

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

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TIMOTHY BROWN,

Index No. _____

**NOTICE OF
PETITION**

Petitioner,

-against-

THE NEW YORK CITY LANDMARKS
PRESERVATION COMMISSION,

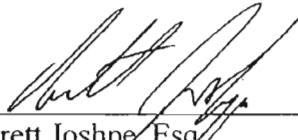
Respondents.
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PLEASE TAKE NOTICE that upon the annexed Verified Petition of Timothy Brown, and sufficient reason being alleged, an application will be made to the Supreme Court of the State of New York at the Courthouse located at 60 Centre Street, Room 130, New York, New York on September 15, 2010, at 9:30 in the morning, or as soon thereafter as counsel may be heard for a judgment pursuant to Article 78 of the Civil Practice Law and Rules:

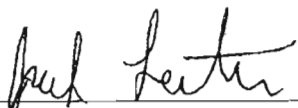
- a. Nullifying and setting aside the determination of Respondent, Landmarks Preservation Commission denying landmark status to 45-47 Park Place in the City, County and State of New York;
- b. Granting such other relief as this Court deems just and proper; and
- c. Awarding Petitioner reasonable attorneys' fees, together with the costs and disbursements of this proceeding.

PLEASE TAKE FURTHER NOTICE, that a Verified Answer and supporting Affidavits, if any, together with the documentary record of all proceedings in this matter shall be served at least five (5) days before the aforesaid date of the hearing.

Dated: New York, New York
August 4, 2010



Brett Joshpe, Esq.
American Center for Law and Justice



Jack L. Lester, Esq.

To: The Landmarks Preservation Commission
One Centre Street
New York, New York

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

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VERIFIED PETITION

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-against-

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Respondents.
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Petitioner, by his attorneys, the AMERICAN CENTER FOR LAW & JUSTICE
and JACK L. LESTER, ESQ. for the Petition herein, allege as follows:

PRELIMINARY STATEMENT

1. This proceeding concerns the fate of 45-47 Park Place in Manhattan (“the building”).

2. The building, which spans two centuries and survived a direct hit on September 11, 2001, faces imminent demolition.

3. The land use process of New York City now threatens to do what the terrorists failed to accomplish and destroy a building that has been under consideration for landmark status for twenty (20) years.

4. For over twenty (20) years, the preservation community as well as the local Manhattan Community Board #1 (the “C.B.”) have continuously advocated and beseeched the New York City Landmarks Commission (the “LPC”) to hold a public hearing to discuss whether the building merits designation as a New York City landmark.

5. LPC calendared the matter for landmark consideration in 1989. LPC steadfastly refused to hold a public hearing regarding this building until July 9, 2010. LPC then quickly held a hearing, closed the record and unanimously voted to deprive the building landmark status inside of only a few weeks. LPC closed the record prior to receiving any notification from the local C.B. of their vote and without weighing or reviewing the considerable record and documentation compiled over twenty (20) years.

6. As set forth below, LPC acted in an arbitrary, capricious and unreasonable manner and allowed the intended use of the building and political considerations to taint the deliberative process. This was accomplished in violation of procedural safeguards set forth in the New York City Charter and Administrative Code of the City of New York.

7. This is a proceeding pursuant to Article 78 of the New York Civil Practice Law and Rules ("CPLR"). Petitioners seek a judgment annulling, vacating and setting aside the determination of Respondent, LPC, as against the weight of the evidence, contrary to administrative procedure and precedent, and violative of statutes, rules and regulations governing the landmark process in the City of New York.

JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to Article 78 of the CPLR to review a final action by the bodies or officers responsible for the land use classification of the building.

9. Venue is proper in New York County pursuant to §506(b) because New York County is where the material events at issue took place and are taking place and where the LPC has their principal office.

PARTIES

10. Petitioner, Timothy Brown, was and is a hero of September 11, 2001. He was a first responder fire fighter who risked his life to save others. He survived the terrorist attack on America and has worked to organize and advocate on behalf of survivors and family members of the deceased. He witnessed first-hand the most brutal attack on American soil since Pearl Harbor and lost nearly 100 of his friends. He observed the impact as well on the building, which suffered a direct hit when the landing gear of one of the planes that destroyed the World Trade Center penetrated the roof of the building. He has worked to achieve landmark status for buildings directly impacted by September 11th.

11. Respondent, the New York City Landmarks Preservation Commission, was established pursuant to Chapter 74, Section 3020 of the New York City Charter.

12. The LPC has the power to establish and regulate landmarks. The Landmarks Preservation Law, codified at Title 25, Chapter 3 of the New York City Administrative Code (“Code”), declares:

as a matter of public policy that the protection, enhancement, perpetuation and use of improvements and landscape features of special character or special historic or aesthetic interest or value is a public necessity and is required in the interest of health, prosperity, safety and welfare of the people. (emphasis added)

Code § 25-301 (b)

13. The Landmarks Law establishes a regulatory scheme which is designed, inter-alia, to

Effect and accomplish protection, enhancement and perpetuation of such improvements . . . and of districts which represent or reflect elements of the city’s cultural, social, economic, political and architectural history . . . safeguard the city’s historic, aesthetic and cultural heritage, as embodies and reflected in such improvements . . . and districts . . . and promote the use of historic districts, Landmarks, interior Landmarks and scenic

Landmarks for the education, pleasure and welfare of the people of the city.
Code § 25-301 (b)

14. Upon receiving landmark designation, a building may not be altered or demolished without LPC's approval pursuant to Code § 25-307 (a).

15. LPC may only approve the alteration or demolition of a landmarked building after holding a public hearing pursuant to Code § 25-308.

FACTUAL BACKGROUND

16. The building was first calendared by LPC in 1989 due to the building's unique architectural features.

17. The building stands in close proximity to the Tribeca Historic District and within approximately two blocks or approximately six hundred (600) feet of the site of the World Trade Center, (also known as Ground Zero).

18. The building is the only building of its kind that links the growth of American free enterprise to the present day events and the aftermath of September 11, 2001, events which stand as a testament to economic, social and political freedom in the face of violence.

19. The building merited landmark status prior to September 11, 2001. The building now stands as a monument to American perseverance and triumph over brutal, murderous and sadistic terror.

20. The building combines three crucial elements deserving of landmark status.

(a) The building has overwhelming historical significance bridging two periods of American history;

(b) The building maintains unique architectural features worthy of landmark status; and

(c) The building may yield discoveries related to the events and aftermath of September 11th that will be lost forever if not preserved.

21. The building is rich with inflections of fine mid-19th century architecture. The building is an intact five (5) story 152-year old Italianate Renaissance palazzo style warehouse. It retains its original colonnade cast by Daniel Badger and Company. The building's upper floors appear much as they did originally.

22. The LPC has recognized the architectural uniqueness of very similar properties in Lower Manhattan. In awarding landmark status to 311 Broadway, the LPC indicated that 311 Broadway is one of the few remaining palazzo-style buildings in Lower Manhattan and therefore merits landmark status.

23. The building's architecture recalls not only mid-19th century New York City, but also 16th century Rome and Florence. The C.B. has noted the building's façade is worthy of preserving. The C.B. urged that the historic façade be incorporated into any future design. The building's symmetrical square projecting lintels and second floor balconets were adopted in the 1840's and 1850's in cities across Britain for Store-and-Loft buildings such as these in London's Farringdon Street North and New Coventry Street (both mid 1840's).

24. The building maintains a continuous cornice flanked by two scrolled brackets surrounded by an antefix. The building's architectural uniqueness is rapidly disappearing. Notwithstanding that the Tribeca Historic District does not encompass the site, its stand alone feature highlights the need to maintain this structure reflecting a

mercantile period in our history rapidly disappearing from our physical landscape. The building's uniqueness in the neighborhood justifies designation as a landmark, according to administrative precedent established by LPC throughout Lower Manhattan.

25. The building was constructed in the mid-19th Century for Paul Spofford and Thomas Tileston. They were pioneers in the shipping industry that inaugurated successful steam navigation into American mercantile and industrial development. They refused to navigate their ships under foreign flag to evade the Confederate blockage of Southern ports during the Civil War. They volunteered their vessels to the Union cause during the Civil War at great financial sacrifice in America's struggle for unity, freedom and racial equality.

26. The building continued to be occupied into the late 19th Century by prestigious commercial enterprises, including occupancy by James P. Smith, a fancy foods importer. From 1911 to 1925 it was the headquarters of Merck & Company. The building had continuous usage, including by Drakenfield & Co., a developer of innovative manufacturing methods for the ceramics industry, and as a Burlington Coat Factory, until 2001, when an airplane's landing gear used in the September 11, 2001 World Trade Center terrorist attack crashed through the building. The building remained vacant and now serves as a prayer center for people of the Muslim faith.

