

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

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THE SHELTER REFORM ACTION COMMITTEE and
GARY KASKEL and MARIE ANN MAR in their capacity
as co-chairpersons of THE SHELTER REFORM ACTION
COMMITTEE,

Plaintiffs,

-against-

**VERIFIED
ANSWER**

ANIMAL CARE AND CONTROL OF NEW YORK CI Pf. INC,
(f/k/a) THE CENTER FOR ANIMAL CARE AND CONTROL,
INC.), THE CITY OF NEW YORK, THE DEPARTMENT OF
HEALTH AND MENTAL HYGIENE OF THE CITY OF NEW
YORK, MICHAEL R. BLOOMBERG. as the Mayor of the
City of New York, THOMAS FR1EDEN, ADRIAN BENEPE,
JOHN M.B. O'CONNOR, JAY KUHLMAN, JOYCE YANG,
BRUCE DONIGER and JOHN DOE.

Index No
107636/06

Defendants,

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Defendants ANIMAL CARE AND CONTROL OF NEW YORK CITY, INC..
THE CITY OF NEW YORK, the DEPARTMENT OF HEALTH AND MENTAL HYGIENE
OF THE CITY OF NEW YORK, MICHAEL R. BLOOMBERG, THOMAS FRIEDEN,
ADRIAN BENEPE, JOHN M, B. O'CONNOR, JAY KUHLMAN, JOYCE YANG, and
BRUCE DONIGER, and CHIEF DOUGLAS ZEIGLER s/h/a JOHN DOE, answer the
complaint herein as follows:

THE PARTIES

1. Deny knowledge or information sufficient to term a belief as to the truth
of the allegations contained in paragraph 1 of the complaint.
2. Deny knowledge or information sufficient to form a belief as to the truth
of the allegations contained In paragraph 2 of the complaint.

3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the complaint.

4. Deny the allegations contained in paragraph 4 of the complaint, except to admit that Animal Care and Control of NYC, Inc. ("ACC") is a 501(c)(3) not for profit corporation formed for the charitable purposes of providing animal care and control.

5. Admit the allegations contained in paragraph 5 of the complaint.

6. Admit the allegations contained in paragraph 6 of the complaint.

7. Admit the allegations contained in paragraph 7 of the complaint.

8. Admit the allegations contained in paragraph 8 of the complaint.

9. Admit the allegations contained in paragraph 9 of the complaint.

10. Admit the allegations contained in paragraph 10 of the complaint.

11. Admit the allegations contained in paragraph 11 of the complaint.

12. Admit the allegations contained in paragraph 12 of the complaint.

13. Admit the allegations contained in paragraph 13 of the complaint.

14. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraphs 14 of the complaint.

VENUE

15. Admit the allegations contained in paragraph 15 of the complaint.

STANDING

16. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the complaint.

17. Deny the allegations contained in paragraph 17 of the complaint.

18. Deny the allegations contained in paragraph 18 of the complaint.

19. Deny the allegations contained in paragraph 19 of the complaint.

20. Deny the allegations contained in paragraph 20 of the complaint.

21. Deny the allegations contained in paragraph 21 of the complaint.

22. Deny the allegations contained in paragraph 22 of the complaint.

23. Deny the allegations contained in paragraph 23 of the complaint.

24. Deny the allegations contained in paragraph 24 of the complaint, except to admit that the ACC was created by the City of New York to perform animal control functions, and to admit that Justice Diane Lebedeff issued an opinion regarding the applicability of FOIL laws to ACC and respectfully refer the Court to that decision for its complete language and contents and an interpretation thereof.

25. Deny the allegations contained in paragraph 25 of the complaint, except admit that CPLR § 1001 (a) provides for inclusion of necessary parties and respectfully refer the Court to the statutory and case law cited for their complete language and contents and an interpretation thereof.

BACKGROUND

26. Admit the allegations contained in paragraph 26.
27. Admit the allegations contained in paragraph 27.
28. Admit the allegations contained in paragraph 28.
29. Admit the allegations contained in paragraph 29, except to admit that the Commissioner of the City's Department of Health and Hygiene is the Chairman of the Board of ACC.
30. Admit the allegations contained in paragraph 30.
31. Admit the allegations contained in paragraph 31.
32. Deny the allegations contained in paragraph 32 of the complaint.
33. Deny the allegations contained in paragraph 33 of the complaint, except admit that ACC has a contract with the City, acting through its Department of Health, to carry out animal control duties for the City.
34. Admit the allegations contained in paragraph 34 of the complaint.

