

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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In the Matter of a Motion

To Quash a Non-Judicial Subpoena :

VIRGINIA PARKHOUSE, :

Petitioner, :

-against-

: AFFIRMATION

SCOTT M. STRINGER, Borough President of Manhattan; :

ROBERT TIERNEY, Chairman of The New York City :

Landmarks Preservation Commission; ROSE GILL :

HEARN, Commissioner Of Investigation, KIM A. :

BERGER, Deputy Commissioner for Investigations; and :

DEPARTMENT OF INVESTIGATION OF THE CITY :

OF NEW YORK, :

Respondents. :

-----X
STATE OF NEW YORK

COUNTY OF NEW YORK ss:

WHITNEY NORTH SEYMOUR, JR., an attorney admitted to practice in the
courts of the State of New York, affirms under penalty of perjury that:

1. I am one of the attorneys for Virginia Parkhouse, Petitioner in this proceeding.
2. I am fully familiar with all of the facts and circumstances of this proceeding.
3. I make this affirmation in support of Petitioner's motion for an order quashing the subpoena issued to Virginia Parkhouse by the New York City Department of Investigation on May 16, 2007, and served upon her on May 24, 2007, at her place of employment, a copy of which is attached hereto as Exhibit A.
4. On May 25, 2007, I sent a letter on behalf of Ms. Parkhouse to Deputy Commissioner Kim A. Berger, the official who issued the subpoena, requesting that she withdraw the subpoena on the following grounds:

1. The DOI subpoena is unlawful and unauthorized. Ms. Parkhouse is not a City employee and she does not do business with the City. She testified at the public hearing before the Landmarks Preservation Commission as a private citizen in support of landmark designation for the Dakota Stables.

2. The DOI subpoena violates public policy by its chilling effect on free speech on the part of a private citizen exercising her First Amendment rights of petition and free speech under the U.S. Constitution and equivalent provisions of the N.Y. State Constitution.

3. The DOI subpoena constitutes an abuse of power and official harassment of Ms. Parkhouse and other citizens who have appeared before the Landmarks Preservation Commission and may appear before it in the future, and is a plain and flagrant deprivation of her and their civil rights.

A copy of my letter is attached as Exhibit B.

5. On May 31, 2007, Michael B. Siller, Deputy General Counsel of the Department of Investigation sent me a letter denying my request to withdraw the subpoena, a copy of which is attached as Exhibit C.

6. As justification for refusing to withdraw the subpoena, the DOI letter of May 31, 2007, includes these statements:

“DOI’s present investigation concerns the affairs of the New York City Landmarks Preservation Committee (LPC).” * * *

“DOI is investigating an allegation that at a public hearing of the LPC, held on October 17, 2006, Ms. Parkhouse incorrectly claimed to be representing the views of Manhattan Borough President Scott Stringer with respect to certain matters pending at that time before the LPC.” * * *

“The testimony of Ms. Parkhouse is relevant to our investigation of whether in fact she was or was not properly speaking on behalf of an elected official at the October 17, 2006 LPC hearing and what effect any representations she may have made in this regard may have had on the outcome of the proceedings.” * * *

“DOI’s inquiry is not concerned with the nature of Ms. Parkhouse’s views or her right to express those views. Rather, the subpoena is directed towards determining whether or not Ms. Parkhouse was purporting to represent that her views were those of Borough President Stringer when in fact Borough President

Stringer had not in fact authorized her to speak on his behalf. Contrary to your assertion, DOI's inquiry in fact is consistent with the values and interests protected by the First Amendment: the public, along with those public servants who are acting in the public interest, such as the members of the LPC, has a right to know the accurate views of its elected officials with respect to matters of public concern and no individual has the right to attempt to add credence to her own particular viewpoint by falsely representing that her view is in fact the view of an elected official. DOI's inquiry into whether the integrity of public proceedings may have been subverted is a matter squarely within the public interest."

7. As will be seen from the foregoing, the question the DOI claims to be investigating is what representations Ms. Parkhouse made to the Landmark Preservation Commission at its public hearing on October 17 concerning the views of Borough President Stringer on the subject of the hearing – the designation of the Dakota Stables and another building as City landmarks.

8. There was absolutely no necessity to frighten and harass Ms. Parkhouse, a citizen voluntarily appearing at a public hearing, by sending a process server to serve her with an official subpoena at her place of employment, by requiring her to lose a day's work to be examined under oath before an official agency, and particularly by an agency with authority to refer matters for criminal prosecution in its discretion.

9. The proper way to determine whether Ms. Parkhouse "incorrectly claimed to be representing the views of Manhattan Borough President Scott Stringer," is to examine the taped transcript of the public hearing before the Landmarks Preservation Commission where the witness quoted "the views" of the Borough President, and then to request a copy of the letter from the Borough President from which Ms. Parkhouse read excerpts and compare the letter with the transcript.

10. For the Court's convenience, a typed copy of the relevant portion of the Landmark Preservation hearing for October 17, 2006, is attached as Exhibit D, and a

copy of Borough President Stringer's letter dated August 14, 2006, from which the witness read excerpts is attached as Exhibit E.

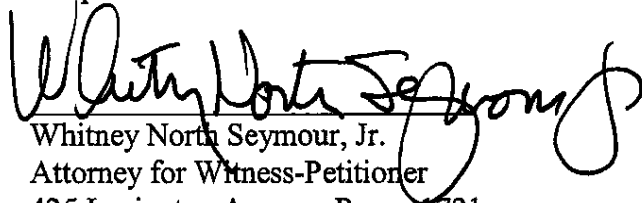
11. It will be immediately seen from these records that there is no conceivable ground for claiming that the witness was "falsely representing that her view was in fact the view of an elected official."

12. The DOI subpoena constitutes a plain abuse of power by a public agency and by the official who initiated this investigation. It appears to be a retaliatory action triggered by some undisclosed animus and malice, calculated to deprive this witness – and other citizens -- of their constitutional rights to quote statements made by public officials as an exercise of free speech.

13. Petitioner's motion to quash should be granted with appropriate caution to the official involved.

14. No prior application has been made to this or any other court for the relief herein requested.

WHEREFORE Petitioner requests that the annexed Order to Show Cause be signed; that the Court set this matter down for a hearing; and that following said hearing the Court issue an order quashing the subject subpoena.



Whitney North Seymour, Jr.
Attorney for Witness-Petitioner
425 Lexington Avenue, Room 1721
New York, NY 10017
Phone (212) 455-7640
Fax (212) 455-2502
wseymour@stblaw.com

Dated: July 11, 2007

Subpoena



CITY OF NEW YORK
DEPARTMENT OF INVESTIGATION
80 MAIDEN LANE
NEW YORK, N.Y. 10038

To: Virginia Parkhouse

One Chase Manhattan Plaza, 35th Floor
New York, NY 10005

Greetings

You are hereby commanded to appear and attend before the Office of the Department of Investigation of the City of New York at 80 Maiden Lane, Borough of Manhattan, City of New York, on the 5th day of June, 2007, at 10:00 o'clock in the forenoon and at any recessed or adjourned date thereof, to testify under oath in the matter of an investigation relating to the affairs, functions, accounts, methods, efficiency or personnel of an agency of the City of New York, now being conducted before the Commissioner of Investigation pursuant to Chapter 34 of the Charter of the City of New York, AND, FOR FAILURE TO APPEAR, an application will be made to the Supreme Court of the State of New York to compel compliance, and to impose costs, and for the issuance of a warrant directing a Sheriff to bring you before the undersigned; and you may also be subject to such other penalties and proceedings as are prescribed by law.

Witness my hand, this 16th day of May, 2007

Kim A. Berger
Deputy Commissioner for Investigations, NYC Department of Investigation

#07-586

Any inquiry concerning this subpoena should be made of:

Confidential Investigator Zeola Fox
New York City Department of Investigation
80 Maiden Lane, 19th Floor
New York, New NY 10038
(212) 825-3498

EXHIBIT A

endorsement pursuant to the Civil Practice Law and Rules, Sec. 2305 (a): The Witness is bound by this Subpoena to appear at the Hearing or Examination and at any recessed or adjourned date thereof.

WHITNEY NORTH SEYMOUR, JR.

425 LEXINGTON AVENUE
ROOM 1721
NEW YORK, NY 10017-3954

TEL: (212) 455-7640
FAX: (212) 455-7721
E-MAIL: WSeymour@STBlaw.com

May 25, 2007

Hon. Kim A. Berger
Deputy Commissioner
Department of Investigation
80 Maiden Lane
New York, NY 10038

Re: DOI Subpoena No. 07-586

Dear Commissioner Berger:

I represent Virginia Parkhouse who has been served with a subpoena to appear and testify before the Department of Investigation on June 5, 2007 at 10:00 AM.

A copy of her subpoena is enclosed. Your Investigator has informed Ms. Parkhouse that she is being called in an investigation concerning her testimony at a public hearing before the NYC Landmarks Preservation Commission on October 17, 2007.

Pursuant to CPLR §3204, I hereby request that you withdraw the subpoena on the following grounds:

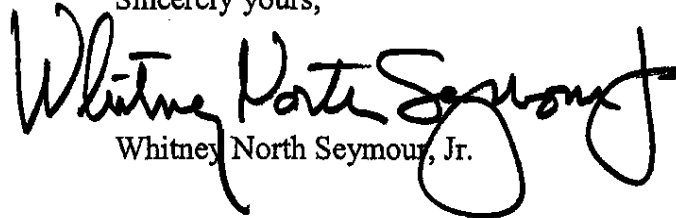
1. The DOI subpoena is unlawful and unauthorized. Ms. Parkhouse is not a City employee and she does not do business with the City. She testified at the public hearing before the Landmarks Preservation Commission as a private citizen in support of landmark designation for the Dakota Stables.
2. The DOI subpoena violates public policy by its chilling effect on free speech on the part of a private citizen exercising her First Amendment rights of petition and free speech under the U.S. Constitution and equivalent provisions of the N.Y. State Constitution.
3. The DOI subpoena constitutes an abuse of power and official harassment of Ms. Parkhouse and other citizens who have appeared before the Landmarks Preservation Commission and may appear before it in the future, and is a plain and flagrant deprivation of her and their civil rights.

EXHIBIT B

If you decide not to withdraw the subpoena, I request that you adjourn the subpoena return date to July 17, 2007 or later to allow me time to prepare and submit a motion to quash the subpoena on the foregoing grounds to the Supreme Court of the State of New York. I am leaving the country on a family vacation trip on June 5 and will not return until June 27.

Thank you for your cooperation.

Sincerely yours,

A handwritten signature in black ink that reads "Whitney North Seymour, Jr." in a cursive style. The signature is written over the printed name below it.

Whitney North Seymour, Jr.

Enclosure

Subpoena



CITY OF NEW YORK
DEPARTMENT OF INVESTIGATION
80 MAIDEN LANE
NEW YORK, N.Y. 10038

To: Virginia Parkhouse

One Chase Manhattan Plaza, 35th Floor
New York, NY 10005

Greetings

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Witness my hand, this *16th* day of *May*, 2007

Kim A. Berger
Deputy Commissioner for Investigations, NYC Department of Investigation

#07-586

Any inquiry concerning this subpoena should be made of:

Confidential Investigator Zeola Fox
New York City Department of Investigation
80 Maiden Lane, 19th Floor
New York, New NY 10038
(212) 825-3498

sement pursuant to the Civil Practice Law and Rules, Sec. 2305 (a): The Witness is bound by this Subpoena to appear at the Hearing or Examination and at any recessed or adjourned date thereof.



The City of New York
Department of Investigation

ROSE GILL HEARN
COMMISSIONER

80 MAIDEN LANE
NEW YORK, NY 10038
212-825-5900

May 31, 2007

BY FAX AND MAIL

Whitney North Seymour, Jr., Esq.
425 Lexington Avenue, Room 1721
New York, New York 10017-3954

Re: **DOI Subpoena 07-56 (Virginia Parkhouse)**

Dear Mr. Seymour:

I write in response to your letter, addressed to New York City Department of Investigation (DOI) Deputy Commissioner Kim A. Berger, dated May 25, 2007, concerning the referenced subpoena. Your request that DOI withdraw the subpoena issued to Ms. Parkhouse is denied. For the reasons discussed below, the grounds cited in your letter for why DOI should withdraw the subpoena are not persuasive.

A. DOI's Subpoena Is Valid, Proper and Enforceable

A government agency seeking to assert its subpoena power in conjunction with an investigation must show: (1) that it has authority to engage in that investigation and to issue the subpoena; (2) that there is a basis to warrant inquisitorial action; and (3) that the information sought is relevant. A'Hearn v. Committee on Unlawful Practice, 23 N.Y.2d 916, 918, 298 N.Y.S.2d 315, cert. denied, 395 U.S. 959 (1969). Those criteria are met here:

(1) DOI's authority to conduct an investigation and to issue subpoenas is derived from state law, Chapter 34 of the City Charter, and from several Mayoral Executive Orders. Specifically, under Article 2-A of the General City Law, the City of New York is empowered, *inter alia*, "[t]o investigate and inquire into all matters of concern to the city or its inhabitants." N.Y. General City Law, § 20(21). This authority has been delegated to DOI pursuant to the City Charter. In particular, § 803(b) of the City Charter authorizes the Commissioner of Investigation, as the head of DOI, "to make any study or investigation which in his [or her] opinion may be in the best interests of the city, including but not limited to investigations of the affairs, functions, accounts, methods, personnel or efficiency of any agency." DOI's present investigation concerns the affairs of the New York City Landmarks Preservation Committee (LPC).

EXHIBIT C

Contrary to your assertion, DOI's jurisdiction is not limited to individuals employed by or doing business with the City. Rather, its investigative authority extends to "any person, even though unconnected with city employment, when there are grounds present to sustain a belief that such person has information relative to the subject matter of the investigation." Weintraub v. Fraiman, 30 A.D. 2d 784, 784-785, 291 N.Y.S.2d 438, 439 (1st Dep't 1968), aff'd, 24 N.Y.2d 918, 301 N.Y.S.2d 983 (1969)(emphasis added). See also C.S.A. Contracting Corp. v. Stancik, 259 A.D.2d 318, 686 N.Y.S.2d 424 (1st Dep't 1999)(subpoena power of Special Commissioner of Investigation for the Board of Education, a branch of DOI, extends to subcontractors not in contractual privity with the Board of Education). DOI's authority to subpoena witnesses is set forth in § 805(a) of the City Charter, which provides that "[f]or the purpose of ascertaining facts in connection with any study or investigation authorized by this chapter, the commissioner [of DOI] and each deputy shall have full power to compel the attendance of witnesses, to administer oaths and to examine such persons as he [or she] may deem necessary." Id. Thus, it is clear that Ms. Parkhouse, who is believed to have information that may be relevant to a DOI investigation, is subject to DOI's subpoena power, even though she is not a City employee and does not do business with the City.

(2) DOI is investigating an allegation that at a public hearing of the LPC, held on October 17, 2007, Ms. Parkhouse incorrectly claimed to be representing the views of Manhattan Borough President Scott Stringer with respect to certain matters pending at that time before the LPC. I trust you will agree that such an allegation is a matter of "concern to the city or its inhabitants," and provides a basis for official inquiry.

(3) The testimony of Ms. Parkhouse is relevant to our investigation of whether in fact she was or was not properly speaking on behalf of an elected official at the October 17, 2006 LPC hearing and what effect any representations she may have made in this regard may have had on the outcome of the proceedings.

B. The Subpoena Does Not Violate Public Policy; in Fact, it Furthers It

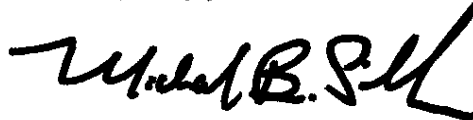
DOI's subpoena does not chill Ms. Parkhouse's or any else's First Amendment rights. DOI's inquiry is not concerned with the nature of Ms. Parkhouse's views or her right to express those views. Rather, the subpoena is directed towards determining whether or not Ms. Parkhouse was purporting to represent that her views were the views of Borough President Stringer when in fact Borough President Stringer had not in fact authorized her to speak on his behalf. Contrary to your assertion, DOI's inquiry in fact is consistent with the values and interests protected by the First Amendment: the public, along with those public servants who are acting in the public interest, such as the members of the LPC, has a right to know the accurate views of its elected officials with respect to matters of public concern and no individual has the right to attempt to add credence to her own particular viewpoint by falsely representing that her view is in fact the view of an elected official. DOI's inquiry into whether the integrity of public proceedings may have been subverted is a matter squarely within the public interest.

