

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

PRESENT: _____ J.S.C.
Justice

PART 9

LANDMARK WEST!

INDEX NO. 116913/04

MOTION DATE _____

MOTION SEQ. NO. 1

MOTION CAL. NO. _____

- v -
MANHATTAN BOROUGH BOARD

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

*is granted,
see Order annexed.*

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

FILED

FEB 23 2005

NEW YORK
CLERK'S OFFICE

Dated: 2/14/05

[Signature]
HAROLD BEELER
J.S.C.

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

At IAS Part 9 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, 71 Thomas Street, New York, New York on the 14th of February, 2005.

PRESENT: HON. HAROLD B. BEELER,
Justice

LANDMARK WEST !, ARLENE SIMON, SUE
MELLENS and SOPHIA deBOER,
Plaintiffs,

-against-

MANHATTAN BOROUGH BOARD,
Defendant.

INDEX NUMBER 116913/04
Motion Sequence 001
DECISION & ORDER

Defendant moves to dismiss the complaint. Plaintiffs oppose.

The Manhattan Borough Board (“the Board”) approved sale of the building at 2 Columbus Circle to the Museum of Arts and Design on August 24, 2004 after a public meeting. This was a necessary step for final disposition of the property pursuant to § 384(b)(4) of the New York City Charter. Previously, the proposed sale has been the subject of public meetings of Community Board 5 and the City Planning Commission and environmental review under the State Environmental Quality Review Act and the Rules of Procedure for City Environmental Quality Review. The environmental review was challenged by the instant plaintiffs in an Article 78 proceeding now on appeal before the Appellate Division, First Department.

Plaintiffs’ complaint requests a declaratory judgment that the Board’s approval of the sale of the building is null and void because “public notice was not given the news media nor were

arrangements made for news media coverage” and “the scheduling of the Hearing during the summer vacation period” violated the Open Meetings Law, NY Pub O § 107.

Defendant argues persuasively that plaintiffs lack standing. Plaintiffs were not aggrieved persons under NY Pub O § 107.¹ While there may have been a technical violation of NY Pub O § 104 in that there is no evidence of specific notification of the news media and conspicuous posting in public locations, plaintiffs were given ample notice of the meeting. Each plaintiff, represented by the same counsel, was a plaintiff in the Article 78 proceeding and, as a result, was notified by the New York City Law Department that the building sale was on the agenda for the Board’s August 24, 2004 meeting. Notice of the meeting appeared in the City Record on August 19, 20, 23 and 24, 2004, the weekdays preceding the meeting, and in an article in the New York Daily News August 18, 2004 in which Landmark West!’s executive director Kate Wood was quoted complaining about the date of the forthcoming meeting.

Ms. Wood was present at the meeting, accompanied by Arlene Simon, Landmark West!’s president, and read a statement opposing the sale. A party who attends a public hearing cannot thereafter claim that notice was procedurally deficient. *Sutton v. Board of Trustees*, 122 AD2d 506, 508 (3d Dep’t 1986) (“since petitioners had actual notice of the scope of UHS’ proposal, they were not aggrieved by any deficiency in a published notice of public hearing”); *Payne v. Taylor*, 178 AD2d 979, 980 (4th Dep’t 1991) (“The Board’s public notice was proper and, in any

¹NY Pub O § 107(1). Any aggrieved person shall have standing to enforce the provisions of this article against a public body by the commencement of a proceeding pursuant to article seventy-eight of the civil practice law and rules, and/or an action for declaratory judgment and injunctive relief. In any such action or proceeding, the court shall have the power, in its discretion, upon good cause shown, to declare any action or part thereof taken in violation of this article void in whole or in part. An unintentional failure to fully comply with the notice provisions required by this article shall not alone be grounds for invalidating any action taken at a meeting of a public body.

event, since petitioners received it and attended the hearing, they should not now be heard to complain about it”).

Those plaintiffs who did not attend the meeting claim only that the timing was inconvenient, that notice was insufficient or that they lacked “meaningful notice.” None assert that they actually lacked notice. Under these circumstances, they cannot stand as aggrieved parties.

The complaint makes one reference to plaintiffs as taxpayers acting under General Municipal Law § 51 to prevent waste of New York City property and assets and plaintiffs argue against dismissal of the complaint on this basis. However, the gravamen of the complaint is for a violation of the Open Meetings Law and the complaint does not identify or allege the purported waste or injury as needed to state a cause of action under GML § 51.

Accordingly, for the reasons stated above, defendant’s motion to dismiss the action is granted.

This constitutes the decision and order of the Court.

DATE: February 14, 2005

ENTER:



HAROLD B. BEELER, J.S.C.

**HAROLD BEELER
J.S.C.**

FILED

FEB 23 2005

COUNTY CLERK'S OFFICE