STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted]

PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO HM110017RT

RENT ADMINISTRATOR'S DOCKET NO GN110049OM

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal against an order issued on December 26, 2018 by the Rent Administrator concerning the housing accommodations known as 98-23 Horace Harding Expressway, Corona, NY which granted the owner's application for a rent increase based on the installation of a major capital improvement (MCIs), to wit building façade and supply air conditioning grills

The Commissioner having reviewed the Petition for Administrative Review (PAR") and any and all supporting documentation, any and all statements made by the affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations find that the petitioner's appeal does not have merit and should be denied

The petitioner of apartment 10-E requests a reversal on appeal and claims in substance that the owner did not install a new air conditioning grill ("AC grill") at her apartment, that the owner did not install the new AC grills at the subject premises, and that the owner has not installed new AC grills at [redacted], [redacted] and at [redacted], [redacted], and provided photos

The petitioner's claim that the owner did not perform the installation of AC grills at [redacted], [redacted] and [redacted] are issues not related to the MCI order under appeal as the MCI order pertains to only 98-23 Horace Harding Expressway Corona, NY

Further, regarding the remaining claims that the owner did not perform the installation at the subject premises and the petitioner's apartment, a review of the record including invoices and checks shows that air conditioner grills were installed at the subject premises The photograph submissions made by the petitioner are not dispositive that AC grills were not installed in her apartment Additionally, in response to the tenant's PAR, the owner provided photographs to refute the petitioner's objections and to show that all AC grills were replaced

Pursuant to Section 26 511 1 (a)(8) of the Rent Stabilization Law and to Section 26-405 1 (a)(8) of the City Rent and Rehabilitation Law, the collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the

rent as established or set in future years Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent Notwithstanding any other provision of the laws, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be denied and that the Rent Administrator's order be affirmed

ISSUED OCT 1 2021 .

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza 92 31 Union Hall Street
Jamaica NY 11433
Web Site www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order This 60-day deadline for appeal may be extended by executive orders at https //governor.ny.gov/executiveorders No additional time can or will be given In preparing your papers please cite the Administrative Review Docket Number which appears on the front page of the attached order If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR) With respect to DHCR your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York NY 10022

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There is no other method of appeal

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JAMAICA, NEW YORK 11433

IN THE MATTER OF THE ADMINISTRATIVE APPEALS OF

RURADAN CORP, [redacted] &
[redacted]

PETITIONERS

ADMINISTRATIVE REVIEW
DOCKET NOS FV410017RT &
FV410003RO

RENT ADMINISTRATOR'S
DOCKET NO ET410112OM

ORDER AND OPINION DENYING PETITIONS FOR ADMINISTRATIVE REVIEW

The above named petitioners timely filed Petitions for Administrative Review (PARs) against an order issued by the Rent Administrator on September 5, 2017 concerning the housing accommodations known as 8 East 48th Street, New York, NY, wherein the Administrator granted the owner's application for a rent increase based on the installation of major capital improvements (MCIs), to wit exterior restoration, architectural services, asbestos air monitoring and testing

The Commissioner deems it appropriate to consolidate these petitions for a uniform disposition since they pertain to the same order and involve common issues of law and fact The Commissioner having reviewed the petitioners' appeals and any and all supporting documentation, any and all statements made by the affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioners' appeals do not have merit and should be denied

The petitioner-owner requests a modification of the order and states, in substance, that its MCI rent increase application mistakenly listed apartment [redacted] as deregulated when it is actually a rent stabilized unit and that the Rent Administrator's order should be modified to include apartment [redacted]

It is the policy of the Division that the owner is responsible for listing all affected apartments and corresponding room counts in the MCI application Any revised apartment list and apartment room count presented by the owner is served on each affected tenant who has the opportunity to respond during the MCI proceeding The record shows that the owner failed to submit a revised apartment list and room count on a revised Supplement 2 form with apartment [redacted] during the pendency of the MCI The owner is held to the apartment and room count information stated in the MCI application and may not raise the issue of an error on administrative appeal

The petitioner-tenants request a reversal and claim in substance, that the results of an inspection on September 29, 2017 pertaining to the denial of rent restoration, Docket No FR410019OR for service reduction order, Docket No EV410112S should be considered on appeal, that the finding of water leaks from said inspection is proof of an unworkmanlike installation, that the owner has not completed the work on the building façade above apartment [redacted], that there are multiple Department of Housing and Preservation (HPD) violations for leaks originating from the building exterior into apartment [redacted], and that the owner has multiple Department of Buildings (DOB) and Environmental Control Board (ECB) violations regarding the building exterior The

petitioner tenants also submit NYC Housing Court Order Docket No HP6132/2013 dated March 12, 2014, three reports from [redacted] ("[redacted]") dated October 9, 2016, December 5, 2016 and December 21 2017 a report from [redacted] ([redacted] Report") dated August 20, 2013, and photographs of the building exterior and interior of apartment [redacted]

The owner responds by counsel and states, in substance, that the evidence submitted by the petitioner tenants on PAR was not submitted below and that three of the documents are dated before exterior work began and the petitioners failed to rebut the owner's June 7, 2017 response to their claims below

As to the petitioner tenants' reports and documents submitted on PAR, a review of record shows that the petitioner tenants did not submit the Housing Court Order HP6132/2013, the [redacted] Reports dated September 21, 2016 and December 5, 2016 [redacted] Report, dated August 20, 2013 and photographs while the MCI application was pending These documents dated the latest December 2016 could have been submitted to the Rent Administrator but were not and therefore are not part of the record below The Commissioner is constrained to foreclose consideration of these submissions on appeal With regards to the submission of the [redacted] Report dated December 21, 2017, this report which was completed after the Rent Administrator's order was issued is also not part of the record below and will not be considered in this appeal Furthermore, said report references lab reports from [redacted] which are not included the December 21 2017 [redacted] Report

A review of the record below shows that the petitioner-tenants submitted their objections on March 9, 2017 and claimed, in substance, that water was still leaking into the walls of apartment [redacted], that the work was incomplete and done in an unworkmanlike manner, and that the owner had accrued multiple HPD, DOB and ECB violations The owner responded to the tenants objections on June 14, 2017 stating, in substance, that the exterior work was performed in a workmanlike manner and submitted with photographs demonstrating that the cracks in the building's exterior walls had been repaired The owner s response also included a 2013 inspection report conducted by NYC Department of Buildings which stated, in substance, that the leaks into the petitioner-tenants' apartment were not caused by the conditions of the subject building but by the adjacent building which shared a wall The owner stated that the adjacent building was demolished as of June 2017 The owner also stated, in substance, that a bathtub/shower enclosure was installed to abate the source of any possible leaks originating from the apartment above [redacted] The record also shows that the Rent Administrator served a copy of the owner's response to the petitioners on June 16, 2017 however, the petitioner tenants did not submit a rebuttal to the owner's response while the MCI application was pending Therefore the Rent Administrator considered the petitioner tenants' claims and the owner s response and properly based the determination of the MCI rent increase order on the information in the record

The petitioner tenants' claim that the Rent Administrator's findings in Docket No FR410019OR should be considered as proof of exterior leaks on appeal is without merit The Commissioner notes that the petitioner-tenants' rent was reduced under a service reduction order, Docket No EV410112S, issued on May 31, 2017 finding that services were not being maintained for Kitchen Wall(s), kitchen leak/stains, bathroom leaks, stains, bathroom plumbing/faucet and intercom after the owner did not answer the complaint Under Docket No FR410019OR, issued on October 19, 2017, the owner's application to restore the rent was denied after the Rent Administrator determined the services had not been restored The owner refiled under Docket No GN410006OR and the restoration application was granted, on June 28, 2018 after the tenants did not provide access for the Agency inspection

A review of the record in the above mentioned reduction of services proceeding including the inspection, does not demonstrate that the leaks were from the exterior restoration work The source of the leaks in kitchen and

bathroom were not stated in the inspection report Additionally, the non responses by both the owner and tenants in the service proceeding also make the evidence inconclusive

With regards to the claim that there are HPD violations in apartment [redacted] due to leaks originating from the building exterior a review of the list of HPD violations submitted below and those submitted with their PAR refer to plaster repairs and painting and do not indicate active leaks originating from the exterior of the subject premises

Lastly, the claims relating to DOB and ECB violations at the subject premises are without merit In the proceeding below, the petitioner tenants raised DOB Violation No FEU05WW02 and ECB Violation No 35013803Y and raised them once again on PAR A review of the DOB information for Violation No FEU05WW02 indicates that the violation was issued on May 17, 2013 before the work began and was dismissed Additionally, ECB Violation No 35013803Y was issued on June 28, 2013, also before the work began and DOB records indicates the violation has been resolved

This order and opinion does not prejudice the tenants right to file a service reduction complaint with the Division if the owner is not maintaining services if the facts so warrant

Pursuant to Section 26-511 1 (a)(8) of the Rent Stabilization Law and to Section 26-405 1 (a)(8) of the City Rent and Rehabilitation Law, the collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent Notwithstanding any other provision of the laws, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that the owner's petition is denied the tenants' petition is denied and that the Rent Administrator's order be affirmed

ISSUED OCT 15 2021

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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Note: During the period of the current Covid-19 emergency, as a courtesy if the Article 78 proceeding is commenced by efiling pursuant to the Court Rules service may be effectuated as limited as follows: by forwarding the court's email indicating the assignment of the Index Number and the documents received by the court i.e. Notice of Petition, Petition and other efiled documents to DHCR eglMail@nyshcr.org. Upon receipt of the complete filings, the receipt of such documents will be acknowledged by email. Only after such acknowledgement of receipt of such documents will the service by email be deemed good service on New York State Division of Housing and Community Renewal (DHCR). DHCR is not the agent for service for any other entity of the State of New York or any third party. In addition, the Attorney General must be served at 28 Liberty Street, 18th Floor, New York, NY 10005. Since Article 78 proceedings take place in the Supreme Court, it is advisable that you consult legal counsel.

There is no other method of appeal.

STATE OF NEW YORK
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JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted], [redacted], [redacted]

PETITIONERS

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ADMINISTRATIVE REVIEW
DOCKET NO GQ410019RT

RENT ADMINISTRATOR'S
DOCKET NO CU410007RP
(REMAND OF WH410110M)

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioners timely filed an administrative appeal against an order issued on April 6, 2018 by the Rent Administrator concerning the housing accommodations known as 22 Riverside Drive, New York, New York which granted the owner s application for a rent increase based on the installation of major capital improvements (MCIs), to wit intercoms elevator upgrade (converting from manual operation to automatic operation), new windows The MCIs had initially been denied under Docket WH410110OM based on an outstanding DHCR order granting a rent reduction due to a decrease in building-wide services (Docket VG430013B) The owner appealed the denial, claiming that an order restoring rent pertaining to Docket VG430013B had been issued under Docket AX430047OR Pursuant to a court order, the proceeding was remanded and reopened under Docket CU410007RP for consideration of the MCI application on the merits Upon review, the application was granted in part, and the instant appeal then ensued

The petitioners claim, in substance that the MCI for the new windows should be denied because not all windows in the building have been replaced that rent regulated tenants did not initially receive the same quality of intercoms as the non-regulated condo owners, that the elevator conversion has been done only to reduce building operating costs and is not an improvement which benefits the tenants The Commissioner having reviewed the petitioners' appeal and any and all supporting documentation, any and all statements made by affected parties the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioners' appeal does not have merit and should be denied

