

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

NEW YORK CITY OFF-TRACK BETTING
CORPORATION,

Debtor.¹

Chapter 9

Case No. 09-17121 (MG)

**STIPULATION, AGREEMENT AND ORDER BETWEEN THE
METROPOLITAN TRANSPORTATION AUTHORITY AND NEW YORK CITY
OFF-TRACK BETTING CORPORATION PROVIDING FOR RELIEF FROM
THE AUTOMATIC STAY**

New York City Off-Track Betting Corporation, the Debtor in the above-captioned case (“**NYC OTB**”), and the Metropolitan Transportation Authority (“**MTA**” and together with NYC OTB, the “**Parties**”), enter into this Stipulation and Agreed Order (the “**Stipulation**”) and represent and agree as follows:

RECITALS

A. On February 10, 2003, NYC OTB entered into a ten year lease of real property with MacArthur Properties LLC for use of 2135 square feet (the “**Premises**”) of a commercial condominium unit located at 1318 Second Avenue,

¹ NYC OTB’s address is 1501 Broadway, New York, NY 10036. NYC OTB’s tax identification number is 13-2664509.

New York a/k/a 301 East 69th Street, New York, New York (the “**Property**”). A copy of the lease agreement is attached hereto as Annex A.

B. During the term of the lease, NYC OTB made various improvements to the Premises that remain attached as trade fixtures (the “**Fixtures**”). Under the lease, NYC OTB maintains a leasehold interest in the Premises (the “**Leasehold Interest**”) and the Fixtures (the Leasehold Interest and the Fixtures are collectively the “**NYC OTB Property Interests**”).

C. On December 3, 2009, (the “**Petition Date**”) NYC OTB filed a voluntary petition [Docket No. 1] for relief under chapter 9 of Title 11 of the United States Code.

D. The Metropolitan Transportation Authority of the State of New York (“MTA”) is a public authority and public benefit corporation of the State of New York that is organized under New York Public Authorities Law §1260 *et seq.* for the purpose of operating a unified public transportation system serving New York City and nearby metropolitan counties in the State of New York. In accordance with New York Public Authorities Law §1267 and the New York State Eminent Domain Procedure Law (“EDPL”), MTA is in the process of acquiring properties needed to construct and operate the Second Avenue Subway, a new subway line that will serve the East Side of Manhattan.

E. MTA is acquiring such properties, as provided under the EDPL, by filing applications to condemn in the Supreme Court of the State of New York, New York County. Among the property interests that MTA requires for the

Second Avenue Subway is a permanent easement in a portion of the Property (the “**Easement**”) for a new subway entrance. MTA will acquire the Easement with funds procured from a federal grant subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the “**Uniform Act**”). MTA’s acquisition of the Easement, and its construction and operation of the new subway entrance, will have the effect of permanently displacing NYC OTB from the Property.

F. Under the Fifth Amendment to the United States Constitution and Article I, §7 of the New York State Constitution, MTA must provide just compensation to NYC OTB associated with MTA’s acquisition of the Easement, namely, for NYC OTB’s right, title and interest in the Fixtures. Under the Uniform Act, MTA also will provide relocation assistance to NYC OTB if required.

G. MTA has negotiated a stipulation agreement (the “**Stipulation Agreement**”), attached hereto as Annex B with NYC OTB to provide compensation to NYC OTB in the amount of \$183,732 (the “**Award**”) for the value of the Fixtures. NYC OTB and MTA have also negotiated an assignment of condemnation award agreement (the “**Assignment of Condemnation Award Agreement**”) and together with the Stipulation Agreement, the “**Agreements**”) attached hereto as Annex C, which provides that NYC OTB will vacate and surrender possession of the Premises within thirty (30) days of receipt of the Award, subject to any liens or encumbrances, if any, but in no event will NYC OTB be compelled to vacate the Premises sooner than ten (10) business

days following the running of the Belmont Stakes scheduled for Saturday, June 5, 2010.

H. MTA's proposed acquisition or termination of the NYC OTB Property Interests is not excepted from the automatic stay provision of Section 362 and 922 of the Bankruptcy Code. Therefore, in order to acquire or terminate the NYC OTB Property Interests, either through an eminent domain proceeding commenced in the Supreme Court of the State of New York or a voluntary transaction in lieu thereof, MTA requires relief from the automatic stay.

I. In an effort to effectuate the terms of the Agreements, the Parties have agreed that it is in their best interest to enter into this Stipulation upon the terms and conditions contained herein and in the Agreements.

NOW, THEREFORE, UPON THE FOREGOING RECITALS, WHICH ARE INCORPORATED AS THOUGH FULLY SET FORTH HEREIN, IT IS HEREBY STIPULATED AND AGREED, BY AND BETWEEN THE PARTIES, THROUGH THEIR RESPECTIVE UNDERSIGNED COUNSEL, AND SUBJECT TO OBTAINING COURT APPROVAL HEREOF, IT SHALL BE ORDERED THAT:

1. This Stipulation shall be of no force and effect unless and until approved by the Court (the “**Effective Date**”). This Stipulation shall be immediately effective on the Effective Date and shall not be stayed pursuant to Bankruptcy Rule 4001(a)(3).

2. On the Effective Date, the automatic stay extant in NYC OTB’s chapter 9 case in accordance with section 362 and 922 of the Bankruptcy Code (the “**Automatic Stay**”) shall be modified solely to the extent necessary to permit MTA to exercise its rights under the Agreements and applicable law solely with respect to the NYC OTB Property Interests, including acquiring or terminating the NYC OTB Property Interests by eminent domain in accordance with the terms of the Agreements. The Automatic Stay shall be further modified such that all notices provided to NYC OTB by MTA and all actions taken by MTA to acquire the NYC OTB Property Interests prior to the Effective date are deemed to have been permitted and effective.

3. NYC OTB is authorized to make, execute, file and deliver such statements, instruments, and other documents and take all other or further actions that may be required or necessary for the performance by NYC OTB of the terms of the Agreements, and each of the Parties are hereby authorized to file, register and otherwise record a copy of the Agreements.

4. Other than as set forth in Paragraph 2 above, the Automatic Stay shall remain in full force and effect.

5. This Stipulation shall be binding upon and shall govern the acts of all entities, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, records of deeds, registrars of deeds, administrative agencies, governmental units, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, contract, or the duties of their office to accept, acknowledge, assent or consent to, file, register, record or release any documents or instruments with respect to the NYC OTB Property Interests and the transaction effectuated in connection therewith under this Stipulation.

6. Each person who executes this Stipulation on behalf of a Party represents that he or she is duly authorized to execute this Stipulation on behalf of such Party.

7. This Stipulation may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8. This Stipulation may be amended or otherwise modified only by a signed writing executed by the Parties.

9. This Court shall retain jurisdiction to resolve any disputes or controversies arising from or related to this Stipulation.

Dated: March 26, 2010

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SO ORDERED:

Dated: New York, New York
April 14, 2010

/s/ Martin Glenn
HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE