

**Matter of 1520 Sedgwick Tenant Assoc. v  
Donovan**

2008 NY Slip Op 32684(U)

September 22, 2008

Supreme Court, New York County

Docket Number: 402138/08

Judge: Marilyn Shafer

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

PRESENT: SHAFER  
Justice

PART 8

1520 SEDGWICK TENANT ASSOC,  
ETAL.

SHAUN DOLOVAN,  
ETAL.

INDEX NO.

402138/08

MOTION DATE

MOTION SEQ. NO.

01

MOTION CAL. NO.

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits

Replying Affidavits

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

*decided*  
*per court to attached return*

**FILED**

SEP 25 2008

COUNTY CLERK'S OFFICE  
NEW YORK

*MARILYN SHAFER*  
S.S.C.

Dated: 9/22/08

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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

PRESENT: HON. MARILYN SHAFER  
*Justice*

PART 8

In the Matter of the Application of  
1520 SEDGWICK TENANT ASSOCIATION, GLORIA  
RUFFIN ROBINSON, SHIOBAN BERMUDEZ, MORDISTINE  
ALEXANDER,

Petitioners,

INDEX NO. 402138/08

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

For a Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules,

- against -

SHAUN DONOVAN, as Commissioner of the  
New York City Department of Housing  
Preservation and Development; and  
1520 SEDGWICK HOUSES, INC.,

Respondents.

**FILED**  
SEP 25 2008  
COUNTY CLERK'S OFFICE  
NEW YORK  
PAPERS NUMBER

The following papers, numbered 1 to 3, were read on this motion:

- Notice of Motion — Affidavits — Exhibits 1
- Affirmation in Opposition — Affidavits— Exhibits 2
- Replying Affidavits 3

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that the petitioners' motion is denied.

Petitioners 1520 Sedgwick Tenant Association, Gloria Ruffin Robinson, Shioban Bermudez, and Mordinstine Alexander move for a preliminary injunction barring the New York

\* 3 ]

City Department of Housing Preservation and Development (HPD) from issuing a Letter of No Objection (Letter) to respondent 1520 Sedgwick Houses, Inc. upon the prepayment of its mortgage on the property known as 1520 Sedgwick Houses (the Building) in Manhattan. Issuance of the Letter would, in effect, authorize the removal of the Building from the Mitchell-Lama program, pursuant to 28 RCNY § 3-14 (i) (11).

Petitioners contend that if such removal occurs, the Building will be sold and the price paid for the Building will require the new owner either to reduce services or to seek to evict many of the current tenants. The Building, which the New York State Department of Parks has found to be eligible for inclusion on the State and National Register of Historic Places, is generally recognized as the site at which hip-hop music originated in the early 1970s. Citing Chinese Staff Assn. & Workers v City of New York (68 NY2d 359 [1986]), which held that population patterns and neighborhood character are conditions that must be considered under both the State Environmental Quality Review Act (SEQRA) and the City Environmental Quality Review rules (CEQR), petitioners argue that a change from the mostly low-income tenants who currently reside in the Building to tenants of greater means will change the character of the Building to such an extent that HPD may not issue the Letter prior to performing an environmental review.

In order to obtain injunctive relief, petitioners must show, among other things, that they are clearly likely to prevail on the merits.

Private Housing Finance Law (PHFL) § 35, which provides for the voluntary dissolution of companies in the Mitchell-Lama program, provides:

2. A company aided by a loan made after May first, nineteen hundred fifty-nine, may voluntarily be dissolved, without the consent of the commissioner or of the supervising agency [here, HPD], as the case may be, not less than twenty years after the occupancy date upon the payment in full of the remaining balance of principal and interest due and unpaid upon the mortgage . . .

(Emphasis added). 28 RCNY § 3-14 (i) (11) provides that

[u]pon payment ... of all amounts owing to the City and/or other mortgagee and certification of compliance with all applicable rules and provisions of law relating to dissolution and/or reconstitution, HPD shall issue a Letter of No Objection to the housing company's dissolution and/or reconstitution.

In 2550 Olinville Ave., Inc. v Crotty (185 AD2d 200 [1st Dept 1992]), the Court held that, absent a waiver by the housing company of the 20-year period provided for in PHFL § 35 (2), or a provision in the housing company's mortgage directly inconsistent with PHFL § 35 (2), HPD must issue a Letter upon the payment of the remaining balance and current interest on the mortgage. As the Court of Appeals explained in Matter of Columbus Park Corp. v Department of Hous. Preservation and Dev. of City of New York (80 NY2d 19, 23-24 [1992]), "[u]nder Private Housing Finance Law § 35 (2), the only conditions imposed on a housing company for dissolution without the consent of the supervising agency, are that it pay the remaining mortgage loan and all expenses incurred in the dissolution and that at least 20 years have elapsed since the occupancy date." Thus, while HPD, as the supervising agency, must verify that a housing company has met the necessary and sufficient conditions for voluntary dissolution, once such verification has been accomplished, HPD is without power to block the dissolution.

Environmental Conservation Law (ECL) § 8-0109 (2) provides that "[a]ll agencies ... shall prepare, or cause to be prepared ... an environmental impact statement on any action they propose or approve which may have a significant effect on the environment." ECL § 8-0105 (5) provides that:

"[a]ctions" do not include:

(ii) official acts of a ministerial nature, involving no exercise of discretion.

Similarly, 43 RCNY § 6-02 defines "action," in relevant part, as:

(5) non-ministerial decisions on licensing activities, such as the proposing, approval or disapproval of a lease, permit, license, certificate or other entitlement

for use or permission to act.

(Emphasis added). Where an underlying statute or local law does not vest an official with the discretion to permit or to deny an application on the basis of environmental concerns, such permit or denial is not an "action" within the meaning of SEQRA (or of CEQR). Incorporated Village of Atlantic Beach v Gavalas, 81 NY2d 322 (1993); see also Matter of Citizens For An Orderly Energy Policy v Cuomo, 78 NY2d 398 (1991) (public authority's compliance with legislative mandate that nuclear power plant be decommissioned is ministerial act).

In sum, petitioners have not shown that they are clearly likely to prevail on the merits.

That said, the likely exit of 1520 Sedgwick Houses, and numerous other buildings, from the Mitchell-Lama program will inevitably disrupt neighborhoods and decrease the housing stock that is available to renters of meager means. The remedy lies with the Legislature.

Accordingly, it is hereby

ORDERED that the motion is denied; and it is further

ORDERED that respondents are directed to serve their answers, or other responses to the petition no later than 45 days after service of this Decision with notice of entry.

This reflects the decision and order of this Court.

Dated: September 22, 2008

Check one:  FINAL DISPOSITION

**MARILYN SHAFER**  
J.S.C.  
 NON FINAL DISPOSITION

FILED  
SEP 25 2008  
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