

To: VIA ECF
HON. SYLVIA O. HINDS-RADIX
Corporation Counsel of the City of New York
Attorney for Respondent
100 Church Street
New York, New York 10007

Supreme Court of the State of New York

Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

In the Matter of the Application of
 NYC FREEDOM TRAIL FOUNDATION INC.,
 - against -
 PUBLIC DESIGN COMMISSION OF THE CITY OF NEW YORK,

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type	Filing Type
<input type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration	<input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceedings <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Labor Law 220 or 220-b <input type="checkbox"/> Public Officers Law § 36 <input type="checkbox"/> Real Property Tax Law § 1278
<input checked="" type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	<input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Executive Law § 298 <input type="checkbox"/> CPLR 5704 Review

Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.

<input checked="" type="checkbox"/> Administrative Review	<input type="checkbox"/> Business Relationships	<input type="checkbox"/> Commercial	<input type="checkbox"/> Contracts
<input type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input type="checkbox"/> Election Law	<input type="checkbox"/> Estate Matters
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Miscellaneous	<input type="checkbox"/> Prisoner Discipline & Parole
<input type="checkbox"/> Real Property (other than foreclosure)	<input type="checkbox"/> Statutory	<input type="checkbox"/> Taxation	<input type="checkbox"/> Torts

Appeal	
Paper Appealed From (Check one only):	If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.
<input type="checkbox"/> Amended Decree <input type="checkbox"/> Amended Judgement <input checked="" type="checkbox"/> Amended Order <input type="checkbox"/> Decision <input type="checkbox"/> Decree	<input type="checkbox"/> Determination <input type="checkbox"/> Finding <input type="checkbox"/> Interlocutory Decree <input type="checkbox"/> Interlocutory Judgment <input type="checkbox"/> Judgment <input checked="" type="checkbox"/> Order <input type="checkbox"/> Order & Judgment <input type="checkbox"/> Partial Decree <input type="checkbox"/> Resettled Decree <input type="checkbox"/> Resettled Judgment <input type="checkbox"/> Resettled Order <input type="checkbox"/> Ruling <input type="checkbox"/> Other (specify):
Court: Supreme Court <input type="checkbox"/>	County: New York <input type="checkbox"/>
Dated: 10/14/2022	Entered: September 13, 2022
Judge (name in full): Lyle E Frank, J.S.C.	Index No.: 150659/2022
Stage: <input type="checkbox"/> Interlocutory <input checked="" type="checkbox"/> Final <input type="checkbox"/> Post-Final	Trial: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury
Prior Unperfected Appeal and Related Case Information	
Are any appeals arising in the same action or proceeding currently pending in the court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.	
Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:	
Original Proceeding	
Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	
Proceeding Transferred Pursuant to CPLR 7804(g)	
Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:
CPLR 5704 Review of Ex Parte Order:	
Court: Choose Court	County: Choose County
Judge (name in full):	Dated:
Description of Appeal, Proceeding or Application and Statement of Issues	
Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.	
Petitioner appeals:	
1. The Decision and Order, dated September 12, 2022; and	
2. The Amended Decision and Order, dated September 12, 2022.	

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Petitioner appeals each and every part of the Decision and Order, as well as the Amended Decision and Order, both dated September 12, 2022, that it adverse to it.

Petitioner moved by Notice of Petition and Petition, and Respondent cross-moved by Motion to Dismiss the Petition.

The Motion Court erroneously determined that the September 20, 2021 resolution, which is the subject of the Article 78 proceeding, is not a final determination, thus the matter is not yet ripe for Article 78 review. It is Petitioner's position that the September 20, 2021 resolution is a "de facto" final determination and that the conduct of the Respondent was violative of City Council Legislation, which creates a de facto violation of due process. As a result of these determinations of the Motion Court, the Motion Court denied Petitioner's Petition and granted Respondent's cross-motion to dismiss the Petition.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	NYC Freedom Trail Foundation Inc.	Petitioner <input checked="" type="checkbox"/>	Appellant <input checked="" type="checkbox"/>
2	Public Design Commission of the City of New York	Respondent <input checked="" type="checkbox"/>	Respondent <input checked="" type="checkbox"/>
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Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Hirschel Law Firm, P.C.

Address: 1225 Franklin Avenue, Suite 325

City: Garden City State: NY Zip: 11530 Telephone No: 516.742.7070

E-mail Address: daniel@hirschelpc.com

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name: HON. SYLVIA O. HINDS-RADIX, Corporation Counsel for City of New York

Address: 100 Church Street

City: New York State: NY Zip: 10007 Telephone No: 212.356.2210

E-mail Address: ikendric@law.nyc.gov

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

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Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

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

----- x
In the Matter of the Application of
NYC FREEDOM TRAIL FOUNDATION INC.,

**NOTICE OF ENTRY
OF DECISION AND ORDER**

Petitioner,

Index No. 150659/2022

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

Hon. Lyle E. Frank, J.S.C.

