (the “March Plan”). While outside the scope of our review, a preliminary review of the March Plan found a continuation of the pattern of concealing resources that was uncovered in our review of the December Plan. It also appears that most of the surplus resources that were shifted from 2002 to 2004 in the December Plan were used in the March Plan in 2003 to help fund the Transport Workers Union (TWU) agreement and reportedly higher debt service costs. A full understanding of the March Plan, however, was not possible from the public documents released by the MTA or even from the limited discussions on the March Plan that occurred near the close of our examination...

The March Plan includes revenues from the fare and toll increases that were approved by the MTA Board on March 6, 2003, and other changes, including additional debt prepayments. The plan projects a surplus of \$59.8 million by the end of 2004, including a \$40 million reserve, but a review of the internal version of the plan found hidden reserves of \$27.5 million, which would raise the surplus to \$87.3 million. In addition, while the March Plan includes the cost of the new agreement with the TWU, it does not include any productivity savings from newly gained management rights. If these savings materialize, the 2004 surplus could exceed \$140 million, and could be even more if the loss in ridership due to the fare increase is lower than anticipated”. See Hevesi Audit, Page 3.

HEVESI AUDIT CRITICAL OF RespondentS FAILURE TO COMPLY WITH CONSTITUTIONAL AND STATUTORY OBLIGATION TO DISCLOSE FINANCIAL BOOKS AND RECORDS

52. Article X, of the New York State Constitution authorizes the New York State Comptroller to audit state agencies including the named agency Respondents herein.

53. As to cooperation by the MTA in the audit process authorized by the New York State Constitution, the Hevesi Audit states as follows:

“The secrecy surrounding the MTA’s finances and the manipulation of its financial plan must come to an end...the State Comptroller took the extraordinary step of issuing subpoenas for records and testimony from MTA officials concerning specific elements of the December Plan. The Comptroller launched his inquiry into the MTA’s finances pursuant to his authority in the State Constitution to supervise the accounts of public corporations, and in the State Finance Law to subpoena records and compel testimony. The Comptroller demanded that the MTA produce a five-year plan as required by law and threatened legal action to force compliance if necessary. The MTA was given seven days to produce the requested records and ten days to produce a five-year financial plan. The subpoenas required MTA officials to produce documentation for key elements of the December Plan that would show how these estimates were calculated. Subpoenas were issued to the Executive Director and Chief Operating Officer, Director of Budgets and Financial Management, Director of Finance (Budget), and the Director of Finance (Capital). The Executive Director’s testimony was excused. MTA budget officials were represented both by MTA counsel and outside attorneys...

On February 26, 2003, the MTA delivered 17 boxes to the Office of the State Comptroller and an examination of MTA officials commenced.

Although the subpoenas requested any relevant documents held by the agencies, the MTA interpreted the request to include only records held by the MTA officials who were subpoenaed. An eighteenth box of documents, alleged by the MTA to contain confidential information pertaining to collective bargaining, insurance proceeds related to the attack on the World Trade Center, and security plans, was also provided. A confidentiality agreement was negotiated between the MTA and the Office of the State Comptroller regarding certain aspects of this information...

The MTA has repeatedly claimed that it is one of the most open agencies in City and State government and that it provides the public with an abundance of information regarding its finances—in budget documents, at monthly board meetings, and on its Web site. The Comptroller’s examination, however, revealed that the MTA has two financial plans: the version it shows the public and the one it maintains for itself, which reveals transactions that were not disclosed in the December Plan....

Based on an examination of internal documents and testimony from MTA budget officials, we believe that “accounting magic” and “foggy finances” are appropriate descriptions of the December Plan. Our examination concludes that the MTA misled the public and its elected officials with their December Plan presentation. The internal version of the December Plan revealed the full extent of the maneuvers used to shield resources from public view...

The internal version of the financial plan revealed transactions that moved resources off budget and from one year to another. In the absence of these transactions, the December Plan would have shown a surplus of \$537.1 million in 2002, in contrast to the \$24.6 million publicly acknowledged by the MTA. More than half of these surplus resources were secretly shifted to 2004. These resources, combined with other undisclosed resources, would have been sufficient to avoid a fare hike in 2003...