The Rent Administrator properly determined the qualifying scope of the improvements and the amount of the approved costs and the rent increase The petitioners' claim that not all windows have been replaced raises no basis for revoking the windows MCI under the facts of this case Pursuant to the Rent Stabilization Code, an installation may qualify as an MCI provided that all "similar components" of the building have been replaced In light of this Code provision, it has been long-standing DHCR policy that an MCI may be granted for new windows even though some windows which are distinctly dissimilar, such as lot-line windows, have not be replaced, provided all other windows which constitute a similar component have been newly installed In the

proceeding at hand the owner has stated that all of the windows which had not been replaced during the initial scope of work described in the application were either lot line windows or landmark windows comprising of stained glass The owner's statement has not been refuted by the petitioners The evidence thus supports a finding that the windows which had not been replaced at the time the application was filed were distinctly dissimilar from those which had been replaced in that the unreplaced windows had to meet the more stringent requirements of either lot line windows or landmark windows and thus constituted a similar component in and of themselves In view of the evidence in the record, the Commissioner finds no error by the Administrator in granting the MCI for the windows installation at issue in this proceeding

The petitioners' claim that the rent regulated tenants did not at first receive the same quality of intercoms as non regulated residents also raises no basis for a modification of the Administrator's order This claim as stated, acknowledges that the same video/audio intercoms which were allegedly installed in other apartment have now been installed in the rent regulated units There is thus no longer a basis to the claim that the rent regulated tenants have not received the same benefit as the non regulated residents The petitioners' further claim, that the elevator conversion was done only to save operating costs and is not an improvement benefiting the tenants, is without merit Pursuant to the Code, an elevator upgrade which includes the installation of new selectors and controllers, as was performed in the proceeding at hand, qualifies as an MCI for which a rent increase may be granted Any reduction in staffing costs which may have resulted from the elevator conversion is not a relevant factor in determining MCI eligibility It is further noted that the decrease in staffing level resulting from the elevator conversion has been addressed under Docket AU430004RP, in which DHCR determined that the owner has provided an adequate substitution of services for the decrease in staff

Pursuant to Section 26-511 1 (a)(8) of the Rent Stabilization Law and to Section 26-405 1 (a)(8) of the City Rent and Rehabilitation Law, the collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent Notwithstanding any other provision of the laws, for any renewal lease commencing on or after June 14 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be denied and that the Rent Administrator's order be affirmed

ISSUED

OCT 21 2021

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted] TENANT REP

PETITIONER

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ADMINISTRATIVE REVIEW DOCKET NO HQ210031RT

RENT ADMINISTRATOR'S DOCKET NO EV210065OM

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-named petitioner timely filed an administrative appeal against an order issued on April 25, 2019 by the Rent Administrator concerning the housing accommodations known as 201 Eastern Parkway, Brooklyn, New York which granted the owner's application for a rent increase based on the installation of a major capital improvements (MCIs), to wit new roof, pointing and waterproofing, hallway windows, elevator upgrading

The petitioner, the tenant representative for various tenants, filed a petition for administrative appeal (PAR) claiming, in substance, that the objections to the MCIs raised by the tenants in response to the application were not addressed by the Administrator, that the application was incomplete and contained errors, that the required permits had not been obtained for the exterior work, that the pointing and waterproofing was not done building wide, that applicable sign offs were not submitted for the elevator work and scaffolding, that there were ECB violations on record relating to the MCI work, and that the unit count and commercial square footage as stated in the application do not conform to the building's Certificate of Occupancy The Commissioner having reviewed the petitioner's appeal and any and all supporting documentation, any and all statements made by affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioner s appeal does not have merit and should be denied

The Rent Administrator properly determined the qualifying scope of the improvement and the amount of the approved costs and the rent increase The record shows that the Administrator gave due consideration to the objections raised by the tenants in response to the application and properly determined that the objections so raised did not present grounds for denying the MCIs It is not necessary that the order granting the MCIs make reference to every objection raised by the tenants Contrary to the petitioner's claims the record contains all required documentation substantiating the MCIs, as approved, including evidence of required permits for the scaffolding and the elevator electrical work, evidence of the required Dept of Buildings (DOB) sign off on the elevator upgrade, and the required contractor's statement verifying that the pointing and waterproofing had been performed where necessary It is noted, there is no requirement that an owner submit evidence of permits for pointing and waterproofing or roof replacement in order for an MCI to be granted for these items

ADMINISTRATIVE REVIEW DOCKET NO HQ210031RT

As to the claim that the pointing and waterproofing was not done building-wide, pursuant to the Rent Stabilization Code, pointing and waterproofing qualifies as an MCI for which a rent increase may be granted provided the work is comprehensive pointing and waterproofing as necessary on exposed sides of the building Thus, it is not required that pointing and waterproofing be performed in every area of a building's exterior walls in order for an MCI to be granted for such work, provided there is evidence that the work has been performed in all areas where it was necessary As noted above, the record of the proceeding at hand does contain the required statement from the contractor who performed the exterior work evidencing that pointing and waterproofing was performed in all areas where a pre-work inspection showed that such work was needed

With regard to the ECB violations relating to the MCI work cited by the petitioner, a review of DOB's database shows that all of the referenced violations had been cleared prior to the issuance of the Administrator's order, and these violations thus presented no bar to granting the MCIs As to the allegation that the unit count and commercial square footage stated in the application do not correlate with the building's Certificate of Occupancy (C of O), the Commissioner finds no error by the Administrator in calculating the rent increase based on the actual residential room count and actual square footage of commercial space, as documented The question of whether the actual occupancy of the building complies with the C of O raises a matter which is beyond the purview of DHCR, the proper procedure for raising such a matter is to file a complaint with the appropriate municipal authority if the facts so warrant

The other claims raised in the appeal by reference to the August 1, 2017 response from the tenants submitted during the proceeding before the Administrator are without merit The record does contain a copy of a fully executed contract between the owner and NY Wonder Construction Corp for the exterior facade and roof work Although a DHCR inspection found evidence of leaks through the roof, the owner subsequently submitted evidence, in the form of work orders signed by the tenants, that necessary repairs had been completed The contract with the windows installer clearly states that the public area windows consist of wired glass and thus no further statement regarding "protectives" is required The cost of installing the booster pump has been disallowed by the Administrator, and thus any claims regarding this installation are moot There is no requirement for the owner to submit evidence of licensing or insurance from contractors in order for an MCI to be granted for a qualifying installation The record supports a finding that the hallway windows installation was completed on February 3, 2015, the date of the final payment to the contractor, which is within two years of the initial filing date of the application on October 28, 2016 There is no requirement for competitive bidding to be undertaken in order for an MCI to be granted for eligible work, and at the time this MCI order was issued, which predates the enactment of the Housing Stability and Tenant Protection Act of 2019 mandating the establishment of a reasonable cost schedule, the approved cost of a qualifying MCI was based on the actual amount expended for eligible work, as documented The claim that the intercom system is not working properly raises an issue which is unrelated to the MCI work at issue in this proceeding—as noted in the Administrator's order, the tenants may file an application for rent reduction based on decreased services if the facts so warrant The maintenance of the exterior facade prior to the start of the MCI work is not a factor in determining whether a rent increase may be granted for qualifying pointing and waterproofing

Pursuant to Section 26-511 1 (a)(8) of the Rent Stabilization Law and to Section 26-405 1 (a)(8) of the City Rent and Rehabilitation Law, the collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent Notwithstanding any other provision of the laws, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital

improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be denied and that the Rent Administrator's order be affirmed

ISSUED

OCT 22 2021

Woody Pascal
Deputy Commissioner

State of New York
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Office of Rent Administration
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There is no other method of appeal

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92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

RICHMOND HILL 108 LLC

PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO JO130043RO

RENT ADMINISTRATOR'S DOCKET NO GR130059OM

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal against an order issued on February 23, 2021 by the Rent Administrator concerning the housing accommodations known as 84 05 108th Street, Jamaica, NY, which partially granted the owner's application for a rent increase based on the installation of major capital improvements (MCIs), to wit elevator upgrading, a new compactor and a new tv/security system In partially granting the owner's MCI application, the Rent Administrator applied all amendments to the MCI program that went into effect during the pendency of the owner's application proceeding pursuant to the Housing Stability and Tenant Protection Act of 2019 (HSTPA), including an updated amortization rate and new provisions related to the effective date and collectability of MCI rent increases The Rent Administrator also denied all costs associated with the new compactor, noting that the item was not listed on the Reasonable Cost Schedule published by DHCR in Operational Bulletin 2020-1 in accordance with HSTPA and that the owner did not comply with the Division's requirements for requesting a waiver of said Reasonable Cost Schedule Specifically the owner failed to submit any documentation justifying that the claimed compactor MCI costs were reasonable

The Commissioner having reviewed the petitioner's appeal and any and all supporting documentation, any and all statements made by the affected parties the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioner's appeal does not have merit and should be denied

The owner-petitioner requests a modification of the order and claims that because the subject MCI application was filed in June 2018, prior to the enactment of the Housing Stability and Tenant Protection Act (HSTPA) in June 2019, the Rent Administrator erred in applying the MCI provisions contained in HSTPA to the owner's pending MCI rent increase application The owner contends that it was the "clear and unequivocal intent of the legislature" that the MCI provisions of HSTPA were not to be applied to pending proceedings based on the language of the statute The owner also contends that the application of HSTPA to the MCI proceeding below was impermissibly retroactive and represented an unconstitutional violation of the owner's right to due process

With respect to the owner's constitutionality claim, the Commissioner notes that there is a strong presumption of constitutionality of the rent laws as enacted by the New York State Legislature and there has been significant and positive review of the continued constitutionality of the amended rent laws since the enactment of the HSTPA *See Community Housing Improvement Program v City of New York*, 492 F Supp 3d 33 (E D N Y 2020) No 19-cv-4087 (E D N Y) (in dismissing an owner's HSTPA challenge, the Court found that that

claimants alleging an applied regulatory taking face a "heavy burden") *appeal pending See also 74 Pinehurst LLC v State of New York*, No 19 Civ 6417 (E D N Y) *appeal pending*, *335-7 LLC et al v City of New York*, No 20 CV-01053 (S D N Y), *G Max Mgmt Inc v New York* No 20-cv-634 (S D N Y), *Building and Realty Inst Of Westchester & Putnam Counties Inc v New York*, No 19-cv-11285 (S D N Y) (*BRI v NY*) The most recent decision, *BRI v NY* decided September 14, 2021 (2021 US Dist LEXIS 174535) noted HSTPA's change to the MCI amortization formula (p 9) and subsequently dismissed the change in that formula as insufficient to demonstrate an unconstitutional taking (page 83 through 87)

The Commissioner finds that the constitutionality claim raised by the petitioner herein—that it was improper for the Administrator to apply the amendments to MCI provisions contained in HSTPA to the petitioner's pending MCI proceeding—is without merit The owner cites several court cases in support of its claim, largely relying on the recent New York Court of Appeals decision of *Regina Metropolitan Co LLC v DHCR*, 35 N Y 3d 332 (2020) The owner also cites the subsequent case of *Harris v Israel*, 191 A D 3d 468 (1st Dept 2021) and the US Supreme Court decision of *Landgraf v USI Film Prods*, 511 US 244 (1994) In *Regina*, the New York Court of Appeals determined that it was improper for DHCR to have applied one particular part of HSTPA to cases which were pending before the Administrator when HSTPA became effective, specifically, the provisions which amended the method of calculating rent overcharges contained in Part F of HSTPA The *Regina* decision set forth an in-depth analysis for determining whether HSTPA can properly be applied to pending proceedings In reaching its finding regarding Part F, the Court in Regina invoked the criteria established by the US Supreme Court in the case of *Landgraf v USI Film Prods* to determine whether the application of a new law to a pending proceeding would have a "retroactive effect" by impacting a party's "substantive rights " As set forth in *Regina*, applying a new statute to a pending proceeding has retroactive effect if doing so "would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed " Applying these criteria to Part F, which greatly increased the amount of overcharged rent the owner was liable for, the Court in *Regina* found that Part F imposed "new liability" and thus had a retroactive effect

The Court of Appeals expressly limited its review in *Regina* to specific overcharge amendments found within one section of HSTPA, Part F, whereas a different section of HSTPA, Part K, relates to MCI proceedings The owner-petitioner seeks to analogize the *Regina s* holdings on Part F to the subject MCI proceeding by claiming that Part K of HSTPA's new MCI provisions instituting an amended amortization rate, eliminating retroactive MCI increases, and advancing the effective date of MCI orders all had a monetary effect[1] on the owner and therefore imposed new financial obligations comparable to the increased rent overcharge liability at issue in *Regina* The petitioner also claims that the application of HSTPA to its pending MCI proceeding impaired a right the petitioner possessed when it performed the MCI installation (i e "the right to have the MCI Application adjudicated in accord with the law in effect at the time," according to the petitioner)

In *BRI v NY*, the court reviewed a similar analogy between the overcharge and MCI sections of HSTPA and found it to be inapplicable, stating that *Regina s* conclusions on the overcharge provisions of Part F should not extend to the MCI provisions of Part K since the MCI changes in the HSTPA make it so that 'increases shall

[1] The owner petitioner inaccurately refers to the difference between the rent adjustment the petitioner alleges it was entitled to receive under the old law and the rent adjustment the petitioner has actually received after the enactment of HSTPA as damages' Such characterization is misleading as the owner petitioner is not required to return or pay any monetary amount to any party as a result of the MCI proceeding below According to DHCR calculations the rent increase obtained by the owner petitioner through the subject MCI order in fact allows the petitioner to recoup $424 091 40 on a claimed $188 096 95 MCI investment (only $176 777 73 of which was found to be MCI eligible which the petitioner does not dispute on appeal) over the next 30 years *See* NY St Cts Elec Filing [NYSCEF] Doc No 33 Melnitsky Aff ¶¶ 16 17 exhibit E May 4 2021 in *Richmond Hill 108 LLC v DHCR* Sup Ct, Queens County index No 707682/2020 The subject MCI increase will also be compounded by the regular rent guideline increases since the MCI amount is included in the rent for the next thirty years

be collectible prospectively and thus result in not impermissibly retroactive legislation ' *BRI*, 2021 US Dist LEXIS 174535, at *69 n 25

Likewise, the Commissioner herein finds that the application of HSTPA's MCI amendments to the proceeding at hand did not have an illegal and unconstitutional retroactive effect on the owner-petitioner Given the fact that the heavily-regulated New York City rent stabilized housing market has been historically subject to changing legislative priorities, the courts have established that rent regulation does not confer vested rights *Schutt v DHCR* 717 N Y S 2d 565, 566 (1st Dept 2000), *see also I L F Y Co v Temporary State Hous Rent Com* , 10 N Y 2d 263 (1961), *appeal dismissed* 369 U S 795 (1962) (finding that an owner does not have an interest in any particular rule of the system of rent regulation and is not so vested as to entitle it to keep the rule unchanged) It is noted, this is not a case where the petitioner holds a pre-HSTPA judgement or decision related to the subject MCI rent increase which is subsequently on appeal, *compare Karpen v Castro*, 2021 N Y Misc LEXIS 3726, 2021 NY Slip Op 21169 (Civ Ct Kings Cnty 2021) *with Harris v Israel*, 191 A D 3d 468 (1st Dept 2021), and there is no pre-existing DHCR order that would create any overcharge or rent refund liability The order under review had an exclusively prospective effect on both the owner and tenants and, for the reasons noted in *BRI v NY* therefore does not impair a legitimate investor backed expectation or a vested right [2] The right the owner possessed for an MCI prior to the enactment of the statute was simply that of an applicant with a request that was to be determined by DHCR in accordance with the rules that would then be in effect when a determination is rendered

Applying Part K's provisions to the petitioner's pending MCI proceeding also did not increase the owner's liability for past conduct It is unlike the provisions of Part F, which could increase the amount of overcharged rent to be refunded or impose an additional liability on the owner for past conduct Part K, as applied in the instant proceeding, grants an MCI increase, and only reduces the amount which the owner can charge as an additional MCI rent increase on a prospective basis

As to the matter of statutory construction, the owner-petitioner s claim that the application of HSTPA to the owner s pending MCI proceeding was counter to the "clear and unequivocal intent of the legislature" is without merit Section 18 of Part K not only specifically states, in connection with the MCI amendments, that 'This act shall take effect immediately ", it also provides additional detail discussed below Moreover, other sections of HSTPA state that certain amendments shall only apply to new proceedings commenced after the HSTPA went into effect Part M, for example, which includes amendments related to leases and lease renewals, states that "This act shall take effect immediately and shall apply to actions and proceedings *commenced on or after such effective date* " (emphasis added) The omission of this phrase from Part K is presumed to be intentional and purposeful, if the legislature had meant for the new MCI rules to apply only to MCI applications filed on or after the HSTPA's June 14, 2019 effective date the language found in Part M would have been employed in § Section 18 of Part K-

In Part K, the petitioner s citation to the certain preface 'effective immediately" language as the sole indicator of legislative intent, omits language in HSTPA which includes the additional direction in Part K as amended for DHCR to "immediately commence and continue implementation of all provisions " Part K has other sections on the establishment and prohibition of certain new standards which when read in context, evince an intention that all new RA orders, where possible, should follow the HSTPA Even already-extant MCI orders in Part K

[2] The Commissioner does note that this legal and statutory analysis is distinct with respect to the change in amortization rates and new provisions regarding the effective date of prospective MCI rent increases and the elimination of retroactive MCI increases from cases in which a petition for administrative review is pending against an Administrator s order issued prior to the effective date of the new law Such application there would create overcharge liability Moreover in those cases the scope of an administrative appeal is limited to the question of whether there was an error by the Administrator in determining the outcome of the administrative proceeding based on the law which was in effect at the time the Administrator s order was issued

have limitations on the timing of certain prospective rent increases that were to go into effect after the effective date of the HSTPA Petitioner cannot seriously argue a legislative intent to effect the collection on an extant order can be squared with a claim of some overarching manifest legislative intent that no part of part K could be applied to pending applications Instead, all of the above evinces a legislative intent that HSTPA's amortization changes and new provisions regarding the effective date of MCI rent increases and the elimination of retroactive increases were to be properly and prospectively implemented as part of new Rent Administrator orders issued after the enactment of the HSTPA

The owner's petition for administrative review is therefore denied

Pursuant to Section 26-511 1 (a)(8) of the Rent Stabilization Law and to Section 26-405 1 (a)(8) of the City Rent and Rehabilitation Law, the collection of any MCI increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent

THEREFORE in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be denied and that the Rent Administrator's order be affirmed

ISSUED OCT 29 2021

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza 92-31 Union Hall Street
Jamaica NY 11433
Web Site www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

Note: During the period of the current Covid-19 emergency, as a courtesy, if the Article 78 proceeding is commenced by efiling pursuant to the Court Rules service may be effectuated as limited as follows: by forwarding the court's email indicating the assignment of the Index Number and the documents received by the court i.e. Notice of Petition, Petition and other efiled documents to DHCRLegalMail@nysher.org. Upon receipt of the complete filings, the receipt of such documents will be acknowledged by email. Only after such acknowledgement of receipt of such documents will the service by email be deemed good service on New York State Division of Housing and Community Renewal (DHCR). DHCR is not the agent for service for any other entity of the State of New York or any third party. In addition, the Attorney General must be served at 28 Liberty Street, 18th Floor, New York, NY 10005. Since Article 78 proceedings take place in the Supreme Court, it is advisable that you consult legal counsel.

There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

739 WEST 186TH STREET TENANTS' ASSOCIATION

PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO EU430003RT

RENT ADMINISTRATOR'S DOCKET NO CP430016OM

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal against an order issued on August 1, 2016 by the Rent Administrator concerning the housing accommodations known as 739 West 186th Street, New York, NY which granted the owner's application for a rent increase based on the installation of a major capital improvement (MCI), to wit new roof, building façade, pointing and waterproofing

The Commissioner having reviewed the petitioner's appeal and any and all supporting documentation, any and all statements made by the affected parties, the underlying case file and all relevant Rent Regulatory Laws and regulations finds that the petitioners' appeal does not have merit and should be denied

The Petitioner-Tenants' Association (TA) requests a reversal and claims, in substance, that the DHCR did not comply with the TA's FOIL request for completed architectural drawings, that the improvements made to the subject premises were "emergency" repairs due to years of neglect from the previous owner, the costs of the parapet work should have been disallowed for not being a complete replacement, that the improvements were routine maintenance, that the owner did not file the proper paperwork with the NYC Department of Buildings (DOB), that the MCI does not benefit all tenants, that the architectural drawings submitted by the owner were inadequate, that the prior owner received an insurance settlement, which was then transferred to the current owner as a discount on the sale price, that the prior owner accrued multiple Environmental Control Board (ECB) liens, and that the owner breached the implied warranty of habitability and Multiple Dwelling Law

The owner responds through their representative and states, in substance, that the building had structural issues and outstanding violations when it purchased the building in 2009, that the costs for the structural improvements were not part of its MCI application, that the proper paper work was filed with the DOB, that not all façade work requires filing with the DOB, that there are no current violations for the building façade and that it is in excellent condition

As to the TA's claim that the Division did not comply with the FOIL request, a review of the record shows that the TA's FOIL request for the entire contents of the file below was sent on July 24, 2014 On August 4, 2014 the TA sent a letter informing the Rent Administrator that the drawings supplied in the FOIL request were incomplete and requested a complete review of the MCI file On August 20, 2014, the TA sent a follow-up letter and requested an extension of 60-business days, from the date of the letter or from the time a completed file is provided to them as they would be making a second FOIL request The Commissioner notes that the only

FOIL request on file with the Division was made on June 4, 2014 and fulfilled on September 27, 2014 when it was sent to the TA

A review of the record below also shows that two tenant PARs dated December 30, 2014 and April 10, 2015 were submitted prematurely The Division informed the tenants that the MCI application was still pending and that a Rent Administrator's Order had not been issued Both PAR submissions were taken into consideration during the processing of the MCI application, including the claims that the previous owner's neglect of the building caused the building to be in disrepair and that the costs of the improvements were exorbitant No further correspondence was received from the TA after April 10, 2015 The Rent Administrator did not make a final determination on the status of the application until August 1, 2016, over a year after the TA's last correspondence with the Division The record indicates that the tenants received files from their FOIL request and all tenant objections were considered

It is the established position of the Division that the façade/pointing and waterproofing work and the installation of a new roof meets the definition requirements of an MCI for which a rent increase may be warranted Furthermore, the record shows that the owner submitted copies of the contract, invoices, and cancelled checks for all the MCI installations and the owner correctly complied with the applicable procedures for an MCI rent increase, and that the increase was properly computed based on the proven cost of the installation

The TA's claim that the tenants should not have to pay for the improvements as they were "emergency" repairs resulting from the prior owner's neglect of the building and caused the prior owner to incur ECB violations in 2008 and 2009 is without merit The TA states, in substance, that all violations have been resolved and asserts that the costs associated with resolving said violations and the emergency building repairs should not have been approved for an MCI rent increase The Commissioner notes that the prior owner's alleged history of neglect giving rise to necessity the work involved is not a bar to granting an MCI increase as the installations qualify as MCIs It is the established position of the Division that the fact that certain work remedies building violations is not grounds for the denial of the MCI application, provided the work performed otherwise qualifies as an MCI and the owner establishes that a rent increase is warranted

