

Real Estate Bd. of N.Y., Inc. v City of New York

2016 NY Slip Op 32923(U)

June 20, 2016

Supreme Court, New York County

Docket Number: 101798/15

Judge: Margaret A. Chan

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

PRESENT: MARGARET A.CHAN
Justice

PART 52

REAL ESTATE BOARD OF NEW YORK, INC.,
 Petitioner,

INDEX NO. 101798/15 160081/15

- v -

CITY OF NEW YORK, BILL DE BLASIO, ET AL.
 Respondents.

MOTION DATE 06/01/2016


MOTION SEQ. NO. 1

The following papers, numbered 1 to <u>8</u> , considered on this petition and cross-motion	
Notice of Motion/ Petition/ OSC - Affidavits - Exhibits	No(s) <u>1,2,3,4</u>
Answering Affidavits - Exhibits	No(s) <u>5</u>
Replying	No(s) <u>6, 7, 8</u>

Upon the foregoing papers, it is ordered that this Article 78 is

DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION

DATE: 6/20/2016


 MARGARET A. CHAN, JSC

- | | | | |
|---------------------------|---|--|--|
| 1. CHECK ONE | : | <input checked="" type="checkbox"/> CASE DISPOSED | <input type="checkbox"/> NON-FINAL DISPOSITION |
| 2. APPLICATION | : | <input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED | <input type="checkbox"/> GRANTED IN PART <input checked="" type="checkbox"/> OTHER |
| 3. CHECK IF APPROPRIATE : | | <input type="checkbox"/> SETTLE ORDER | <input type="checkbox"/> SUBMIT ORDER |
| | | <input type="checkbox"/> DO NOT POST | <input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE |

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 52

-----X
THE REAL ESTATE BOARD OF NEW YORK, INC.,
Petitioners,

-against-

CITY OF NEW YORK, BILL DE BLASIO, ET AL.
Respondents.
-----X

DECISION/ORDER
Index No. 101798/2015
Index No. 160081/2015

HON. MARGARET CHAN, J.:

Petitioner Real Estate Board of New York, Inc. (REBNY) commenced an Article 78 proceeding (Index No. 101798/15) to annul Local Law 50 that Mayor Bill De Blasio signed into law on June 2, 2015. Local Law 50 established a two-year moratorium to on the conversion on more than twenty percent of hotel space to non-hotel space use for hotels containing more than 150 units. REBNY claims that Local Law 50 was improperly passed because (1) it was initiated in the City Council rather than the City Planning Commission; (2) it passed without review in accordance with the Uniform Land Use Review Procedure (ULURP); or (3) the State Environmental Quality Review Act (SEQRA). Respondents cross-moved (Index No. 160081/15) for dismissal of the petition on the grounds that petitioner lacks standing to bring this proceeding.

Respondents' cross-motion will be addressed first as standing is a threshold determination on whether petitioner may maintain its challenge to a governmental action (*see Soc'y of Plastics Industry, Inc. v County of Suffolk*, 77 NY2d 761, 769 [1991]). As such, "[p]etitioner has the burden of establishing both an injury-in-fact and that the asserted injury is within the zone of interests sought to be protected by the statute alleged to have been violated" (*Assoc. for a Better Long Island, Inc. v New York State Dept. of Environmental Conservation*, 23 NY3d 1, 6 [2014]).

Petitioner is an organization with more than 17,000 members in the broad real estate and related industries (Banks Aff at ¶ 5). To establish that it has organizational standing, petitioner must show that at least one of its members would have standing to sue; that its interest is germane to the organization's purposes; and that individual members need not participate in the lawsuit to assert the claim or seek the relief at issue (*see NY State Ass'n of Nurse Anesthetists v Novello*, 2 NY3d 207, 211 [2004]; *Dental Society of State of NY v Carey*, 61 NY2d 330, 333-34 [1984]).

Petitioner's issue is with the process by which Local Law 50 was adopted. Petitioner adds that the City Council's failure to comply with SEQRA concerns its members even if they do not own hotel properties (Braun Aff in support of petition, exh 1- Banks Aff at ¶15). While the steps of undergoing ULURP and SEQRA reviews concern its members, hotel owners or otherwise, it is safe to say that the public at large is affected as well. However, not everyone affected can bring suit to challenge a government's administrative missteps. Petitioner must show that its injury is distinct from that of the public at large, and that its members suffered an injury in fact in order to challenge respondents' alleged erroneous actions (*see Soc'y of Plastics Industry, Inc.* 77 NY2d at 773).

