
This memorandum is uncorrected and subject to revision before publication in the New York Reports.

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1 No. 126 SSM 12 In the Matter of Bethelite Community Church, Great Tomorrows Elementary School,

 $\mbox{Respondent,} \\ \mbox{v.}$

The Department of Environmental Protection of the City of New York, et al.,

Appellants.

Submitted by Ronald E. Sternberg, for appellants. Submitted by Anthony Jones, for respondent.

MEMORANDUM:

The order of the Appellate Division should be reversed, with costs, and the matter remitted to Supreme Court for further proceedings in accordance with this memorandum.

Petitioner is a religious corporation that operates a

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church and school in a building it occupies in Manhattan.

Petitioner commenced this CPLR article 78 proceeding seeking to annul the determination of the Department of Environmental Protection of the City of New York denying it a full exemption from water and sewer charges under Chapter 893 of the New York Laws of 1887, as amended by the Laws of 1980, and section 24-514(e) of the Administrative Code of the City of New York, respectively.

Respondents do not now dispute the denial of their preanswer motion to dismiss the proceeding. They only challenge
that Supreme Court proceeded to the merits without permitting
them to submit an answer. Supreme Court erred in granting the
petition without first affording respondents an opportunity to
answer (see CLPR 7804[f]; Matter of BOCES Cent. Council of
Teachers v Board of Coop. Educ. Servs. of Nassau County, 63 NY2d
100, 102-104 [1984]). Accordingly, this case must be remitted to
Supreme Court to allow respondents to submit an answer and for
further proceedings on the pleadings.

On review of submissions pursuant to section 500.11 of the Rules, order reversed, with costs, and matter remitted to Supreme Court, New York County, for further proceedings in accordance with the memorandum herein. Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided June 7, 2007