35. Deny the allegations contained in paragraph 35 of the complaint.

36. Admits the allegations contained in paragraph 36 of the complaint.

37. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the complaint, except to admit that ACC occupies City-owned property in Manhattan, Brooklyn, and Staten Island, and occupies property rented by the City in Queens and the Bronx.

38. Admit the allegations contained in paragraph 38 of the complaint.

39. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the complaint.

40. Deny knowledge and information sufficient to form a belief the allegations contained in paragraph 40 of the complaint, except to admit that the ACC is funded with public monies, and respectfully refer questions of law as to the ACC's status to the court.

41. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph 41 of the complaint and respectfully refer questions of law and interpretations of prior judicial decisions to the court for review and interpretation.

42. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph 42 of the complaint and respectfully refer questions of law and interpretations of prior judicial decisions to the court for review and interpretation.

43. Admit the allegations contained in paragraph 43 of the complaint.

44. Admit the allegations contained in paragraph 44 of the complaint.

45. Admit the allegations contained in paragraph 45 of the complaint.

46. Admit the allegations contained in paragraph 46 of the complaint.

47. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 47 of the complaint.

48. Deny the allegations contained in paragraph 48 of the complaint.
49. Deny the allegations contained in paragraph 49 of the complaint.
50. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the complaint.
51. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 51 of the complaint.
52. Deny the allegations contained in paragraph 52 of the complaint.
53. Deny the allegations contained in paragraph 53 of the complaint.
54. Deny the allegations contained in paragraph 54 of the complaint, except to admit that the majority of ACC's funding is received from the City of New York pursuant to a contract with the City for the provision of animal care and control services.
55. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 55 of the complaint.
56. Deny the allegations contained in paragraph 56 of the complaint.
57. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 57 of the complaint.
58. Admit the allegations contained in paragraph 58 of the complaint.
59. Deny the allegations contained in paragraph 59 of the complaint.
60. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 60 of the complaint, except to deny that Martin Kurtz was an active City employee when he accepted a position with the ACC.
61. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 61 of the complaint.

62. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 62 of the complaint.

63. Admit the allegations contained in paragraph 63 of the complaint.

64. Deny knowledge and Information sufficient to form a belief as to the truth of the allegations contained in paragraph 64 of the complaint.

65. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 65 of the complaint.

66. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 66 of the complaint.

67. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 67 of the complaint.

68. Deny the allegations contained in paragraph 68 of the complaint, except to admit that such interviews were conducted in January 2005.

69. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 69 of the complaint.

70. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 70 of the complaint.

71. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph 71 of the complaint.

72. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 72 of the complaint.

73. Deny the allegations contained in paragraph 73 of the complaint.

74. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph 74 of the complaint.

75. Admit the allegations contained in paragraph 75 of the complaint.
76. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 76 of the complaint.
77. Deny the allegations contained in paragraph 77 of the complaint.
78. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 78 of the complaint.
79. Deny the allegations contained in paragraph 79 of the complaint.
80. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph 80 of the complaint.
81. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 81 of the complaint.
82. Deny the allegations contained in paragraph 82 of the complaint.
83. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 83 of the complaint.
84. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 84 of the complaint, and respectfully refer questions of law to the Court.
85. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph 85 of the complaint.

FIRST CAUSE OF ACTION

86. Defendants repeat and reallege their response to the allegations contained in paragraphs 1-85 of the complaint with the same force and effect as though fully set forth at length herein.

87. Deny knowledge and information sufficient to form a belief as to the allegations contained in paragraph 87 of the complaint, and respectfully refer questions of law and statutory interpretation to the Court.

88. Deny the allegations contained in paragraph 88 of the complaint.

89. Deny the allegations contained in paragraph 89 of the complaint.

90. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 90 of the complaint.

91. Deny the allegations contained in paragraph 91 of the complaint.

92. Deny the allegations contained in paragraph 92 of the complaint.

93. Deny the allegations contained in paragraph 93 of the complaint.

94. Deny the allegations contained in paragraph 94 of the complaint.

95. Deny the allegations contained in paragraph 95 of the complaint.

96. Deny the allegations contained in paragraph 96 of the complaint.

97. Deny the allegations contained in paragraph 97 of the complaint.

SECOND CAUSE OF ACTION

98. Defendants repeat and reallege their response to the allegations contained in paragraphs 1 -97 of the complaint with the same force and effect as though fully set forth at length herein.