The TA's claims that the Rent Administrator should have disallowed the costs for the parapet replacement as all parapets were not replaced and that the improvements were routine maintenance are without merit The Rent Stabilization Code (RSC) permits costs for other necessary work performed in conjunction with and directly related to a major capital improvement to qualify for an MCI rent increase The record shows that the parapet replacement qualified as other necessary work, not routine maintenance, related to the new roof installation and the Commissioner finds that the Rent Administrator properly approved the parapet replacement costs Also, the claim that the MCI does not benefit all the tenants because the north-west part of the building contained 7 apartments that did not receive parapet work, is without merit As noted above, the parapet work was other necessary work related to and done in conjunction with the qualifying new roof installation, which does inure to the benefit of all tenants

Concerning the TA's claim that the owner did not acquire DOB permits, the Commissioner notes that it is within the jurisdiction of the DOB to issue such violations and/or penalties in instances where the proper building permits and/or licenses may not have been acquired Moreover, the owner was not required nor requested to submit DOB permits to the Division for the roof replacements, façade restoration, and pointing and waterproofing in this instant case

The TA's claims that the architectural drawings were inadequate as they contained no dimensions, no mention of a roof replacement and no architect's seal are without merit After a careful review of the record, the

Commissioner finds that the drawings submitted with the owner's application are adequate, complete, contain dimensions, detail the roof replacement, pointing, waterproof and parapets, and contain an architect's seal

The TA's claim, in substance, that the owner purchased the building at a price lower than market value, and that the prior owner received funds from a large insurance settlement has not been substantiated nor shown to be related to the MCI application by the TA and therefore is not a basis for reversal of the Rent Administrator's Order

Lastly, the TA's claims that the owner breached the implied warranty of habitability, that there are various service reductions and defects, no hot water, pest infestations, broken fixtures and also harassment by the landlord, and other claims related to the building's 2008 vacate order are service complaints that are unrelated to the subject exterior restoration and roof MCIs However, this order and opinion is issued without prejudice to the tenants' right to file with this Division an application for rent reduction based on the owner's failure to maintain building-wide and/or individual apartment services, if the fact so warrant

Pursuant to Section 26-511 1 (a)(8) of the Rent Stabilization Law and to Section 26-405 1 (a)(8) of the City Rent and Rehabilitation Law, the collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent Notwithstanding any other provision of the laws, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be denied and that the Rent Administrator's order be affirmed

ISSUED

NOV 05 2021

Woody Pascal—
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site www hcr ny gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order This 60 day deadline for appeal may be extended by executive orders at https //governor ny gov/executiveorders No additional time can or will be given In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR) With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022

Note During the period of the current Covid 19 emergency, as a courtesy, if the Article 78 proceeding is commenced by efiling pursuant to the Court Rules service may be effectuated, as limited as follows by forwarding the court's email indicating the assignment of the Index Number and the documents received by the court, i e , Notice of Petition, Petition, and other efiled documents to DHCRLegalMail@nyshcr org Upon receipt of the complete filings, the receipt of such documents will be acknowledged by email Only after such acknowledgement of receipt of such documents will the service by email be deemed good service on New York State Division of Housing and Community Renewal (DHCR) DHCR is not the agent for service for any other entity of the State of New York or any third party In addition, the Attorney General must be served at 28 Liberty Street, 18th Floor, New York, NY 10005 Since Article 78 proceedings take place in the Supreme Court, it is advisable that you consult legal counsel

There is no other method of appeal

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
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GERTZ PLAZA
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JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO HO210023RT

[redacted]

RENT ADMINISTRATOR DOCKET NO GW210027OM

PETITIONERS

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

Petitioner [redacted] timely refiled an administrative appeal against an order of the Rent Administrator issued on February 7, 2019 for the housing accommodation known as 215 Clarkson Avenue, Brooklyn, NY which granted the owner's application for a rent increase based on the installation of a major capital improvement to wit a new roof

The petitioner's appeal requests that the order be reversed and claims, in sum, that there were leaks and water damage in the bedroom and living room of her apartment [redacted] that emanated from the roof and continue even after the installation of the new roof, that the owner has not been able to fix the leaks despite numerous attempts to do so, that the roof was not replaced, but repaired, as confirmed by ongoing leaks, that the petitioner did not see a new roof being installed despite being present when the work was done, that the cost of the new roof should be the owner's responsibility because it was a necessary repair, not an improvement, that the petitioner's rent should not be charged for repair/maintenance work, that the petitioner cannot afford a rent increase, that the new roof will be paid off in 8 years but the MCI rent increase is permanent and that other tenants in the building disagree with the rent increase

The owner answered the PAR stating, in substance, that there are no leaks in the apartment, only left-over water damage as confirmed during a visit by the owner's rep to the petitioner's apartment on 4/1/2019 and with a follow-up discussion with the tenant on 4/15/2019

The Commissioner having reviewed the petitioner's appeal, any and all supporting documentation, any and all statements made by the affected parties, the underlying case file, and all relevant Rent Regulatory Laws and Regulations, finds that the appeal does not have merit, and is denied

A review of the record reveals on December 17, 2018 the Division sent a Notice to Tenant of MCI Rent Increase Application to the tenant petitioner in apartment [redacted] that the owner had filed an MCI application and gave 45 days to respond or ask for an extension to submit a response However, the

Division records show that the petitioner failed to respond to the application below although afforded an opportunity to do so Fundamental principles of the administrative appeal process and Section 2529 6 of the Rent Stabilization Code prohibit a party from raising issues on appeal which were not raised below Accordingly, the Commissioner is constrained to foreclose consideration of the issues in this appeal

The Commissioner notes that this order and opinion is issued without prejudice to the tenant petitioner and other tenants' right to file a building wide or apartment decrease in service complaint for a reduction in rent with the Division, if the facts so warrant

Pursuant to Section 26-511 1 (a)(8) of the Rent Stabilization Law and to Section 26-405 1 (a)(8) of the City Rent and Rehabilitation Law, the collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent Notwithstanding any other provision of the laws, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition is denied and that the Rent Administrators Order is affirmed

ISSUED

NOV 05 2021

WOODY PASCAL
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza 92-31 Union Hall Street
Jamaica, NY 11433
Web Site www.hcr.ny.gov

Right to Court Appeal

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There is no other method of appeal

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ORSID REALTY CORP

PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO EO430018RO

RENT ADMINISTRATOR'S DOCKET NO CR430058OM

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ORDER AND OPINION REMANDING PROCEEDING

The petitioner owner timely filed an administrative appeal against an order issued on February 11, 2016 by the Rent Administrator concerning the housing accommodations known as 130 West 86th Street, New York, New York which denied the owner's application for a rent increase based on the installation of a major capital improvement(s), to wit burner The Rent Administrator denied the owner's MCI rent increase application based on the owner indicating that the full cost of the burner installation was paid for with the cooperative's reserve fund

The Commissioner having reviewed the petitioner's appeal and any and all supporting documentation, any and all statements made by the affected parties the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioner's appeal has merit and should be granted to the extent of remanding the proceeding to the Rent Administrator for additional processing

The petitioner owner requests a reversal of the Rent Administrator's order and alleges, in substance, that the restriction on the use of reserve funds for an MCI installation only applies to the cooperative corporation's initial reserve fund, that where the initial reserve fund was depleted prior to the commencement of the work, the cooperative corporation may use its existing funds to pay for the work, that the owner stated in its MCI application that the initial reserve fund was not used to pay for the MCI installation, and that the initial reserve fund was fully depleted at least twenty four (24) years prior to the date the burner installation commenced

The petitioner-owner supplemented their appeal and submitted an affidavit from a member of the board of the corporation stating that no portion of the initial reserve fund was used to pay for the burner and that the initial reserve fund was fully depleted prior to the commencement of the subject burner installation The petitioner also submitted a copy of the third amendment to the offering plan dated December 15, 1982 and financial statements from 1985, 1987, 1989, 2001, and 2008 for the subject building

Tenants did not respond to the petitioner-owner's appeal

It is the policy of the Division as well as stated in Section 2522 4(a)(9) of the Rent Stabilization Code that improvements paid for out of a cooperative corporation's negotiated cash reserve fund contributed by the sponsor to entice purchasers or under compulsion of law may not form the basis for a rent increase Likewise, if an MCI is installed subsequent to transfer of title to a cooperative corporation, the corporation will not be eligible for a rent increase to the extent the cost of the improvement is paid for out of the cash reserve fund of the corporation However, if the installation is paid for using a special assessment, out of the proceeds of a refinance, or if the initial reserve fund has been replenished, the increase may be based on the total amount of the installation

A review of the record shows that the owner submitted a questionnaire concerning the use of the reserve fund during the Rent Administrator's proceeding The owner checked the box "Yes" in the questionnaire when answering whether the reserve funds of the cooperative corporation were used to pay for the improvements, thus indicating that the reserve fund was in fact used However, the Commissioner notes that under the same question on the same questionnaire, the owner also typed the statement that the "Reserved funds used were not from the initial cash reserve fund established in 1982 " The Rent Administrator failed to request additional information clarifying the owner's questionnaire and the use of reserve funds

In view of the information provided by the owner in the questionnaire during the Rent Administrator's proceeding, the Commissioner finds it appropriate to remand this matter to the Rent Administrator to clarify the source of the funds for the subject MCI installation and for any further processing of the owner's MCI application, as necessary The Rent Administrator shall notify the owner and all tenants of the reopening of the proceeding for further processing, and to allow all parties to comment

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition is granted in part and the proceeding is remanded to the Rent Administrator for further processing and reconsideration

ISSUED

NOV 19 2021

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site www hcr ny gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order This 60 day deadline for appeal may be extended by executive orders at https //governor ny gov/executiveorders No additional time can or will be given In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR) With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022

Note During the period of the current Covid-19 emergency, as a courtesy if the Article 78 proceeding is commenced by efiling pursuant to the Court Rules service may be effectuated, as limited as follows, by forwarding the court's email indicating the assignment of the Index Number and the documents received by the court, i e , Notice of Petition, Petition, and other efiled documents to DHCRLegalMail@nyshcr org Upon receipt of the complete filings, the receipt of such documents will be acknowledged by email Only after such acknowledgement of receipt of such documents will the service by email be deemed good service on New York State Division of Housing and Community Renewal (DHCR) DHCR is not the agent for service for any other entity of the State of New York or any third party In addition, the Attorney General must be served at 28 Liberty Street, 18th Floor New York, NY 10005 Since Article 78 proceedings take place in the Supreme Court, it is advisable that you consult legal counsel

There is no other method of appeal

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted]

PETITIONERS

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ADMINISTRATIVE REVIEW DOCKET NO.: JU410002RP
(REMIT OF AN410009RT)

RENT ADMINISTRATOR'S DOCKET NO.: XL410082OM

SJR NO.: 17193

ORDER AND OPINION DENYING APPEAL PURSUANT TO COURT REMIT

On February 3, 2012, the petitioners filed an administrative appeal (Docket AN410009RT) against an order issued by the Rent Administrator concerning the housing accommodations known as 333 East 49th Street, New York, New York which granted the owner's application for a rent increase based on the installation of a major capital improvement (MCI), to wit: facade restoration with related engineering fees and scaffolding. On January 6, 2020, an order of the Commissioner was issued in which the petitioners' administrative appeal was granted in part. The petitioners then filed an appeal under Article 78 of the Civil Practice Law and Rules (SJR No. 17193) as to the denial of some of the claims raised in Docket AN410009RT. The Article 78 appeal resulted in a so-ordered stipulation (Supreme Court, New York County, Index No. 151856/2020) remitting the proceeding to DHCR for further review and consideration of any of the claims raised by the petitioners in the initial AN410009RT appeal and in the Article 78 appeal. On September 23, 2021, Notices of Reopening were sent to the petitioners and to the owner through their authorized representatives. The reopening notice sent to the petitioners provided them with an opportunity to raise, for further review and consideration, any of the issues previously raised either in the AN410009RT proceeding or in the Article 78 appeal. No response to this Notice has been received to date.