C. **The Subpoena Does Not Constitute an "Abuse of Power" or "Official Harassment" of Anyone**

I will not belabor my response to your final point. You purport only to represent Ms. Parkhouse, not "other citizens" who have appeared or may appear before the LPC with respect to matters that are not the subject of DOI's present inquiry. As the discussion above demonstrates, our inquiry in no way violates your client's – or anyone else's to be sure – civil rights. The allegation against Ms. Parkhouse is, at this point, simply that – an allegation – which DOI is compelled to investigate so that, if appropriate, the public record can be set straight.

DOI will consent to a reasonable adjournment of the subpoena's return date as it appears that you will not be available on June 5 when the subpoena currently is returnable. Please contact Investigator Zeola Fox at 212-825-3498 to discuss a mutually agreeable return date. If you intend to move to quash the subpoena, we will cross-move to compel your client's attendance.

Very truly yours,



Michael B. Siller
Deputy General Counsel

c: Walter M. Arsenault, First Deputy Commissioner
Kim A. Berger, Deputy Commissioner
Marjorie B. Landa, General Counsel
Zeola Fox, Confidential Investigator

T: Virginia Parkhouse

VP: Hello. I'm Virginia Parkhouse, and I'm volunteering today to read the statement of Borough President Scott Stringer.

Dear Chairman Tierney:

I am writing regarding two historic stables, the Mason/Dakota Stables at 348-354 Amsterdam Avenue and the New York Cab Company Stables at 201 West 75th Street. Both are historic figures of Manhattan's Upper West Side and should be preserved.

The Dakota Stables, an automobile garage since 1915, was dubbed a "stylistic gem" by Christopher Gray in the New York Times. Built by Bradford Gilbert, this building has a magnificent façade, built lively by two colors of bricks. Built in the style of Romanesque Revival, it recalls several elements of Gilbert's Tower Building. The Tower Building was demolished in 1914, but is considered to be one of the more important buildings in the history of New York City architecture. While also possessing architectural significance, commercial stables are important to the understanding of urban at the turn of the century. Preserving these stables will ensure that no further demolition or development interferes with the vibrant history alive within them.

I ask that you immediately protect the important part of history of the Upper West Side and landmark these buildings.

Thank you.

EXHIBIT D



THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

SCOTT M. STRINGER
BOROUGH PRESIDENT

August 14, 2006

Robert B. Tierney, Chair
Landmarks Preservation Commission
Municipal Building
One Centre Street, 9th Floor
New York, NY 10007

Re: 348-354 Amsterdam Avenue
201 W. 75th Street

Dear Chair Tierney:

I am writing regarding two historic stable buildings, the Mason/Dakota Stables at 348-354 Amsterdam Avenue, and the New York Cab Company Stables at 201 W. 75th Street. Both are historic fixtures of Manhattan's Upper West Side and should be preserved. I strongly urge you to calendar these two important buildings for public hearing by the Landmarks Preservation Commission.

The Dakota Stables, an automobile garage since 1915, was dubbed a "stylistic gem" by Christopher Gray in the New York Times. Built by Bradford Gilbert, this building has a magnificent façade, made lively by two colors of brick. Built in the style of Romanesque Revival, it recalls several elements of Gilbert's Tower Building. The Tower Building was demolished in 1914, but is considered to be one of the more important buildings in the history of New York City architecture. While also possessing architectural significance, commercial stables are important to the understanding of urban life at the turn of the century. Preserving these stables will ensure that no demolition or development interferes with the vibrant history alive within them.

I ask that you move to calendar these two buildings and protect an important part of the history of the development of the Upper West Side.

Sincerely,

Scott M. Stringer
Manhattan Borough President

cc: Landmarks West
Community Board 7

MUNICIPAL BUILDING ♦ 1 CENTRE STREET ♦ NEW YORK, NY 10007
PHONE (212) 669-8300 FAX (212) 669-4305
www.manhattanbp.org bp@manhattanbp.org

EXHIBIT E