When viewing the responses of MTA budget officials both before and during this examination, it is hard to reach any other conclusion than that they have cultivated an insular budget system and organizational culture that is distinguished by its failure to provide clearly defined and understandable budgetary information. The decisions that MTA budget officials have been making about the financial plan presentation, when it will produce statutorily mandated financial plans, and the denials of legitimate requests for public information, all exemplify a disturbing culture of secrecy.” See Hevesi Audit, Pages 3, 4.

THE THOMPSON AUDIT

54. On April 23, 2003, New York City Comptroller William Thompson in an audit of the financial affairs of Transit.

55. The Thompson Audit concluded in part:

“The Transit Authority did not provide the public with complete, clear, and accurate information about its current and future financial position. The

Transit Authority overstated its operating expenses on its financial statements for 2001 and on its draft financial statements for 2002, and its Fiscal Year 2003 Operating Budget Proposal lacked essential information...Overall, the errors in the Transit Authority's financial statements combined with the shortcomings of the Operating Budget make it impossible for all concerned parties to assess the financial position of the Transit Authority and make an informed judgment about the necessity for a fare increase. See Thompson Audit, 2.

56. The Thompson Audit concluded in part:

“Our analysis revealed two significant problems with the operating budgets

that cause us to question the need for the fare increase. Specifically, the draft financial statements indicated that the Transit Authority ended calendar year 2002 with approximately \$300 million in the “MTA Investment Pool...However, we could not determine whether these resources were included in the budget plans and were considered on March 6, 2003, when the MTA Board voted to increase the basic Transit authority fare from \$1.50 to \$2.00. In addition, the Transit Authority's “Fare Revenue Model,” which the MTA used to project Transit Authority revenue from the fare increase in the revised budget, made assumptions regarding ridership that are questionable based on our review of historic ridership data....

Overall, we conclude that the Transit Authority's financial documents issued prior to and after the March 6, 2003, meeting of the MTA Board were not adequate to provide the basis for sound policy-making. Our analysis revealed that financial statements and budget documents were incomplete, misleading, and obfuscating. The Transit Authority made important financial revisions only *after* the MTA Board voted to increase the transit fare. We cannot determine whether those revisions, and possibly others yet to be revealed, will prove the necessity of a fare hike that affects more than seven million passengers a day”. See Thompson Audit, Page 3.

THE COMPTROLLERS' AUDITS EXPOSE INTENTIONAL PATTERN OF DECEPTION BY THE MTA TO JUSTIFY A Fare HIKE BY MISLEADING THE PUBLIC THAT A \$2.8 BILLION DOLLAR DEFICIT EXISTED IN FISCAL YEAR 2003

57. Upon information and belief, the December Plan was manipulated to reflect a

\$2.8 billion dollar surplus in a year with a surplus for the purpose of misleading the public to justify a pre-determined fare increase.

58. Upon information and belief, the Deficit Notice was specifically designed to numb the public into accepting a fare hike.

59. Upon information and belief, the Respondents chose to include the purported \$2.8 billion dollar surplus in the Deficit Notice even though not required by statute to set the tone for public debate on the amount of an unnecessary increase at the public hearings to follow.

60. Upon information and belief, public participation in the public hearing process was chilled and otherwise diminished by the purported massive deficit faced by the MTA.

61. Upon information and belief, the MTA revised its financial projections after the public hearing process had concluded to more accurately reflect its financial state of affairs.

62. Upon information and belief, the Respondents intentionally obstructed the audits of both Comptrollers in an effort to suppress discovery of their deceptive accounting practices and Deficit Notice during the Course of public hearings and prior to a vote of the Board increasing the transit fare.

AS AND FOR A FIRST CAUSE OF ACTION

63. The allegations of paragraphs 1 to 62 are incorporated herein fully by reference.

64. Public Authorities Law §1266-3 permits the MTA to raise transit fares only after public hearings.

65. Public Authorities Law §1266-3 stipulates that the MTA may only raise transit fares necessary to maintain the “self sustaining” nature of the MTA.

66. Upon information and belief, the Respondents intentionally shifted surplus revenue to the Respondents corporate account to inflate the purported deficit in their financial reports.