In their initial appeal filed under Docket AN410009RT, the petitioners claimed, in substance: the application had not been timely filed; there was no contractor's statement verifying that the facade work had been performed where necessary; the work was defective; the costs had not been properly documented and were excessive; the scaffolding costs and some of the engineering costs should have been disallowed. In addition, in the subsequent Article 78 appeal, the petitioners raised a further claim that the Housing Stability and Tenant Protection Act of 2019 ("HSTPA") should be applied to the instant appeal proceeding which would result in a complete revocation of the MCI rent increase. The Commissioner having reviewed the petitioners' appeal and any and all supporting documentation, any and all statements made by affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioners' claims do not have merit and the instant appeal should be denied.

ADMINISTRATIVE REVIEW DOCKET NO. JU410002RP

It is noted that certain claims initially raised in the AN410009RT proceeding, specifically those pertaining to the contractor's statement, to defects in the facade work and to the scaffolding costs, were not raised either in the Article 78 appeal or in response to the Notice of Reopening. Accordingly, as to those claims, the Commissioner finds that the determinations set forth in the order issued under Docket AN410009RT, either granting or denying those claims, are deemed to be final.

As to the petitioners' claim that the MCI application had not been filed within two years of completing the facade work, after thorough review of the evidence contained in the record, the Commissioner finds this claim to be without merit. The petitioners correctly assert the established DHCR policy that the timeliness of an MCI application filing is determined based upon the date on which the work at issue was physically completed. Delays in obtaining required municipal sign-offs on an installation or in issuing a final payment to a contractor do not extend the time in which the application may be filed in cases where the record as a whole supports a finding that the work at issue had been physically completed at an earlier date. The record of the case at hand, however, contains a Certificate of Substantial Completion signed by the project architect stating that the facade restoration at issue had been substantially completed on December 18, 2007. The Commissioner affirms the finding reached in the AN410009RT order that there was no error by the Administrator in relying on the architect's certification as documentary evidence of the actual completion date of the facade work.

The arguments raised by the petitioners on appeal do not offer substantive grounds for altering the above finding. The petitioners' contention that the work had been fully completed as of December 6, 2007 is based on a supposition that, because that was the date of the last invoiced site visit by the architect, the architect "must have" determined that the work had been fully completed as of that date but then incorrectly certified that the work had been completed on December 18, 2007. The petitioners' further contention that the invoices from the contractor show that the work must have been completed prior to December 18, 2007 is unsupported by the evidence, in that contrary to the petitioners' claim, the final invoice from Shomi Construction, the contractor which performed the facade work at issue, in fact shows that workers had been on the job at the subject premises until the end of December 2007. Also contrary to the petitioners' claim, the invoice does not state that the later labor charges included in this invoice were for the installation of terrace tiling unrelated to the facade restoration (note: the petitioners' claim that some invoices do not include information as to the specific work which was performed is addressed below). The petitioners' additional contention that a December 10, 2007 request to have the sidewalk bridge removed indicates that the work must have been fully completed as of that date is based on a supposition that no further work could have been ongoing during the time between that request having been made and the actual removal of the bridging on December 21, 2007.

In view of the record in its totality, it is the finding of the Commissioner that the Certificate of Substantial Completion represents the most reliable evidence of the date of the actual completion of the facade work at issue in this proceeding, and that the petitioners have not offered persuasive evidence to substantiate their claim that the project architect, as a licensed professional, incorrectly certified the date of completion as being December 18, 2021. The cases cited by the petitioners on appeal are distinguishable from the facts of this case and thus do not offer grounds for altering the above finding. In each of the cited cases, there was reliable evidence in the record supporting a finding that the MCI applications had not been filed within two years after the actual completion of the work at issue. The petitioners do not cite any cases where an architect's certification as to the completion date of the MCI work was determined to be unreliable.

The Commissioner has also reconsidered the petitioners' claim that the MCI costs have not been adequately documented and finds no basis in the record to disturb the finding made in the AN410009RT proceeding that the Administrator properly determined the approved cost of the facade work. As noted in the AN410009RT order, the record of this proceeding includes a fully executed contract for the facade work with a clearly defined scope of work as outlined in the detailed architectural drawings incorporated into and made a part of the

executed contract. Contrary to the petitioners' claim, it is the contract documents described above which provide substantiation of the scope of the facade work, not the invoices from Shomi Construction, which were submitted, in combination with the submitted copies of canceled checks, as documentation of the total amount paid for the contracted facade work. It is noted that; in most cases where an executed contract containing a detailed description of the scope of work has been submitted, copies of invoices from the contractor would not be a required submission, in that copies of canceled checks evidencing payments alone would constitute acceptable documentation of the amount expended for the work. However, in the case at hand, the agreed-upon cost of the project set forth in the contract, rather than being a fixed-cost lump sum, was based on a daily labor rate for a set number of workers (five laborers) and did not include costs of materials, which were to be reimbursed separately by the owner. Therefore, in addition to submitting copies of canceled checks, the owner properly submitted copies of invoices from the contractor in order to document the total cost of the work under the terms of the contract.

While, as noted, copies of invoices were submitted in this case in order to document the cost of the work, in light of the fact that there was a fully executed contract binding the contractor to a clearly defined scope of work, for the purpose of determining the approved MCI cost of the facade work, it was not necessary, under the facts of this case, for the individual invoices to contain information documenting the scope of the work as completed, provided it was shown on each invoice that amounts were being charged in accordance with the cost provisions of the executed contract. The record shows that all of the submitted invoices from Shomi Construction, including those cited by the petitioners on appeal, documented that the amounts being charged were based, in accordance with the contract, on the agreed-upon daily rate per five laborers and on the cost of materials as documented with copies of the contractor's purchase receipts. It is noted that the invoice dated May 22, 2007, cited by the petitioners as showing an incorrect project address, was backed up by attached receipts showing that all of the materials included in this invoice were for the work being done at 333 East 49th Street. In view of the fact that the scope of the facade work has been substantiated by an executed contract, and that the cost of the work has been substantiated by documentation of materials and labor charges in accordance with the contract along with copies of canceled checks evidencing payments, the Commissioner finds no merit to the petitioners' claim that the cost of the facade work, as approved, has not been properly documented.

With regard to the engineering fees, the petitioners' claim that the costs shown on certain of the invoices should be excluded from the approved MCI amount because those invoices did not have a separate "description" page attached to them is rejected. The Commissioner finds that all of the invoices from Rand Engineering, the company which performed the architectural services at issue, contained information substantiating that the services being billed were related to the underlying MCI-qualifying facade restoration project at the subject premises. Each of the invoices cited by the petitioners clearly states that the requested payment was for services performed in connection with the Local Law 11 work being performed at 333 East 49th Street, which is in fact the underlying MCI-eligible facade restoration project for which the MCI has been granted. Additionally, some of the cited invoices (e.g. the invoice dated November 13, 2006) make reference to specific tasks, such as the submission of plans and specifications, relating to the facade restoration work. In light of the evidence in the record, the Commissioner finds that the petitioners have not substantiated their claim that the costs shown on some of the invoices from Rand Engineering should be excluded from the approved MCI amount.

The petitioners' claim that certain provisions of HSTPA should be applied that would result in the denial or serious modification of the previously granted MCI increase is rejected. The claim as framed in petitioners' Article 78 petition (which is considered now by stipulation to be part of the record) is without merit. The rules with respect to MCIs were change by HSTPA. The petitioners cite to case law regarding the lack of a vested right to an unchanged rule based on the filing and pendency of an application before DHCR. The Commissioner generally agrees with the case law and is applying HSTPA consistent with these cases. However, the citations of petitioners have ignored and leave uncited Regina Metropolitan v. DHCR, 35 N.Y.3d 332 (2020) and Harris

v. Israel, 191 A.D.3d 468 (1st Dept., 2021). Regina noted that provisions of HSTPA should not be construed as creating new rent overcharge liability on pre-HSTPA matters based on its provisions. Given the issuance of the Rent Administrator's order here in 2012 granting these rent MCI increases, the retroactive application of the new HSTPA standards would create the collection of more than seven years of now purportedly illegal rents that would subject to refund and overcharge liability. In Harris v. Israel relying on the Regina decision, the Appellate Division held that a matter on appeal from an initial housing court determination with respect to owner occupancy should not apply the new HSTPA owner occupancy standards, notwithstanding an argument similar to petitioners that these HSTPA provisions were also effective immediately. DHCR as an administrative agency has processing parallel to the matter in Harris which was initially determined as a plenary matter by a court. DHCR's Rent Administrator's determination is then the matter of an appeal to the Commissioner (a PAR), just as the initial Harris decision worked its way through the Court appellate process. (See also Karpen v. Castro, 77 Misc.3d 852 (Civ. Ct., Kings Co., 6/10/21) not applying the Harris ruling to an owner occupancy proceeding pending the trial court level.)[1]

Further, as a matter of statutory construction, as noted in Regina the mere usage of language of effective immediately by itself is not necessarily an exclusive indicator of how to apply the law. Here, the application would not be effective immediately but, according to petitioners' position, would be essentially effective more than seven years prior to HSTPA's passage. This position is incorrect when judged against the two benchmarks of improper retroactivity enunciated by the courts. The first, is as set forth in Regina, in that it would create rent refunds and overcharges where the rents were otherwise legal. The second is as set forth in Harris, that of a determination already being effective by its terms prior to HSTPA that is now just the subject of an appeal.

The language of HSTPA does not state that it applies on appeal. The sole express standards in HSTPA's MCI provisions that effects orders issued before HSTPA are with respect to §26-511.1(a)(8) which extends prospectively the payment schedule of future increases due upon renewal leases after HSTPA for orders issued between 2012 and 2019 where there would still have been extant payments in later years of 6% increases. The other MCI provisions matters articulate, not only generally an effective immediate standard (which Regina states is often insufficient for retroactive application) but gives DHCR a one-year period for all such immediate implementation. See §29, Part Q, Ch. 39, Laws of 2019. Therefore, not applying the new HSTPA standards in order to dismiss this MCI application is consistent with the court decisions applying HSTPA.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be denied and that the Rent Administrator's order is modified as previously set forth in docket number AN410009RT, but otherwise affirmed.

ISSUED:

NOV 23 2021

Woody Pascal
Deputy Commissioner

[1] Although not raised by petitioners, DHCR's position here is also consistent with its application with respect to luxury deregulation orders where lawful deregulation prior to the HSTPA required a DHCR order and expiration of the existing lease.

State of New York
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Web Site: www.hcr.ny.gov

Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO.: FO410048RT

[redacted] APT. [redacted]

[redacted] APT. [redacted]

PETITIONERS

RENT ADMINISTRATOR'S DOCKET NO.: EU410032OM

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ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW AND REVOKING THE RENT ADMINISTRATOR'S ORDER.

The petitioners timely filed an administrative appeal against an order issued on February 22, 2017 by the Rent Administrator concerning the housing accommodations known as 412 E 55th Street, New York, NY 10022 which granted the owner's application for a rent increase based on the installation of a major capital improvements, to wit: boiler/burner.

The Commissioner having reviewed the petitioners' appeal and any and all supporting documentation, any and all statements made by affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioners' appeal has merit and should be granted.

The tenants' petition alleges, in substance, that the work performed was not an MCI boiler/burner replacement but a non-MCI conversion of the existing boiler/burner from oil to gas boiler/burner which has previously been denied as repair and maintenance work ineligible for MCI rent increase under Docket no. EO410057OM; that the owner resubmitted the exact same previously denied application and documentation and the Rent Administrator erroneously granted the MCI rent increase.

