

IN THE SUPREME COURT OF PENNSYLVANIA

FRIENDS OF DANNY DEVITO,	:	
KATHY GREGORY,	:	
B&J LAUNDRY, LLC	:	No. 68 MM 2020
BLUEBERRY HILL PUBLIC GOLF	:	
COURSE & LOUNGE, and	:	
CALEDONIA LAND COMPANY,	:	
Petitioners	:	APPLICATION
	:	FOR RELIEF - SUPPLEMENTAL
	:	BY KATHY GREGORY
	:	
v.	:	
	:	
TOM WOLF, GOVERNOR	:	
AND RACHEL LEVINE,	:	
SECRETARY OF PA.	:	
DEPARTMENT OF	:	
HEALTH,	:	
	:	
Respondents	:	

SUPPLEMENTAL APPLICATION FOR RELIEF
BY PETITIONER KATHY GREGORY

COMES NOW Petitioner, Kathy Gregory, by and through her attorneys,
Scaringi Law, pursuant to Rule 123 of the Pennsylvania Rules of Appellate
Procedure, and respectfully represent:

1. On March 24, 2020, Petitioners filed their Emergency Application for
Extraordinary Relief (the Petition), challenging Governor Tom Wolf’s order of
March 19, 2020 barring most businesses in Pennsylvania from accessing their
physical locations (the Order).
2. On March 26, 2020, the Governor filed his Answer.

3. On March 26, 2020, Petitioners filed an Ancillary Application for Relief requesting expedited briefing and oral arguments.
4. On March 26, 2020, Petitioners filed a Supplemental Application for Relief renewing their request for briefing.
5. On March 27, 2020, this Court granted Petitioners' request for briefing and set briefing deadlines.
6. On March 31, 2020, Petitioners filed their Brief.
7. The Governor's Brief is due on Friday, April 3, 2020 at noon.
8. Since the filing of the Petition new facts have arisen that are material and relevant thereto; namely, on March 28, 2020, the Department of Homeland Security issued an advisory recommendation that all real estate services are deemed to be "essential" to combatting COVID-19 and should remain open or be opened.

PETITIONER GREGORY

9. Petitioner Gregory, as a real estate agent working in the real estate services industry, has been on the non-life-sustaining list since the Order was issued. The Order prohibits "all real estate services;" thus Petitioner Gregory cannot work even virtually from home; in any event real estate services includes the physical showings of properties, inspections, and settlements none of which can occur at home.

10. The Governor responds that Petitioner Gregory can apply for a waiver; however, Petitioner Gregory’s license is legally only permitted to be utilized through her broker; her broker will not apply for a waiver.

11. The Governor states that in making waiver determinations, the Department of Community and Economic Development (DCED) is “maintaining consistency” with an advisory issued by the Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (“CISA Advisory”) entitled “Identifying Critical Infrastructure During COVID-19.”¹

12. On March 28, 2020, CISA released a “Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response,” which deems as essential to the COVID-19 response, “Residential and commercial real estate services, including settlement services.”²

13. This guidance from CISA states that: “If you work in a critical infrastructure industry, as defined by the Department of Homeland Security...you have a special responsibility to maintain your normal work schedule.”

¹ <https://www.scribd.com/document/452553495/UPDATED-1-45pm-March-27-2020-Life-Sustaining-Business-FAQs>

²

https://www.cisa.gov/sites/default/files/publications/CISA_Guidance_on_the_Essential_Critical_Infrastructure_Workforce_508C_0.pdf

14. Petitioner Gregory wishes to comply with the CISA admonition to maintain her normal work schedule; however, she is prohibited from working by the Order.

15. The Governor, through DCED, has approved the waiver of one real estate brokerage company. In the approval the Governor states, “it has been determined that the business identified above, to the extent identified in your application, places a critical role in the manufacture of goods and services necessary to sustain life.” Said waiver approval is incorporated herein by reference, made a part hereto and marked as Exhibit A.

16. By the approval of this waiver, the Governor has determined that real estate services are life-sustaining.

17. The Governor’s waiver process is overwhelmed. Recent media reports indicate that as of Tuesday, March 31, 2020, DCED has received nearly 31,000 waiver applications, approved 4,925 and denied 7,737. According to DCED, another 6,757 requests were filed by businesses that did not need them to continue to operate.³

³ <https://www.sungazette.com/news/top-news/2020/04/lycoming-up-to-six-cases-more-counties-under-stay-home-order/>

18. Petitioner Gregory's real estate practice is the same or substantially similar to the real estate practice identified in the waiver approval and is the same or substantially similar to all real estate practices in Pennsylvania.