27. The building stands as an iconic symbol to an uninterrupted linkage of the rise of American capitalism with our current quest to preserve our freedom and democracy. The building, therefore, should stand as part of the commemorative and educational experience of our shared political, cultural and historic heritage.

ADMINISTRATIVE PRECEDENT – HISTORIC
AND ARCHITECTURAL SIGNIFICANCE

28. The building's direct, unequivocal and dramatic connection to two eras in American history compels the granting of landmark status. Upon information and belief, there are approximately 24,000 properties that have merited landmark status as of 2008.

29. Upon information and belief, in the period between 2003 and 2008, LPC awarded landmark status to approximately 1,972 buildings.

30. LPC focused administratively during that time span in preserving buildings that recall New York City's 19th Century industrial heritage and architectural features that highlight the Italianate Renaissance palazzo-style.

31. A very similar replica located at 23 and 25 Park Place, calendared by LPC in 1989, was designated in 2007. 23 and 25 Park Place ("23 Park Place") was designed with unified facades, and the elevations feature Italianate details, including a continuous stone cornice. From 1921-1930 the building housed the operations of the Daily News. The features of 23 Park Place mirror in a significant manner features of the building.

32. Buildings located at 122 Chambers Street, 105-107 Chambers Street, 311 Broadway, 319 Broadway, 359 Broadway and 361 Broadway in Manhattan are all individually landmarked buildings sharing the unique architectural style of the building at issue in this proceeding.

33. Upon information and belief, approximately six percent (6%) of all landmarked structures in New York City have been landmarked solely due to historic significance.

34. Upon information and belief, the World Trade Center Site has been determined eligible for inclusion in the National Register of Historic Places.

35. Upon information and belief, the Metropolitan Transit Authority has agreed to preserve the buildings surrounding the World Trade Center Site in its development plans.

36. Upon information and belief, the New York State Registry of Historic Places is reviewing the building.

37. Notwithstanding the fact that September 11th has established the building as an icon for surviving a direct hit from the landing gear of one of the attacking planes, LPC has utterly failed to account for this momentous historic event in a departure from administrative precedent.

38. The Federal Government created the Heritage Emergency National Task Force to help libraries, museums, and archives by providing expert information and to salvage important historical artifacts in the wake of disasters. The agency is co-sponsored by the Federal Emergency Management Agency and Heritage Preservation Inc. The Task Force is composed of more than 30 Federal Agencies and national service organizations. The Task Force has assessed the impact of September 11th on cultural and historic resources in Lower Manhattan.

39. The Task Force is still actively engaging in a complete inventory of historic artifacts buried or lost in the buildings surrounding the World Trade Center. To this day, a complete evaluation of human and material remains of that catastrophic event remains incomplete. The rubble at the World Trade Center continues to yield discoveries.

40. Respondent, LPC's report and evaluation failed to account for or reflect any other governmental agency involvement, if any, investigating artifacts and/or human remain to be discovered in the building. Immediately following September 11th, for example, it was assumed that Calder's 15-ton stabile Bent Propeller had been destroyed. However, pieces of the red steel sculpture have been recovered recently. Similarly, boxes containing artifacts from the African Burial Ground have been unearthed beneath the debris surrounding the World Trade Center.

41. Highlighting the vulnerability of the rich history of buildings surrounding the World Trade Center, the World Monuments Fund added the entire area to a list of the World's most endangered sites. Upon information and belief, LPC has failed to consult with any agency investigating the remains of September 11th in summarily rejecting landmark status for the building.

42. Upon information and belief, the intended use of the building has infected the land use review process and militated against an analytical and deliberative review of the building's significance.

43. Upon information and belief, the staff of LPC recommended that the building be considered for landmark status in 1989.

44. Upon information and belief, members of the local C.B. and concerned citizens have and are continuing to have the building listed on the State and National Registers of Historic Places.

45. Despite, the foregoing and contrary to administrative precedent, LPC refused to consider the views of any relevant and/or involved public agency.

46. Contrary to administrative precedent, the Respondent, LPC, closed the public record a scant one week after hastily announcing a public hearing.