The owner answered by counsel and opposed the PAR stating, in substance, that the instant MCI application is not a refiling of the previous one under Docket no. EU410057OM where the owner mislabeled the installation as conversion of the existing boiler/burner from oil to gas compelling the DHCR to deny the work as non-MCI repair and maintenance work; that the instant application is for complete replacement of the old boiler/burner which burned #6 oil with a new boiler/burner which burns natural gas and #2 oil; that the owner submitted below the DOB permits and approval as evidence of the boiler/burner replacement. In a PAR supplement dated 9/14/2017 the owner's counsel submitted two certificates of operation issued by the New York City (NYC) Department of Environmental Protection (DEP) at the building and asserts that the certificates show that the old boiler/burner was replaced with a new one; that the certificate under application number CA025672 pertains to the old replaced Fitzsimmons boiler and a Petro burner which burned #6 oil, and the other certificate under application number CA2511092 pertains to the new replacement Federal boiler and an Ind. Comb burner heating system which burns both natural gas and #2 oil.

The tenants' claim that the work performed does not qualify as MCI boiler/burner replacement has merit. It is the established position of the Division that the installation of a new boiler/burner constitutes a major capital improvement for which a rent increase may be warranted, provided that the owner otherwise so qualifies.

However, the owner's claim that the old boiler/burner at the premises was replaced with a new boiler/burner is contrary to the record, including the DOB work permit and sign-off on the work submitted by the owner showing that the work performed was not a replacement of the old boiler/burner but rather, was the activation of the gas portion of existing gas/oil burner and the changing of the grade of fuel from #6 to #2 oil. Also the claim that the NYC DEP certificates show that the old boiler/burner was replaced with a new one is also contrary to the record which shows that the certificate number CA025672 with expiration date 3/3/1993 pertains to the old replaced boiler/burner which burned only #6 oil for which replacement the owner was granted an MCI rent increase on 4/3/1996 under Docket no. HE430062OM, and the certificate number CA2511092 was issued for conversion of the existing boiler/burner from #6 oil burner to natural gas and #2 oil burner, and not for installation of a new boiler/burner.

Based on the record which shows that the work performed was gas conversion of the existing boiler/burner and change of the fuel grade from #6 to #2 oil and not for a new boiler/burner installation as claimed in the MCI application, the Commissioner finds that an MCI rent increase is not warranted, and the rent increase was granted in error. As the owner has not submitted sufficient evidence to support his claim on appeal that a new boiler/burner was installed at the building warranting an MCI rent increase, the Commissioner finds that the Rent Administrator's order granting the MCI rent increase should be revoked.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be granted; that the order of the Rent Administrator and the rent increase provided therein be revoked; and it is further

ORDERED, that the owner shall refund or credit any excess rent collected as a result of this order in 24 equal monthly installments, commencing the first rental payment date after the issuance of this order, until all overpayments have been refunded.

ISSUED:

NOV 24 2021

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

VARIOUS TENANTS OF
1581 PRESIDENT STREET

PETITIONER

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ADMINISTRATIVE REVIEW
DOCKET NO GW230027RT

RENT ADMINISTRATOR'S
DOCKET NO EP230073OM

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioners timely filed an administrative appeal against an order issued on October 29, 2018 by the Rent Administrator concerning the housing accommodations known as 1581 President Street, Brooklyn, NY which granted the owner's application for a rent increase based on the installation of major capital improvements (MCIs), to wit rewiring, plumbing re-piping, gas re-piping

The Commissioner having reviewed the Petition for Administrative Review (PAR) and any and all supporting documentation, any and all statements made by the affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations find that the petitioners' appeal does not have merit and should be denied

The petitioners request a reversal and claim in substance that the re-piping work was done in a piecemeal nature in that there are conflicting dates between the MCI work at issue and NYC Department of Buildings (DOB) permits, Nos 340348387 and 340459248, that the DOB failed to inspect every apartment in relation to DOB Electrical Application No B390579, that the DHCR and the owner did not properly notify the tenants of apartments [redacted] and [redacted] of a change to the room count during the application proceeding below, that various NYC Department of Housing Preservation and Development (HPD) immediately hazardous Class "C" violations should have barred the MCI rent increase, that the owner did not apply for a useful life waiver prior to the commencement of the work, and that roof leaks occurred in the building after the Rent Administrator's Order was issued

The owner responds by counsel and states in substance that the petitioners' failure to receive proof of the owner's letter about the change in room count is outside the scope of this proceeding, that the DOB permits cited by the petitioner do not pertain to the claimed MCI work, and that the subject premises had no immediately hazardous Class "C" HPD violations during and after the MCI work was completed

The Rent Administrator properly determined the qualifying scope of the improvements and the amount of the approved costs and the rent increase A review of the record of the instant proceeding indicates that the owner correctly complied with the applicable procedures for rewiring, plumbing and gas re-piping MCIs During the application proceeding below, the owner provided adequate documentation, including copies of a contract,

cancelled checks, a contractor's statement, and New York City Department of Buildings (DOB) sign-offs confirming that the owner installed the items at the subject premises The record reveals that at the time the MCI application was filed there was one outstanding immediately hazardous Class "C" violations on record with HPD, Violation No 10688254/5107670, which the owner remediated and cleared from the HPD database before the Rent Administrator's Order was issued It is noted that at the time the subject MCI order was issued, prior to the enactment of the Housing Stability and Tenant Protection Act of 2019 any violations posted in the HPD database subsequent to the filing of the application did not present a bar to granting MCIs Accord Docket No FO230009RT Therefore, the petitioners' claim that the subject premises had various HPD class "C" immediately hazardous violations that should have barred the MCI increase is without merit

The petitioners' claim that DOB Job Nos 340348387 and 340459248 evince that the MCI work was done in a piecemeal manner is without merit A review of the DOB public database for Job No 340348387 and Job No 340459248, indicates that they do not pertain to the claimed work in the proceeding below The DOB jobs related to interior renovations, electrical and plumbing work done to individual apartments (units [redacted] whereas the MCI work related to building-wide systems Furthermore, there is no evidence in the record of an unexplained, unusually long cessation and later recommencement of the claimed MCI work, and thus no indication that the MCI work was completed in separate and distinct phases, and no basis for a finding that the work had been performed in a piecemeal fashion Additionally, the claim that the DOB failed to inspect every individual apartment in relation to DOB Electrical Application No B390579 is outside the purview of the DHCR The tenants are advised to refer the complaints to the particular municipal agency having jurisdiction over such matters or to a court of competent jurisdiction

As to the claim that the DHCR and the owner did not properly notify the tenants of apartments [redacted] and [redacted] of a change to the room count during the application proceeding below, the Commissioner notes that the owner correctly notified the DHCR of the amended room count in a letter dated December 19, 2016 and the Rent Administrator properly notified the tenants of apartments [redacted] and [redacted] of the amended room change The record shows that on June 18, 2018 the tenants of both apartments were sent a Request for Additional Information (RAI) and attached the owner's letter regarding a change to the room count The purpose of the RAI was to inform the tenants that the owner increased their room counts from 4 to 5 and as the proceeding was pending the tenants had an opportunity to object to the room count On June 25, 2018 the tenant of apartment [redacted] responded and stated in substance that the DHCR failed to provide a copy of the written request to change the amount of rooms in the December 2016 letter, that there was no signature of a DHCR official on the RAI, that there was no signature of the owner in the letter, and that the letter from the owner's agent is invalid Despite the allegations raised, the tenant of apartment [redacted] did not dispute the room count and the tenant of apartment [redacted] did not respond to the RAI

With regards to the useful life of the rewiring, plumbing re-piping and gas re-piping, it has been long established DHCR policy, upheld by the courts, that in cases where no prior MCI has been granted for the type of installations in question, useful life is not a factor in determining whether an MCI may be granted In the instant proceeding, DHCR records show no prior MCIs having been granted for rewiring, plumbing re-piping and gas re piping at the subject premises In that the owner has not received and the tenants have not had to pay a prior MCI rent increase for the rewiring, plumbing and gas re-piping at the subject premises, the useful life of the pre-existing items is not an issue in this proceeding and an owner's application for a waiver of useful life was not required

The Commissioner notes that the petitioners' allegations relating to roof leaks are services complaints unrelated to the subject building's plumbing re-piping, gas re-piping and rewiring MCIs However, this order and opinion

is issued without prejudice to the tenant's right to file with this Division an application for rent reduction based on the owner's failure to maintain building wide and/or individual apartment services, if the facts so warrant

Pursuant to Section 26-511 1 (a)(8) of the Rent Stabilization Law and to Section 26-405 1 (a)(8) of the City Rent and Rehabilitation Law, the collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent Notwithstanding any other provision of the laws, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be denied and that the Rent Administrator's order be affirmed

ISSUED

DEC 0 8 2021

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order This 60 day deadline for appeal may be extended by executive orders at https //governor.ny.gov/executiveorders No additional time can or will be given In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR) With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022

Note During the period of the current Covid-19 emergency, as a courtesy, if the Article 78 proceeding is commenced by efiling pursuant to the Court Rules service may be effectuated, as limited as follows, by forwarding the court's email indicating the assignment of the Index Number and the documents received by the court, i e , Notice of Petition, Petition, and other efiled documents to DHCRLegalMail@nyshcr.org Upon receipt of the complete filings, the receipt of such documents will be acknowledged by email Only after such acknowledgement of receipt of such documents will the service by email be deemed good service on New York State Division of Housing and Community Renewal (DHCR) DHCR is not the agent for service for any other entity of the State of New York or any third party In addition, the Attorney General must be served at 28 Liberty Street, 18th Floor, New York, NY 10005 Since Article 78 proceedings take place in the Supreme Court, it is advisable that you consult legal counsel

There is no other method of appeal

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: JM210022RO
EMOR SK LP	RENT ADMINISTRATOR'S DOCKET NO.: HQ210001OM
PETITIONER	
----------x	OLAD NO.: 1522

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed a petition for administrative review (PAR) against an order issued on December 17, 2020 by the Rent Administrator concerning the housing accommodations known as 3100 Brighton 7th Street, Brooklyn, NY, which denied the owner's application for a rent increase based on the installation of a major capital improvement (MCI), to wit: elevator upgrading. In denying the rent increase, the Rent Administrator found that the owner had "failed to submit proof of all payments [and] proof of having resolved all HPD violations including lead-based paint." The Administrator noted that "notices to owner were mailed on 1/29/20, 2/27/20, 8/31/20 and 10/6/20." Subsequent to the filing of the owner's PAR, a petition was filed in the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules seeking an order of mandamus, which resulted in the Division being directed to issue a Commissioner's order in an expeditious manner.

The Commissioner having reviewed the petitioner's appeal and any and all supporting documentation, any and all statements made by the affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioner's appeal does not have merit and should be denied.

The owner-petitioner requests a reversal of the order and claims that proof of all payments for the MCI work was submitted to the Rent Administrator during the proceeding below. The owner also states that the lead-based paint violation cited in the denial order was issued after the filing date of the subject MCI application and therefore should not have precluded a rent increase. In addition, the owner contends that an MCI rent increase should not have been denied because the lead paint violation was "ultimately corrected," and in a supplement to the PAR provides a copy of a "Dismissal Request Form" submitted to the New York City Department of Housing Preservation & Development (HPD) in January 2021 and other supporting documents which indicate that work to correct said lead paint condition was performed on January 5, 2021, after the subject denial order was issued. The owner also claims that prior to this abatement work the tenant of the apartment where the lead paint violation was located continually denied access to the owner to correct the underlying condition. Finally, the petitioner states it was inequitable for the owner not to have been afforded a "final notice" before the MCI application denial.