Respondents argue that petitioner has not shown that even one of its hotel-owner member has suffered an injury-in-fact under Local Law 50. In response, petitioner proffers 25 or 29¹ of its members who are “presumptively aggrieved” by Local Law 50 (Pet’s Memo of Law in Opp, p 6). The affected members have “properties that are hotels with at least 150 transient hotel rooms” (Braun Aff, exh 1 - Banks Aff at ¶¶ 8, 10 and 11). Petitioner does not know how many of these affected members are considering a conversion of their hotel rooms to other uses (*id.* at ¶11). Nonetheless, it maintains that Local Law 50 causes a loss of earning possibilities for real estate brokers and affiliates in the real estate industry (*id.* at ¶ 12 and exh 2 - Haulspurg Aff). There was one example given related to selling a hotel for residential use to illustrate the possible loss of a lucrative business opportunity. REBNY member, Peter Haulspurg, the Chairman and Chief Executive Officer of Eastern Consolidated, in the real property brokerage business for clients such as the Edgar Bronfman family, George Soros, Larry Silverstein, the Moinian family and the Durst family, is being consulted by a foreign family that is considering selling its large Manhattan hotel for a residential conversion (*id.*, exh 2). If the hotel owner sells the hotel, Mr. Haulspurg and his company may earn \$1 million in commission. It appears that Mr. Haulspurg’s exploration for options to best serve his client, including upgrading the hotel’s quality is varied and ongoing (*id.* at ¶ 4). Meanwhile, the moratorium of Local Law 50 is not ongoing. How long and when this foreign family finds a buyer or opts to even sell the hotel at all is unknown. The expiration date of Local Law 50 is known – June 2, 2017.

Local Law 50 is set to expire two years after the effective date of June 2, 2015. Thus, Local Law 50 has about eleven months remaining at the time of this decision. Petitioner has not shown any injury that its members actually sustained in the past year that Local Law 50 was in effect. Petitioner offers speculative economic injuries its members might sustain in the next eleven months before Local Law 50 is deemed repealed. As such, the petition does not meet the standing requirement as there is no injury-in-fact.

The injuries proffered by petitioner are economical in that they are basically the loss of possible investments or money-making opportunities for its members in the two years under the Local Law 50 moratorium. “Economic injury does not confer standing to sue under SEQRA. Economic injury is not by itself within SEQRA’s zone of interests (*see Soc’y of Plastics Industry, Inc.* 77 NY2d at 777 citing *Matter of Mobil Oil Corp. v Syracuse Indus. Dev. Agency*, 76 NY2d 428, 433-34). Nonetheless, petitioner, relying on *Har Enterprises v Town of Brookhaven* (74 NY2d 524 [1989]), asserts that it has standing by virtue of its members’ ownership of properties subject to Local Law 50.

The petitioner in *Har* owned three parcels of land on which he had contracted to build a large supermarket. The Town of Brookhaven voted to approve a rezoning plan that would affect petitioner’s land and construction plans. The petitioner in *Har* raised a SEQRA-based challenge and sought to void the Town of Brookhaven’s rezoning determination. The Court of Appeals held that “this property owner has a legally cognizable interest in being assured that the town satisfied SEQRA before taking action to rezone its land” even if he did not allege environmental harm (*Har* at 530). Despite that petitioner’s sole interest is economic, he nonetheless has standing “by virtue of its status as owner of the property” (*id.*).

The difference between this case and *Har* is that *Har*’s property was directly and concretely affected by the rezoning. The petitioner in *Har* had in hand a contract for the construction of a supermarket, which the rezoning would prevent from going forward. Here, there is only speculation. Thus, not only is the environmental concern absent here under petitioner’s SEQRA-based challenge, a concrete injury is also absent to compel a “hard look” as mandated by SEQRA (*Har* at 529). Accordingly, petitioner does not have standing under SEQRA to challenge the adoption of Local Law 50.

¹ The number of identified affected hotels differ from one paragraph to the next in Banks’ Affidavit.

Petitioner's challenge under ULURP is likewise unavailing. While sidestepping the review and approval process of ULURP in determining land use affects the public at large, petitioner's alleged injury, unlike the public at large, is economic. However, the alleged injury is also speculative as discussed above. Thus, petitioner's challenge under ULURP cannot be sustained as it has no standing.

Accordingly, petitioners' Article 78 proceeding fails for lack of standing. Respondents' cross-motion to dismiss the petition is granted.

This constitutes the decision and order of the court.

DATE : 6/20/2016



CHAN, MARGARET A., JSC