47. Contrary to administrative precedent, the Respondent, LPC, closed the record prior to a vote of the C.B.

48. Respondent, LPC, has failed in any manner to explain the differential treatment accorded this building, as contrasted with buildings of very similar architectural features.

49. Respondent, LPC, has failed to analyze and fully evaluate this building's unique and direct connection to the events of September 11, 2001.

AS AND FOR A FIRST CAUSE OF ACTION

50. Petitioner repeats and realleges paragraphs "1" through "49".

51. It is hornbook administrative law that "where an administrative agency does not follow its own precedents in deciding a case involving the same factors as other cases, the agency must set forth its reasons for the departure, or the reviewing court must reverse the agency decision as arbitrary and capricious as a matter of law." See Citadino v. Bellacosa, 136 Misc. 2d 999 (Sup. Ct. N.Y. Co. 1987) (Dontizin, J.) citing Chas A. Field Delivery Svcs., 66 N.Y. 2d 516 (1985).

52. The denial of landmark status to the building was an arbitrary and capricious abuse of discretion and contrary to decades of administrative precedent.

AS AND FOR A SECOND CAUSE OF ACTION

53. Petitioner repeats and realleges paragraphs "1" through "52".

54. Respondent, LPC is mandated by Code § 25-303 (b) to hold a public hearing in order to designate a landmark site.

55. Public hearings must afford the public the right to participate and be heard and for their testimony and documents to be considered and evaluated.

56. The record of such public hearing must be considered prior to a determination.

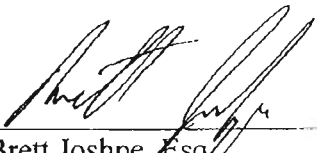
57. Respondent, LPC's failure to review, or consider the public record including the closure of the record prior to a vote of the Community Board was violative of the New York City Charter Chapter 70 § 2800 (d) (2) and an arbitrary and capricious abuse of discretion and violative of Code § 25-313 (b), which mandates the public be accorded a reasonable opportunity to be heard.

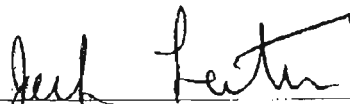
AS AND FOR A THIRD CAUSE OF ACTION

58. Petitioner repeats and realleges paragraphs "1" through "57".

59. Respondent, LPC's failure to evaluate or consider remains of September 11, 2001, or to consult with involved or participating Federal or State Agencies in declining to designate the site a landmark, was an arbitrary and capricious abuse of discretion and violative of law.

WHEREFORE, Petitioner respectfully request judgment against Respondent nullifying and setting aside the determination of Respondent issued on August 3, 2010 which refused to grant landmark status to the building.


Brett Joshpe, Esq.
American Center for Law and Justice


Jack L. Lester, Esq.

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

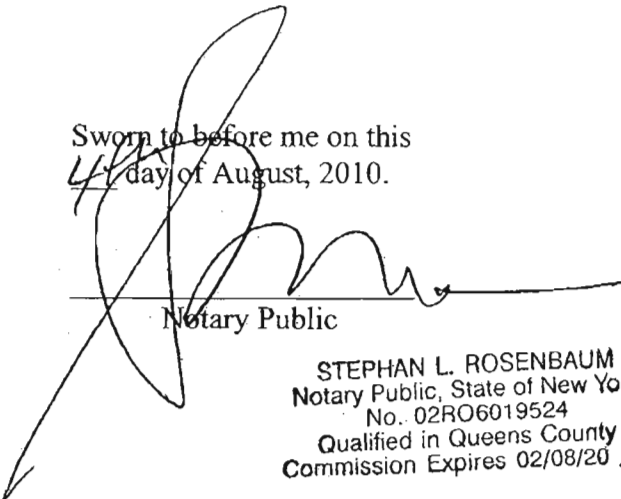
TIMOTHY BROWN, being duly sworn, deposes and says:

1. Deponent is the Petitioner in the above-captioned action.
2. Deponent has read the foregoing Verified Petition and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters, deponent believes them to be true.



TIMOTHY BROWN

Sworn to before me on this
4th day of August, 2010.



Notary Public

STEPHAN L. ROSENBAUM
Notary Public, State of New York
No. 02RO6019524
Qualified in Queens County
Commission Expires 02/08/20 11