Regarding the owner's claims related to violations pending against the subject premises, a review of the record below shows that the subject MCI application was filed by the owner on May 3, 2019; at the time, the applicable rent laws and regulations stated that an owner's MCI application would not be granted, in whole or

in part, if it was determined that any immediately hazardous building violations were pending against the subject premises on the date the MCI application was filed. Therefore, if immediately hazardous violations (such as Class "C" violations issued by HPD) were pending against a building on the filing date of an MCI application, the owner was notified and given sixty days to either remove them of record from the HPD database or provide the Division with an affidavit from an architect or engineer indicating that the violating conditions were inspected and had been remedied. Where the owner included such an affidavit with the MCI application when submitted, the pending violations did not bar the docketing of the application. Lead paint violations, however, are of such a serious nature that they were required to be removed of record from the HPD database before an application could be approved.

In accordance with the above-stated policy in effect at the time of filing, the owner included with its MCI application a statement that seven immediately hazardous HPD Class "C" violations were pending against the subject premises, along with an affidavit from a licensed architect stating that four of the open "C" violations (Violation Nos. 13032381; 13032382; 13032383; 13006141) had been inspected and were found to have been corrected. The remaining three open immediately hazardous Class "C" violations involved lead paint (Violation Nos. 11024345; 11024346; 11024347). As such, the owner provided a separate statement related to said lead paint violations noting that "All lead paint has been physically removed from all apartments in which it appeared" and "[w]e have applied for a reinspection by Code Enforcement to have the violations removed from the record." The Rent Administrator therefore docketed and began to process the subject MCI application in May 2019.

In June 2019, one month after the subject MCI application was filed, the Rent Stabilization Law was amended by the Housing Stability and Tenant Protection Act of 2019 (HSTPA). The MCI-related sections of HSTPA took effect immediately and had several direct impacts on the processing of the owner's pending MCI application. In addition to a revised amortization rate and new provisions related to the collectability of MCI rent increases, HSTPA expanded the class of housing maintenance, building, and fire code violations an owner was required to correct before an MCI increase could be granted. Such violations now include hazardous violations (such as HPD Class "B" violations) in addition to immediately hazardous violations (such as the abovementioned HPD Class "C" violations). HSTPA also required that all such hazardous and immediately hazardous violations must be corrected before the final issuance of an MCI order, including violations issued after the filing date of an MCI application (lead paint violations are still required to be removed of record from the HPD database). As such, the Rent Administrator sent a notice to the owner in August 2019 advising the owner that the subject MCI application was affected by the new HSTPA violation-related requirements and stating, in pertinent part, that:

> The Housing Stability and Tenant Protection Act of 2019 revised various aspects of the Major Capital Improvement (MCI) Program. This notice is to advise you that your application is affected by those changes. Attached are two worksheets to assist you with completing the required changes.
>
> ...The list of violations that affect the processing of your MCI application now include hazardous violations [emphasis added] of the NYC Housing Maintenance Code (HPD), NYC Building Code (DOB), NYC Fire Code, Uniform Fire Prevention & Building Code (ETPA Counties), in addition to immediately hazardous violations.
>
> **Please complete and return [the attached] worksheets along with a copy of this notice to this office within 60 days of the mailing date of this notice. Failure to comply with this request may result in an Order dismissing your application.**

An attached worksheet included with the August 2019 HSTPA notice titled "Worksheet 2: Violation Certification" further advised the owner of the following:

> ...You must affirm that there are no immediately hazardous and/or hazardous violations [emphasis added] of the NYC Housing Maintenance Code (HPD), NYC Building Code (DOB), NYC Fire Code (FDNY), Uniform Fire Prevention & Building Code (ETPA Counties), and if there is still such violation of record, the violation has been corrected or the violation is tenant induced and should be waived for the purposes of this application.
>
> Failure to establish that the conditions listed as violations as noted above have been remedied may result in the dismissal of the MCI application [emphasis added].
>
> **...All lead paint violations must be removed of record from the HPD database.**

After the owner failed to respond to the abovementioned August 2019 HSTPA notice or return the attached worksheets within 60 days as requested, the Rent Administrator mailed the owner a follow-up request in the form of a Request for Additional Information (RFAI) on January 29, 2020 seeking, among other items, "an architect's/engineer's affidavit that he/she has personally inspected and confirmed that the conditions have been remedied that caused open violations with HPD (see attached)." At the time, HPD's violation database showed multiple open hazardous "B" and immediately hazardous "C" violations (including one new lead paint violation, Violation No. 13299544, issued in September 2019). Regarding the new lead paint violation, the Administrator's RFAI additionally noted that "the open lead-based paint C violation, #13299544, must also be removed from HPD's website for the application to continue processing." The January 2020 notice afforded the owner 21 days to respond, and notified the owner that "failure to comply with this request may result in an Order dismissing your application, in whole or in part."

After the owner failed to respond to the January 2020 request within 21 days, the Rent Administrator sent a second copy of the RFAI marked "SECOND NOTICE" to the owner on February 27, 2020. The February 2020 follow-up notice again afforded the owner another 21 days to respond and again notified the owner that "failure to comply with this request may result in an Order dismissing your application, in whole or in part." The owner submitted one timely 60-day extension request but failed to provide any additional information or evidence over the following 60 days.

Finally, on October 6, 2020 the Rent Administrator sent a final violation-related RFAI to the owner, stating, in pertinent part, that *"There are several outstanding 'B' and 'C' violations. Please submit an architect/engineer affidavit stating that he/she personally inspected each specific violation confirming that the condition which caused the violation has been remedied. All lead paint 'C' must be removed from the record of the HPD database* [emphasis added]." Attached to this final October 2020 notice was a printout of HPD's violation database indicating that multiple outstanding building violations still existed at the subject premises, including 44 total violations that barred an MCI rent increase: 37 hazardous Class "B" violations and 7 immediately hazardous Class "C" violations (still including lead paint Violation No. 13299544), none of which the owner had accounted for or addressed with DHCR in any way. The Division's final notice, sent more than one year after the original August 2019 HSTPA notice, requested that the owner submit all necessary information by December 6, 2020 and noted again that "failure to comply with this request may result in an Order dismissing your application, in whole or in part." The owner's agent responded via email on October 12, 2020 stating that "The owner is working on removing the new violations that were written recently." No request for an extension

was made. After the December 6, 2020 deadline for a response passed with no additional correspondence from the owner, the Rent Administrator issued the subject MCI denial order on December 17, 2020.
On appeal, the owner-petitioner states that the Rent Administrator erred by not affording the owner a request marked "final notice" before rejecting the MCI application. The Commissioner finds that in light of the above-mentioned facts, the owner had sufficient notice that the failure to comply with the Division's multiple violation-related requests would result in an order dismissing the MCI application and was afforded ample time and opportunity to comply. The owner's claim is therefore without merit.

The owner-petitioner also claims that the abovementioned lead-based paint "C" violation (Violation No. 13299544) should not have precluded a rent increase since the violation was issued after the filing date of the subject MCI application. The owner alternatively claims that the tenant of the apartment where the lead-based condition was located continually denied access to the owner to make corrections. After reviewing the record, the Commissioner finds that the Rent Administrator properly applied HSTPA's violation-related requirements to the owner's pending MCI application, including the new requirement that an owner remove certain violations issued after the filing date of an application. As such, the owner's claim that a lead-paint violation issued after the filing date of the subject MCI application should not have been considered by the Rent Administrator is without merit. As for the owner's "no access" claim, the Commissioner notes that in certain cases the Rent Administrator does take "no access" issues into consideration where a tenant has repeatedly denied apartment access to the owner or HPD for the purpose of clearing a lead paint violation. However, the owner did not raise this "no access" claim during the proceeding below or otherwise notify the Rent Administrator that a tenant was refusing to provide access to an apartment for lead paint remediation work or inspection. The owner-petitioner is therefore precluded from raising such objection on appeal. The Commissioner further notes that the owner's claim that the abovementioned lead paint violation was "ultimately corrected" does not constitute grounds for re-examining the record below, as the owner's statement still fails to take into account over 40 additional "B" and "C" violations which the owner was required to remove or address with an architect's/engineer's affidavit.

The owner-petitioner's statement that proof of all payments for the MCI work was submitted to the Rent Administrator during the proceeding below is also without merit. A review of the record shows that the subject MCI application included a copy of a contract agreement which detailed the following terms of payment for the $98,500 elevator MCI project: "25% upon signing; 25% after completion of NYC DOB inspection; Balance to be paid in 3 monthly installments thereafter." The MCI application also included proof that the owner had so far paid the contractor $49,250 (50% of the total contracted cost) and noted that proof of the balance (i.e., the three unsubstantiated monthly installment payments) "to be submitted when it clears the bank."

The following month, on June 26, 2019, the Division sent the owner a Request for Additional Information seeking proof of the remaining installment payments. The owner submitted a timely response on July 11, 2019 indicating that three monthly installment payments in the amount of $16,416.66 were scheduled to be made to the contractor on July 5th, August 5th, and September 5th of 2019. The owner also provided evidence that the first of the three scheduled monthly installment payments had been made: a copy of a July 5, 2019 check (#1011) from the owner to the contractor in the amount of $16,416.66. However, after proof of the remaining two installment payments were not provided in a timely manner, the Rent Administrator mailed three follow-up requests seeking "proof of payment for the remainder of MCI claim" on January 29th, February 27th, and August 31st 2020. The owner did not respond to the January request and asked for a 60-day extension to the February request but failed to follow-up in the additional 60 days. Finally, in response to the August 2020 RFAI, the owner provided proof that the third of three scheduled monthly installment payments had been made: a copy of a September 2, 2020 check (#7451) to the contractor in the amount of $16,416.68 marked "final payment." The owner did not provide proof of the second monthly installment payment, originally scheduled to be made in August 2019.

Therefore, on October 6, 2020, the Division mailed to the owner its fifth and final RFAI related to missing payments, stating "we have received two of the three payments included in the installment agreement. Please provide a copy of the 2nd check...that was paid in the installment agreement." The notice gave the owner until December 6, 2020 to respond and alerted the owner that "failure to comply with this request may result in an Order dismissing your application, in whole or in part." The owner's agent replied to the Division via email on October 12, 2020, stating "In response to your letter dated 10/6/2020, attached is the cancelled check and bank statement for the last payment." However, attached to the email was the same September 2, 2020 check marked "final payment" already submitted to the Division, rather than the requested second installment payment. After no further response from the owner by the December 6, 2020 deadline, the Rent Administrator issued the subject MCI denial order on December 17, 2020. The Commissioner therefore finds no error in the Rent Administrator's statement in the MCI denial order that the "owner failed to submit proof of all payments."

On appeal, the owner-petitioner claims that proof of the missing second installment payment was provided during the proceeding below and states that "on or about October 9, 2020 the owner provided DHCR with a copy of Check No. 1013, dated August 5, 2019, in the amount of $16,416.66 representing the second installment of the balance of the payments for the elevator work." The owner's claim, however, is unsupported by the record. The Commissioner notes that while the owner-petitioner does provide a copy on appeal of an October 9, 2020 letter from the owner's agent referencing and attaching a copy of the missing $16,416.66 second installment check (#1013, dated August 5, 2019), a review of Division records shows that said letter was not mailed during the proceeding below. Specifically, the record includes a Division copy of the owner's October 9, 2020 letter date stamped as received by the agency on December 28, 2020, after the subject MCI denial was issued. As such, the owner-petitioner's claim that proof of all payment was timely submitted to the Rent Administrator during the proceeding below is without merit.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be denied and that the Rent Administrator's order be affirmed.

ISSUED:

DEC 14 2021

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted]

PETITIONER

----------x

ADMINISTRATIVE REVIEW
DOCKET NO.: JV430015RT

RENT ADMINISTRATOR'S
DOCKET NO.: GW430065OM

ORDER AND OPINION TERMINATING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal against an order issued on August 30, 2021 by the Rent Administrator concerning the housing accommodations known as 780 Riverside Drive, New York, NY 10032 which granted the owner's application for a rent increase based on the installation of a major capital improvement, to wit: elevator replacement.

