

**Friends of Elizabeth St Garden, Inc. v New York City
Dept. of Hous. Preserv. & Dev.**

2022 NY Slip Op 33908(U)

November 18, 2022

Supreme Court, New York County

Docket Number: Index No. 153699/2020

Judge: Debra A. James

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.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBRA A. JAMES

PART 59

Justice

-----X

FRIENDS OF ELIZABETH ST GARDEN, INC.,

Petitioner,

- v -

NEW YORK CITY DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT, CITY OF NEW
YORK,

Respondent.

-----X

INDEX NO. 153699/2020

MOTION DATE 09/23/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9,
11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

ORDER

Upon the foregoing documents, it is

ADJUDGED that the petition is GRANTED; and it is further

ORDERED that within sixty (60) days of service of this

Order with notice of entry, respondents shall comply with the

January 31, 2020, directive of respondent's Record Appeals

Officer in a manner compliant with that directive and Public

Officers Law §89(3); and it is further

ORDERED that the issue of the reasonable attorney's fees
and litigation costs to be awarded to the petitioner under

Public Officers Law §89(4)(c) is severed and referred to a

Special Referee to hear and report and that this issue hereby

referred to the Special Referee Clerk (Room 119, 646-386-3028 or

spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for petitioner shall, within sixty (60) days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules); and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts.

DECISION

The court shall grant the petition.

By letter dated January 31, 2020, respondent's Records Access Appeals Officer granted petitioner's appeal of its FOIL request the gravamen of which was that respondent's delay in providing responsive records constituted a constructive denial of petitioner's application. That determination stated:

I am granting the appeal and requiring the Agency to provide the responsive documents that are currently available within five (5) business days. To the extent

that other responsive documents exist, any further documents are to be released within twenty (20) business days. if there are no further additional responsive documents available, then you will be affirmatively notified by the FOIL unit.

Respondent does not deny that it has not complied with the appeal determination. Nor has respondent provided any rational basis under the statute as to why it should not be compelled to comply with its statutory production obligations. Respondent cites the impact of the pandemic and issues with its computer system for its failures. However, it is nearly three years after petitioner's appeal was decided and there has not been compliance therewith.

Further, by Interim Order dated March 1, 2021, this court held its determination of this matter in abeyance and directed that a log of the documents produced thus far be filed and that the parties confer as to the status of the remaining production upon any needed clarification of the documents sought by the petitioner (NYSCEF Doc. No. 18). Respondent's counsel stated in a subsequent affirmation (NYSCEF Doc. No. 21) that appropriate responses would be provided by the close of the first half of 2021.

As the respondent has not argued against its obligations under the FOIL statute, it is appropriate to order respondent's compliance therewith. Respondent's obligation extends to compliance with the directive in the Appeal Decision that "if

there are no further additional responsive documents available,
then you will be affirmatively notified by the FOIL unit."

Debra A. James

20221118130120DJAMESDB9AE9427DFD41BF930FA1675AB1FE2D

11/18/2022

DATE

DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE