

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Erika M. Edwards, J.S.C.

PART 47

Index Number : 158483/2016
TRIBECA TRUST, INC.
vs
CITY OF NEW YORK
Sequence Number : 001
ARTICLE 78

INDEX NO. 158483/2016

MOTION DATE 11/2/17

MOTION SEQ. NO. 001

The following papers, numbered 1 to , were read on this motion to/for Art. 78 petition

Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s).

Answering Affidavits — Exhibits No(s).

Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion is

Decided as per the attached decision and order.

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

Dated: 11/28/17

[Signature] J.S.C.

HON. ERIKA M. EDWARDS

- 1. CHECK ONE: [X] CASE DISPOSED [] NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: [] GRANTED [X] DENIED [] GRANTED IN PART [] OTHER
3. CHECK IF APPROPRIATE: [] SETTLE ORDER [] SUBMIT ORDER
[] DO NOT POST [] FIDUCIARY APPOINTMENT [] REFERENCE

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

In the Matter of the Application of
TRIBECA TRUST, INC. and LYNN ELLSWORTH,

Index No.: 158483/2016

DECISION and ORDER

Petitioners,

Motion Seq. 001

For Judgment Pursuant to Articles 63 and 78 of
the Civil Practice Law and Rules,

-against-

CITY OF NEW YORK, THE NEW YORK CITY
LANDMARKS PRESERVATION COMMISSION,
and MEENAKSHI SRINIVASAN, Chair,

Respondents.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Notice of Amended Petition, Amended Petition and Affidavits/Affirmations/Memos of Law annexed	1
Answer and Affidavits/Affirmations/Memos of Law annexed	2
Reply to Counterclaims and Affidavits/Affirmations/ Memos of Law annexed	3
Reply and Affidavits/Affirmations/Memos of Law annexed	4

ERIKA M. EDWARDS, J.:

Petitioners TRIBECA TRUST, INC. (“Trust”) and its Chair, LYNN ELLSWORTH (“Ellsworth”), (“Petitioners”) filed this CPLR Article 78 Petition against Respondents CITY OF NEW YORK (“City”), THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION (“Commission”) and MEENAKSHI SRINIVASAN, Chair (“Chair”) (collectively “Respondents”) seeking to annul, vacate and remand the Commission’s determination, dated June 7, 2016, not to grant Petitioner’s request for evaluation (“RFE”) proposing extensions of the borders of three designated historic districts in the Tribeca area of Manhattan.

For the foregoing reasons, this court denies Petitioner’s Petition and dismisses the proceeding with prejudice and without costs.

Petitioners argue in substance that the determination was unilaterally made by the Chair in violation of New York City law and procedure and that it was arbitrary and capricious because the Chair made the determination with unfettered discretion in the absence of established guidelines or lawful procedures for consideration of the extension of historic districts. Petitioners request the court to remand the determination for the Commission to establish transparent guidelines, procedures and criteria for consideration of expansion proposals of historic districts.

Respondents oppose the Petition and argue in substance that the court should deny the Petition and dismiss the proceeding. Respondents assert that the Commission's RFE committee, which includes its Chair and several others, properly reviewed Petitioners' submissions, conducted its own research and observations and recommended that Petitioners' proposal not be advanced for further consideration because much of the area, except for fewer than ten buildings in a small section, was deemed not to merit designation, others were deemed not to be priorities and there is already a high level of existing landmark protection in Tribeca. Respondents further argue that the committee's decision not to advance Petitioner's RFE to the Commission for consideration was well within its discretion and it was rational, proper and made pursuant to the procedures published on the Commission's website. Additionally, the Commission's determination was not arbitrary, capricious, or an abuse of discretion.

In an Article 78 proceeding, the scope of judicial review is limited to whether a governmental agency's determination was made in violation of lawful procedures, whether it was arbitrary or capricious, or whether it was affected by an error of law (*see* CPLR § 7803[3]; *Matter of Pell v Board of Educ.*, 34 NY2d 222, 230 [1974]; *Scherbyn v BOCES*, 77 NY2d 753, 757-758 [1991]). In a special proceeding pursuant to 22 NYCRR §202.57, the scope of judicial review is limited to whether the Division's determination was arbitrary, capricious, or lacking a rational basis (*McFarland v New York State Div. of Human Rights*, 241 AD2d 108 [1st Dept 1998]).

The safeguard against arbitrary administrative action lies in the promulgation of adequate, objective standards for the administrative agency's determination denying a party's application to insure meaningful judicial review of the aggrieved party's denial (*Nicholas v Kahn*, 47 NY2d 24, 33-34 [1979]). While it is not fatal that a decision is left to the discretion of its chair, an administrative agency is forbidden from exercising its discretionary power without first detailing standards or guides to govern the exercise of that discretion (*id.* at 34; *Holmes v New York City Housing Auth.*, 398 F2d 262 [2d Cir 1968]). Where the rules delegate unfettered discretion to the chair with inadequate safeguards against the exercise of arbitrary power or simple unfairness, a determination is arbitrary and capricious as a matter of law (*Nicholas*, 47 NY2d at 34).

Based on the evidence presented, Respondents demonstrated that the committee's recommendation not to advance Petitioners' RFE for further consideration and the Commissions' ultimate denial of Petitioners' RFE was rational and made pursuant to the Commission's lawful procedures. The Commission properly followed its internal procedures and steps required for the designation process to thoroughly consider Petitioners' RFE. Additionally, the court agrees with Respondents that the Landmarks Law and controlling legal authority convey broad discretion on the Commission to designate improvements, structures or areas as landmarks and historic

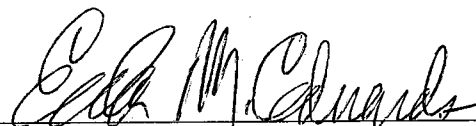
districts and the court defers to the Commission's expertise in these matters. The Landmarks Law also adequately sets forth the requirements and criteria used for the Commission's designation of structures or areas as landmarks or historic districts.

Furthermore, the court finds that Petitioners failed to demonstrate how the Commission's determination was arbitrary, capricious or an abuse of discretion. Also, Petitioners' failed to demonstrate that the determination was made without the promulgation of adequate, objective standards or that it was made at the sole, unfettered discretion of the Chair without standards or guides to act as safeguards against the exercise of arbitrary power. Petitioners also failed to show the need to remand the matter back to the Commission for it to establish additional procedures, guidelines and criteria for the determination of extension applications. Therefore, the court denies the Petition and dismisses this proceeding.

As such, it is hereby

ORDERED and **ADJUDGED** that the court denies Petitioners TRIBECA TRUST, INC.'s and LYNN ELLSWORTH's CPLR Article 78 Petition against Respondents CITY OF NEW YORK, THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION and MEENAKSHI SRINIVASAN, Chair, to annul, vacate and remand the Commission's determination denying Petitioners' request for evaluation, dated June 7, 2016, and the court dismisses the Petition against all Respondents with prejudice and without costs.

Date: November 28, 2017



HON. ERIKA M. EDWARDS