

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

884

CA 14-00252

PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, AND LINDLEY, JJ.

IN THE MATTER OF HORNBLOWER YACHTS, LLC,
PETITIONER-APPELLANT,

V

MEMORANDUM AND ORDER

ROSE HARVEY, COMMISSIONER, NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION, ANDY BEERS, EXECUTIVE DEPUTY COMMISSIONER, NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION, NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION, MAID OF THE MIST CORPORATION, GIL C. QUINIONES, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NEW YORK POWER AUTHORITY AND NEW YORK POWER AUTHORITY, RESPONDENTS-RESPONDENTS.

KING & SPALDING LLP, NEW YORK CITY (EDWARD G. KEHOE OF COUNSEL), AND JOHN P. BARTOLOMEI & ASSOCIATES, NIAGARA FALLS, FOR PETITIONER-APPELLANT.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (OWEN DEMUTH OF COUNSEL), FOR RESPONDENTS-RESPONDENTS ROSE HARVEY, COMMISSIONER, NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION, ANDY BEERS, EXECUTIVE DEPUTY COMMISSIONER, NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION AND NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION.

DAMON MOREY LLP, BUFFALO (BRIAN D. GWITT OF COUNSEL), FOR RESPONDENT-RESPONDENT MAID OF THE MIST CORPORATION.

NEW YORK POWER AUTHORITY, WHITE PLAINS (JAVIER E. BUCOBO OF COUNSEL), FOR RESPONDENTS-RESPONDENTS GIL C. QUINIONES, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NEW YORK POWER AUTHORITY AND NEW YORK POWER AUTHORITY.

Appeal from a judgment of the Supreme Court, Niagara County (Catherine R. Nugent Panepinto, J.), entered September 3, 2013 in a proceeding pursuant to CPLR article 78. The judgment dismissed the petition.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

Memorandum: Petitioner commenced this CPLR article 78 proceeding

seeking, among other things, to compel respondent New York State Office of Parks, Recreation and Historic Preservation (Parks) to conduct competitive, public bidding with respect to a public concession license to operate scenic boat tours and to conduct related services on the Niagara River (hereafter, license). Parks had granted the license to respondent Maid of the Mist Corporation (MOTM) in 2002 for a 40-year term, and this proceeding was commenced when Parks and MOTM thereafter sought to amend the provisions of the license. We agree with petitioner that Supreme Court erred in determining that it lacks standing to seek the relief requested (see *Albert Elia Bldg. Co. v New York State Urban Dev. Corp.*, 54 AD2d 337, 341-342). With respect to the substantive merits, however, we conclude that the court properly dismissed the petition inasmuch as petitioner failed to demonstrate "a 'clear legal right' to the relief requested" (*Matter of Council of City of N.Y. v Bloomberg*, 6 NY3d 380, 388). Contrary to petitioner's contention, we conclude that Parks, Recreation and Historic Preservation Law § 3.09 does not require competitive, public bidding for the work authorized by the amendment of the license. Contrary to petitioner's additional contention, we conclude that the amendment was in furtherance of MOTM's 2002 license and the business conducted thereunder, and the amendment did not "so alter[]" the terms, "the essential identity or [the] main purpose of the [2002 license] that it constitute[d] a new undertaking" rendering the work authorized by the amendment subject to competitive, public bidding (*Albert Elia Bldg. Co.*, 54 AD2d at 343).

Entered: October 3, 2014

Frances E. Cafarell
Clerk of the Court