New York City's FARE Act In Court: Whether It's "Fair" Is Still Under Review

By Claude G. Szyfer and Daria D. Anichkova August 31, 2025 Email

In late 2024, the City Council upended the New York City rental markets when it passed the Fairness in Apartment Rental Expenses (FARE) Act (the Act), which, in part, prevents a real estate broker who "publishes" a real estate listing or who enters into a listing agreement with a landlord from seeking payment of their brokerage fee from the prospective tenant. The real estate industry — led by the Real Estate Board of New York (REBNY), the New York State Association of REALTORS® (NYSAR), real estate brokerage firms who specialize in rental listings, and certain landlords — sued the City and the Department of Consumer and Worker Protection Commissioner, arguing the law is unconstitutional and preempted by state statute.

On June 10, 2025, however, U.S. District Judge Ronnie Abrams issued an Opinion in *REBNY v. City of New York* denying plaintiffs' request for an injunction and dismissing their First Amendment and Preemption challenges, while allowing the claim under the Contracts Clause to proceed. That ruling allowed the Act to take effect on June 11, 2025. This article analyzes the court's decision, its impact, and what happens next.

By way of background, in New York City's rental market — about 70% of the available housing stock — tenants often paid for the broker's fee, whether the broker had been retained by the landlord or not, such as in connection with an open listing. The original version of the Act, introduced in early 2024, contained just one provision essentially stating that the party retaining the broker paid their fee, and the Council justified the Act by claiming it sought to improve "housing affordability."

But, when it enacted the Act, the Council dropped that primary purpose, and claimed that it sought to "re-align the principal-agent" relationship, and purportedly enhance mobility for renters by reducing upfront costs. The version of the Act it ultimately passed also contained numerous new provisions preventing a broker from receiving her fee when they merely publish a listing and also forbidding a broker from "conditioning" the rental of an apartment by requiring tenant to retain them. The Act also forbid a broker from receiving her fee from the tenant when

they entered into a listing agreement with a landlord, and also created a rebuttable presumption that when a broker advertises an apartment they essentially do so with the landlord's permission and thus constitute a "landlord's agent."

REBNY, NYSAR, and the other plaintiffs filed a complaint challenging the Act on three grounds:

1. The Act violates the First Amendment (and the New York Constitution's free-speech clause) because it disfavors specific speech (advertising of listings) by disfavored speakers (brokers);
2. The Act impermissibly and severely impairs exclusive listing agreements under the Contracts Clause of the Constitution; and
3. The Act is preempted by New York's Real Property Law Article 12-A (the state's broker licensing and regulation scheme).

Plaintiffs also moved for a preliminary injunction seeking to halt enforcement of the Act while the action proceeded, and the City filed its own motion to dismiss each of the claims. The District Court dismissed the First Amendment and Preemption claims, while allowing the Contracts Claim to continue. The court denied the request for a preliminary injunction on all three claims.

With respect to the First Amendment claim, the court agreed with plaintiffs that the Act impacted speech and burdened their ability to publish listings because the Act was triggered off of the act of publication of a listing. Analyzing the Act under the Supreme Court's four-part test from *Central Hudson Gas & Elec. Corp. v. Public Servs. Comm'n*, 447 U.S. 557 (1980), however, the court dismissed the claim finding the Act directly advanced a substantial interest — reducing tenants' upfront costs and better aligning principal-agent incentives — yet left open alternative channels for brokers to advertise and communicate about listings. The court held "[b]rokers remain free to post any listing they choose. In the event a broker rents a property to her own client that she has previously listed, the Act simply requires her to impose her fee on the landlord — with whom it presumes she also has an agency relationship. Moreover, to the extent that a broker may prefer to receive compensation from her tenant clients, she may choose instead to communicate information about available properties to those clients directly, instead of through published listings." 2025 WL 1644046, at * 12. For many in the industry, however, the court's logic that a broker seeking to be paid their commission by a potential tenant may call that client directly about a listing, but cannot advertise the listing over the internet takes real estate brokerage back 40 years, and helps perpetuate a "shadow inventory" of real estate listings.

Turning to the issue of state law preemption, the court initially agreed with plaintiffs that Article 12-a of the Real Property Law constituted a "regulatory statute setting up a comprehensive plan to assure, by means of licensing, that standards of competency, honesty and professionalism are observed by real estate brokers and sales[persons]." 2025 WL 1644046, *19. But, she disagreed Article 12-a addressed the conduct covered by the Act, finding that "[i]ts provisions

say nothing about the amount in fees that licensed brokers may collect, nor from whom they may collect fees, nor whether they may collect such fees at all. New York courts have declined to find field preemption in similar circumstances." *Id.* The court also found that Article 12-a also failed to include any language stating that the legislature intended for it to occupy the field of broker regulation. Thus, the court dismissed the preemption claim.

Finally, the court found issues of fact concerning plaintiffs' Contract Clause claim, and allowed the claim to move forward, but still denied the request for a preliminary injunction. Specifically, plaintiffs had argued that the Act permanently nullified provisions in their exclusive listing agreements requiring brokers to seek payment from tenants and obviating any payment obligation from the landlord. Here again, the court agreed with plaintiffs that the Act did indeed permanently and severely impaired their exclusive agreements, but found issues of fact as to whether the Act was "reasonable and necessary" to achieve the City's stated purpose of aligning principal-agent relationships, and refused to grant injunctive relief. The court allowed the parties to proceed with discovery on this claim.

When the Act took effect on June 11, 2025, New York City's rental markets experienced two immediate impacts: increases in rent and a significant disappearance of listings from advertising platforms. Thus, while the Act may have removed the potential upfront costs of paying a broker's fee, given the increase in rents, tenants may pay more over the long-term negating the effect of the Act.

Plaintiffs have filed a notice of appeal to the Second Circuit, and briefing will be completed by the end of October 2025. Plaintiffs have focused their appeal on their First Amendment and Contracts Clause claims arguing the court failed to properly analyze the Act under *Central Hudson* and other Supreme Court precedent. Thus, court watchers should stay tuned as the constitutionality and ultimate impact of the Act is still under review.

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