99. Deny the allegations contained in paragraph 99 of the complaint.

100. Deny the allegations contained in paragraph 100 of the complaint.

101. Deny the allegations contained in paragraph 101 of the complaint.

102. Deny the allegations contained in paragraph 102 of the complaint.

THIRD CAUSE OF ACTION

103. Defendants repeat and reallege their response to the allegations contained in paragraphs 1 -102 of the complaint with the same force and effect as though fully set forth at length herein.

- 104. Deny the allegations contained in paragraph 104 of the complaint.
- 105. Deny the allegations contained in paragraph 105 of the complaint.
- 106. Deny the allegations contained in paragraph 106 of the complaint.
- 107. Deny the allegations contained in paragraph 107 of the complaint.
- 108. Deny the allegations contained in paragraph 108 of the complaint.
- 109. Deny the allegations contained in paragraph 109 of the complaint.
- 110. Deny the allegations contained in paragraph 110 of the complaint.

FOURTH CAUSE OF ACTION

111. Defendants repeat and reallege their response to the allegations contained in paragraphs 1-110 of the complaint with the same force and effect as though fully set forth at length herein.

- 112. Deny the allegations contained in paragraph 112 of the complaint.
- 113. Deny the allegations contained in paragraph 113 of the complaint.
- 114. Deny the allegations contained in paragraph 114 of the complaint.
- 115. Deny the allegations contained in paragraph 115 of the complaint.
- 116. Deny the allegations contained in paragraph 116 of the complaint.
- 117. Deny the allegations contained in paragraph 117 of the complaint.

FIRST DEFENSE

- 118. Plaintiffs fail to state a cause of action.

SECOND DEFENSE

- 119. Plaintiffs lack standing to bring this action.

THIRD DEFENSE

- 120. This action is barred by the equitable doctrine of laches.

FOURTH DEFENSE

- 121. This action is barred by the applicable statute of limitations.

FIFTH DEFENSE

122. The City of New York acted properly and pursuant to law to contract with the ACC for animal control services.

SIXTH DEFENSE

123. Plaintiffs lack standing to object to the provisions for the composition and selection of the ACC's Board of Directors.

SEVENTH DEFENSE

124. To the extent that defendants were performing governmental, quasi-governmental, or administrative duties that were of a discretionary nature rather than ministerial functions, defendants claim qualified privilege and immunity from liability herein.

EIGHTH DEFENSE

125. The ACC Board of Directors and its individual members acted properly and pursuant to law to contract with the City of New York to provide animal control services.

NINTH DEFENSE

126. The ACC Board of Directors and its individual members have not breached any duty of loyalty to ACC.

TENTH DEFENSE

127. The ACC Board of Directors and its individual members have not breached any duty of diligence, care and skill.

WHEREFORE, the SCA [sic] respectfully demands that the complaint herein be dismissed in its entirety and that the Court grant such other and further relief as may be just and proper.

Dated: New York, New York
July 21, 2006

Yours, etc.,

MICHAEL A. CARDOZO
Corporation Counsel
Attorney for Defendant City
100 Church Street
New York, New York 10007

By: /s/
Kathleen Karakassis
Assistant Corporation Counsel
(212) 232-9779

TO:

James M. Visser, Esq.
Attorney for Plaintiffs
3400 Paul Avenue
Bronx, NY 10468
(646)-260-6326

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

VERIFICATION

EDGAR BUTTS, being duly sworn, deposes and says:

I am the Assistant Commissioner for Veterinary Public Health and Pest Control of the Division of Environmental Health of the New York City Department of Health and Mental Hygiene (the "Department"); that I have read the foregoing ANSWER and know the contents thereof; that the same are true to my knowledge except as to the matters therein, stated to be alleged upon information and belief, and as to those matters I believe them to be true,

I further state that the source of my information and the grounds for my belief as to all matters not stated upon my knowledge are from records and reports maintained by the Department and from conversations had with employees and agents of the Department.

Dated: New York, New York
 July 21, 2006

/s/_____

EDGAR BUTTS

Sworn to before me
This 21 day of July, 2006

/s/_____

Notary Public

BERNARD ZICHERMAN
Notary Public, State of New York
No. 03-4978394
Qualified In Bronx County
Commission Expires 3/4/07

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ANIMAL CARE AND CONTROL OF NEW YORK CITY, INC.
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Defendants.

VERIFIED ANSWER

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File Number: 2006-001307