-against-

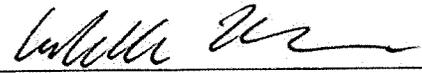
PUBLIC DESIGN COMMISSION OF THE CITY OF
NEW YORK,

Respondent.
----- x

PLEASE TAKE NOTICE, that the annexed are true and complete copies of the
Decision and Order, and Amended Order, that were signed by the Honorable Lyle E. Frank on
September 12, 2022 and duly entered and filed in the Office of the Clerk of the County of New
York on September 13, 2022.

Dated: New York, New York
September 14, 2022

HON. SYLVIA O. HINDS-RADIX
Corporation Counsel of the
City of New York
Attorney for Respondent
100 Church Street
New York, New York 10007
(212) 356-2210

By: 
ISABELLA KENDRICK
Assistant Corporation Counsel

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

PRESENT: HON. LYLE E. FRANK PART 11M
Justice

-----X INDEX NO. 150659/2022

NYC FREEDOM TRAIL FOUNDATION INC. MOTION DATE 03/09/2022

Petitioner, MOTION SEQ. NO. 001

- v -

PUBLIC DESIGN COMMISSION OF THE CITY OF NEW YORK, DECISION + ORDER ON MOTION

Respondent. -----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50

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

Petitioner brings the instant petition pursuant to New York Civil Practice Law and Rules ("CPLR") Article 78 to set aside the determination of the respondent dated September 20, 2021. Specifically, respondents moved agenda item 27861 from the "Public Hearing Agenda" to the "Consent Agenda". Respondent opposes the instant petition, and moves to dismiss the petition, on the ground that the petition is not ripe for review, as no final determination has been made. For the reasons set forth below, the petition is denied, and the motion to dismiss is granted without prejudice for an additional action to be brought upon a final agency determination.

Petitioner's challenge arises out of the respondents September 20, 2021 resolution granting Conceptual Approval for the artwork installation project entitled Questions Worth Having Answers To by Kameelah Janan Rasheed proposed for Abolitionist Place in Downtown Brooklyn.

Petitioners contend that respondents moving an agenda item from a public hearing agenda to a consent agenda is violative of its rules and procedures, thus arbitrary and capricious.

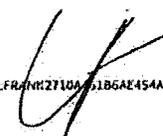
Respondents contend that the resolution complained of, is not a final agency determination as the artwork installation is not yet approved.

In support of this position, respondents annex the affidavit of Kerri Butler, Executive Director of the Public Design Commission of the City of New York ("PDC"), that explains respondents approval process. Respondent has a three-step review and approval process for artwork installation submissions: Conceptual Review, Preliminary Review, and Final Review. See NYSCEF Doc. 29.

CPLR § 7801(1) states that a proceeding pursuant to Article 78 "shall not be used to challenge a determination: (1) which is not final or can be adequately reviewed by appeal to a court or to some other body or officer or where the body or officer making the determination is expressly authorized by statute to rehear the matter upon the Petitioner's application."

Here, the Court agrees with the respondents and finds that its September 20, 2021 resolution is not a final determination, thus the matter is not yet ripe for Article 78 review. A plain reading of the resolution itself provides that the artist will undertake community engagement and that the project must be submitted for preliminary review and approval, establishing that the project is not yet approved and that the ultimate issue raised by petitioner, community involvement, may ultimately be resolved. The Court has reviewed petitioner's remaining contentions and finds them unavailing. Accordingly, it is hereby

ADJUDGED that the petition is dismissed without prejudice.


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LYLE E. FRANK, J.S.C.

9/12/2022

DATE

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
		<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART 11M
Justice

NYC FREEDOM TRAIL FOUNDATION INC.
Plaintiff,
MOTION DATE N/A
MOTION SEQ. NO. 001

PUBLIC DESIGN COMMISSION OF THE CITY OF NEW YORK,
Defendant.
AMENDED DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

The Court seeks to clarify the prior order. The Court erroneously wrote that it found the remaining contentions of the petitioner unavailing. The Court meant to write that due to the decision rendered, that the Court did not reach the remaining contentions of the parties.

9/12/2022
DATE

20220912195643LFRANK354C... LYLE E. FRANK, J.S.C.

CHECK ONE: [X] CASE DISPOSED [] DENIED [] NON-FINAL DISPOSITION [X] GRANTED IN PART [] OTHER
APPLICATION: [] SETTLE ORDER [] SUBMIT ORDER
CHECK IF APPROPRIATE: [] INCLUDES TRANSFER/REASSIGN [] FIDUCIARY APPOINTMENT [] REFERENCE

Index No. 150659/2022

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

In the Matter of the Application of
NYC FREEDOM TRAIL FOUNDATION INC.,

Petitioner,

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

-against-

PUBLIC DESIGN COMMISSION OF THE CITY OF
NEW YORK,

Respondent.

NOTICE OF ENTRY OF DECISION AND ORDER

HON. SYLVIA O. HINDS-RADIX
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