67. Upon information and belief, the Respondents allocated money for purposes beyond the statutory definition of “self sustaining” in the Public Authorities Law.

68. Upon information and belief, the foregoing actions and additional actions of the collective Respondents were intended and did in fact inflate the purported deficit to \$2.8 billion dollars to justify a fare hike.

69. The Respondents enacted a fare hike on March 6, 2003 to the detriment of plaintiffs and all similarly situated.

70. The plaintiffs and all similarly situated have and will continue to be damaged by the actions of the Respondents in violation of Public Authorities Law until such time

as this Court grants the relief sought herein.

AS AND FOR A SECOND CAUSE OF ACTION

71. The allegations of paragraphs 1 to 70 are incorporated herein fully by reference.

72. Public Authorities Law §1263-(9) permits the MTA to raise the transit fare only after public hearings on adequate notice.

73. Upon information and belief, the Deficit Notice of the MTA is on its face intentionally misleading as to the severity of any deficit faced by the MTA assuming one existed.

74. Upon information and belief, the Deficit Notice was intended to justify a fare increase in a year when the operating budget of the MTA was in surplus.

75. Upon information and belief, the Deficit Notice was effective in accomplishing the goal of setting the agenda to determine the amount of, not if there would be, a fare hike in fiscal year 2003.

76. Based upon the intentionally deceptive Deficit Notice, the The plaintiffs and all similarly situated have and will continue to be damaged by the actions of the Respondents in violation of Public Authorities Law until such time as this Court grants the relief sought herein.

AS AND FOR A THIRD CAUSE OF ACTION

77. The allegations of paragraphs 1 to 76 are incorporated herein fully by reference.

78. The Public Authorities Law §1269(d) requires the MTA to produce a five year fiscal plan on at least an annual basis.

79. Upon information and belief, the MTA has failed to produce five year fiscal plans as required by the Public Authorities Law.

80. Upon information and belief, the December Plan released by the MTA is a two year fiscal plan which is unauthorized by the Public Authorities Law.

81. Upon information and belief, the MTA enacted a two year fiscal plan as part of an intentional pattern in an attempt to convince the public that the MTA had a \$2.8 billion dollar deficit.

82. Based upon the foregoing conduct of Respondent, the plaintiffs and all similarly situated have and will continue to be damaged by the actions of the Respondents in violation of Public Authorities Law until such time as this Court grants the relief sought herein.

WHEREFORE: plaintiffs pray for an order of this Court on the First, Second and Third Causes of Action:

a. A declaratory judgement that the Notice of Hearing was misleading and

defective on its face, did not provide the public with the requisite notice of the accurate state of the financial affairs of the Respondents, was violative of due process and failed to meet the notice requirements of the Public Authorities Law.

b. A declaratory judgement that the MTA has violated the Public Authorities Law §1269 which requires that a five year plan be issued on at least an annual basis.

c. A declaratory judgement that the MTA has violated the Public Authorities Law §1269 which requires that a five year plan be issued on at least an annual basis.

d. A declaratory judgement that the MTA has violated the Public Authorities Law §1269 by issuing a two-year fiscal plan which is unauthorized by the Legislature and statute.

e. A declaratory judgement that the MTA intentionally misled the public as to the operating surplus or deficit for fiscal year 2003 by an through the December Plan and Notice of Hearing.

f. A declaratory judgement that the December Plan and Notice of Hearing and shifting of funds off budget to create a \$2.8 billion dollar budget deficit is a violation of the State Finance Law as it constitutes a misallocation of public funds.

g. Issue an order, restraining and enjoining respondents their agents and attorneys from enacting a transit fare increase on May 1, 2003 and partially or fully closing

any token booth in the New York City Subway System until further order of this Court;

h. Ordering an outside accounting of Respondents financial affairs for five years.

i. Ordering the Respondents to reissue an accurate Notice of Hearing in compliance with the Public Authorities Law should they desire to enact a fare hike.

j. Ordering the Respondents to conduct public hearings on the reissued Notice.

k. Awarding Petitioners attorney's fees and costs.

l. Such other, different and further relief as is deemed just, equitable and proper.

Dated: New York, New York

April 30, 2003

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