19. The Governor, in order to comply with his own statement that he is "maintaining consistency" with the CISA guidelines, should be Ordered to revise his Order and move all real estate services from the non-life-sustaining to life-sustaining lists; this is a much more efficient and practical means of addressing the need to get the real estate services industry, which has been deemed by the federal government as "essential," back up and running, rather than the Governor requiring individual real estate businesses to file individual waiver applications, which has likely added to the significant number of waivers and has added significant administrative burden to DCED and is perhaps causing delays in DCED's handling of other waiver requests.

20. The Governor can include, in the revised Order, specific guidance like he did in the within referenced waiver approval including, "compliance with social distancing and other mitigation measures to protect employees and the public, including virtual and telework operations (e.g. work from home) as the primary option when available...which have been established by the Department of Health and the Centers for Disease Control to date and going forward." Exhibit A.

21. Petitioner Gregory makes this request on behalf of herself and all real estate services businesses in Pennsylvania.

WHEREFORE, Petitioner respectfully requests that this Court order and decree that the Governor shall transfer all real estate services from the non-life-sustaining list to the life-sustaining list and that the Governor may include a proviso establishing reasonable limitations on the operations of real estate services, in order to prevent and mitigate the COVID-19 viral illness, that are substantially similar to the those referenced in the Governor's waiver approval as set forth on Exhibit A, on his revised list.

Respectfully submitted,

/s/ Marc A. Scaringi

Marc A. Scaringi, Esq.

Supreme Court ID No. 88346

Brian C. Caffrey, Esq.

Supreme Court ID No. 42667

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April 2, 2020

VERIFICATION

I, Kathy Gregory, hereby swear or affirm that the above-written statements of fact in the SUPPLEMENTAL APPLICATION FOR RELIEF BY PETITIONER KATHY GREGORY are true and correct to the best of my knowledge, information and belief and that I make said statements of fact subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification of authorities.

Date: 4/1/2020


Kathy Gregory

EXHIBIT A



03/23/2020

Jesse Sturm
BrokersRealty.com The Brokers Realty Group Limited
1047 W Mulberry St Coal Twp PA 17866
610 Lowther Rd Lewisberry PA 17339
Coal Twp, PA 17866
jesse@brokersrealty.com

Transmitted via email

RE: Application of BrokersRealty.com The Brokers Realty Group Limited to Continue Business Operations at its Physical Locations

Dear Jesse Sturm:


By Executive Order dated March 19, 2020, and pursuant to powers granted to us by law, we ordered that no person or entity shall operate a place of business that is not a life-sustaining business, regardless of whether the business is open to members of the public. These orders (the "COVID-19 Orders") are necessary to stop the spread of the novel coronavirus COVID-19.

In response to your request for an exemption from the applicability of the COVID-19 Orders, pursuant to the powers granted to us to protect the legitimate business, industry, and commerce of the Commonwealth, and to prevent and control the spread of disease, it has been determined that the business identified above, to the extent described in your application, plays a critical role in the manufacture and supply of goods and services necessary to sustain life, and may continue to operate at the physical location identified in your application.

This exemption approval is subject to continuance of and compliance with the social distancing and other mitigation measures to protect employees and the public, including virtual and telework operations (e.g. work from home) as the primary option when available, which were submitted with your request and which have been established by the Department of Health and the Centers for Disease Control and Prevention to-date and going forward. In-person work at a business site is only to be performed on the most limited basis possible to deliver the services or goods of your life-sustaining business.

Sincerely,


TOM WOLF
Governor


RACHEL L. LEVINE, M.D.
Secretary of Health

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SECRETARY OF PA. :
DEPARTMENT OF :
HEALTH, :
:
Respondents :

CERTIFICATE OF SERVICE

I, Deborah A. Black, Paralegal for Scaringi Law, do hereby certify that I served a true and correct copy of *Supplemental Application For Relief by Petitioner Kathy Gregory*, in the above-captioned action, upon the following via PACfile System, to:

J. Bart DeLone
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Appellate Litigation Section
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333 Market St 17th Fl.
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Date: April 2, 2020

/s/ Deborah A. Black

Deborah A. Black, Paralegal
For Marc A. Scaringi, Esquire and
Brian C. Caffrey, Esquire

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Petitioners' Counsel

Signature: /s/ Marc A. Scaringi

Name: Marc A. Scaringi, Esquire

Attorney No. (if applicable): 88346

Date: April 2, 2020