The tenant's petition alleges, that the $57.00 rent increase for apartment [redacted] indicated in the order granting the MCI rent increase order is incorrect because it exceeds the 2% maximum collectible rent stated in paragraph V. of the order; that based on the apartment's monthly rent of $2,064.06, the 2% maximum collectible rent for the apartment is $40.13 and not the $57.00 stated in the MCI order.

Subsequently, the tenant submitted a letter dated November 22, 2021 stamp dated by DHCR on November 26, 2021 stating that the matter set forth in the petition has been resolved with the landlord and requesting that her petition be withdrawn.

The Commissioner is of the opinion that the subject petition for administrative review should be terminated based on the tenant's withdrawal of the petition.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition is terminated.

ISSUED: DEC 23 2021

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEALS OF

[redacted]

PETITIONERS

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ADMINISTRATIVE REVIEW
DOCKET NO.: HN210002RT

RENT ADMINISTRATOR'S
DOCKET NO.: FT210064OM

ORDER AND OPINION DENYING PETITIONS FOR ADMINISTRATIVE REVIEW

The petitioners timely filed administrative appeals against an order issued on January 28, 2019 by the Rent Administrator concerning the housing accommodations known as 9101 Shore Road, Brooklyn, New York which granted the owner's application for a rent increase based on the installation of a major capital improvement, to wit: new windows.

The petitioners each claim that the Administrator's order shows an incorrect room count for their apartments. Petitioners [redacted] and [redacted] also claim that the new windows in their apartments are defective in that the windows are difficult to open and close. The Commissioner having reviewed the petitioners' appeals and any and all supporting documentation, any and all statements made by adversely affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioners' claims are beyond the scope of review in this proceeding and the appeals should thus be denied.

A review of the record reveals that the claims raised by the petitioners on appeal were not raised during the proceeding before the Rent Administrator. Fundamental principles of the administrative review process and Section 2529.6 of the Rent Stabilization Code prohibit a party from raising issues on appeal which were not raised below though they could have been so raised, and therefore, by law the petitioners' claims may not be considered on appeal.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that these petitions be denied and that the Rent Administrator's order be affirmed.

ISSUED: DEC 24 2021

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

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There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO.: FW 430030RT

VARIOUS TENANTS OF 221 TO 229 SEAMAN AVENUE
[redacted]

PETITIONERS

RENT ADMINISTRATOR'S DOCKET NO.: DQ430074OM

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioners timely filed an administrative appeal against an order issued on October 24, 2017 by the Rent Administrator concerning the housing accommodations known as 221 to 229 Seaman Avenue Complex-Wide, New York, NY 10034 which granted in part the owner's application for a rent increase based on the installation of major capital improvements, to wit: courtyard/walkway/etc., related architect's fee, related inspections, courtyard doors and tv/security system.

The Commissioner having reviewed the petitioners' appeal and any and all supporting documentation, any and all statements made by affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioner's appeal does not have merit and should be denied.

The tenants' petition claims, in substance, that the MCI rent increase for courtyard/walkways concrete replacement should be denied because all the concrete area within the property line of the premises was not replaced, including the concrete walkway in the northern side of the courtyard (Northern walkway) and the two large exterior staircases (the old staircases) were not resurfaced; that all staircases were resurfaced except the old staircases; that the Northern walkway is part of the courtyard and is accessible to the tenants and the building manager expressly instructed the tenants to use it during the concrete replacement project; that there is DHCR precedent for denying a rent increase for courtyard concrete replacement based on failure to replace all concrete areas within the property as set forth in Commissioner orders Docket nos. UH410024RO, JD130012RP, YL110012RP and VE410025RO; that the concrete replacement was not completed in a workmanlike manner and the Rent Administrator ignored the tenants' licensed engineer's inspection report which identified numerous defects in the work; that open NYC Department of Housing, Preservation and Development (HPD) class "C" violations, including lead paint violations exists at the building; that the MCI application was untimely as it was filed on 5/24/2015 more than two years after the completion of the concrete work in March 2012 or April 2013; that the documents submitted with the MCI application, including the contractors' invoices and the architect's documents show that the concrete work was already completed as of 5/10/2013; that the security cameras do not monitor all entrances/exits at the building and the tenants identified nine entrances and exits, and at least eight exit-only emergency doors with no camera coverage; that the doors replacement is not MCI eligible as not all similar doors were replaced, including the four doors leading to the basement areas; that the tenants were denied their due process rights as they were not served with the owner's responses to the objections to the MCI rent increase application, and the owner's representative accompanied and interacted with the DHCR inspector on the date of DHCR inspection and the tenants were not afforded the same opportunity. In a subsequent correspondence dated 6/16/2018 DHCR stamp dated 6/19/2018 the tenants allege that there were procedural irregularities in the

processing of the MCI application in that the Rent Administrator considered the owner's late submissions, including the packet submitted by the owner on 10/26/2016, and relied on the contractors' self-serving affidavits stating that the concrete work was done in a workmanlike manner.

The owner answered by counsel and opposed the PAR stating, in substance, that the Northern Walkway is a service area not part of the courtyard and not accessible to the tenants; that the MCI application was timely filed; and that it made timely submissions during the processing of the MCI application below.

The claim by the tenants that the courtyard/walkways concrete replacement does not qualify as an MCI is without merit. The Commissioner notes that it is the established position of the Division that the resurfacing of the entire courtyard and walkways area within the property line of the premises constitutes a major capital improvement for which a rent increase may be warranted, provided the owner otherwise so qualifies. In order to qualify, tenants must have access to the concrete area. The DHCR inspection of the premises conducted on 11/21/16 found that all concrete courtyard and walkways area within the property line of the premises were resurfaced, and that the "Northern Walkway" is a service area not accessible to the tenants. As the record, including the DHCR inspection report, shows the owner resurfaced all the original courtyard and walkways area within the property line of the premises, therefore the work qualifies as an MCI installation. As for the "Old Staircases", the Commissioner notes said work is not required as part of MCI for the courtyard and walkways resurfacing project, and although the record shows that some of the outdoor staircases were resurfaced/replaced, the project architect's letter dated 8/31/2016 submitted in the proceeding below indicates that the resurfacing of said outdoor staircases were necessary in order to provide structural integrity to the repaving of the concrete courtyards and landings. Therefore, the Commissioner finds pursuant to Section 2522.4 (a) (2) (ii) of the Rent Stabilization Code and Section 2202.4 (e) of the Rent and Eviction Regulations that the resurfaced staircases were properly allowed as necessary work performed in conjunction with and directly related to the MCI courtyard and walkways concrete resurfacing.

The DHCR Commissioner's orders Docket nos. UH410024RO, JD130012RP, YL110012RP and VE410025RO cited by the tenants are distinguishable and not applicable to the instant case. In UH410024RO the courtyard concrete resurfacing was denied because the scope of the work included a repair of certain areas of the courtyard, whereas in the instant case, all areas of the courtyard were completely resurfaced with no repairs included in the work. In JD130012RP the concrete replacement was denied as the owner acknowledged that it did not replace all of the concrete areas of the courtyard, whereas in the instant case, all concrete areas of the courtyard were replaced. In YL110012RP the concrete work was denied because it was performed piecemeal, whereas in the instant case, the concrete work was performed as single MCI project. In VE410025RO the owner's claim for rent increase for installation of new sidewalk was denied, whereas in the instant case, MCI concrete courtyard replacement was performed.

The tenants' claim that the concrete replacement was unworkmanlike is without merit. The DHCR inspection conducted on 11/21/2016 found that the concrete replacement was done in a workmanlike manner and there was no defective area found on the work. The Commissioner finds that the Rent Administrator properly relied on the DHCR inspection report which is based on the eyewitness observation of an impartial, disinterested DHCR inspector.

The claims that the doors replacement and the security cameras installation are not MCI eligible are without merit. The record shows that all the metal courtyard doors were replaced therefore, the work performed meets the definitional requirements of an MCI warranting a rent increase. The tenants' contention that

the basement doors were not replaced is not a basis to deny an increase for the courtyard doors. The basement doors are separate doors and not part of the courtyard door installation. As for the security cameras installation, the record, including the DHCR report of inspection shows that 8 security cameras that monitor all entrances/exits of the building on a 24-hour basis daily were installed and therefore the security camera installation qualifies as an MCI. The tenants' claims that there are nine entrances and exits with no camera coverage is unsubstantiated and is not supported by the DHCR inspection. As for the tenants' claim that there are at least eight exit-only emergency doors without cameras, the Commissioner notes emergency exit only doors are not ingress/egress doors and are not part of the security camera MCI.

Regarding the claim that there were outstanding class "C" immediately hazardous violations, including lead paint violations at the building, the Commissioner notes that pursuant the applicable regulations at the time the Rent Administrator's order was issued which were the 2014 amendments to Section 2522.4(a)(13) of the Rent Stabilization Code, if an owner has included with the MCI application an affidavit from an architect or engineer who indicates that he/she has inspected the outstanding immediately hazardous non-lead paint C class violation and it/they have been repaired or remedied the violations being of record shall not be a bar to the MCI rent increase. Also, if the MCI application is submitted with an affidavit signed by the owner or a principal or officer of the corporate owner or an architect or engineer indicating the process of lead paint abatement or removal has begun, the application will be docket and normal processing of the application is continued but no order granting a rent increase is issued until the lead paint "C" violations are removed from the record.

The record shows that the owner's MCI application includes two affidavits sworn to on 4/29/2014 by a registered architect indicating that the 4 non-lead paint violations on record at 221/229 Seaman Avenue, and the 21 non-lead paint violations on record at 31/41 Park Terrace West were previously corrected. The application also includes two affidavits by the owner sworn to on 4/15/2015 indicating that the 13 lead paint violations on record at 221/229 Seaman Avenue, and the 7 lead paint violations on record at 31/41 Park Terrace West were in the process of being removed from the HPD's record. The record further shows that the owner subsequently submitted HPD search reports dated 8/12/15 for 221/229 Seaman Avenue and 31/41 Park Terrace West showing that there were no longer any open lead-based class "C" violations on records at both addresses. As the architect's affidavits show that all the non-lead paint violations at the premises were corrected as of 4/29/2015 before the 5/4/2015 date of the MCI application, and the HPD record shows that all the lead paint violations at the building were corrected and removed from the HPD record as of 8/12/2015 before the 10/24/2017 issuance date of the MCI order, the Commissioner finds that the MCI rent increase was properly granted effective 09/01/2015.

Regarding the claim that there are hazardous conditions in the old staircases and the Northern Walkway, the Commissioner notes that as indicated above, the old staircases and the Northern Walkway were not part of the MCI courtyard/walkway concrete resurfacing and as such, this claim does not constitute a basis to deny an increase for the concrete work. This order and opinion is issued without prejudice to the tenants right to file with the Division application for rent reduction based on the owner's failure to maintain building services, including the old stairways and the northern walkway.

The claim that the MCI application was untimely is without merit. The record, including the contractor's affirmation of the MCI cost, the project architect's letter dated 8/31/2016 and the contractor's affidavit sworn to on 9/2/2016 indicate that the concrete project was completed on 10/30/2013. The tenants' claim that the concrete project was possibly completed in March 2012, April 2013 or 5/10/2013 is speculative. The Commissioner finds that based on record the MCI application was timely filed on 05/04/2015 within the two years the MCI work was completed on 10/30/2015.

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The tenants' claim that they were denied due process is without merit. The record shows that the tenants were afforded opportunity to comment on the MCI application and that the DHCR 11/21/2016 inspection was based on the tenants' comments/objections to the MCI application below. The record further shows that on 10/26/2016 Notice of the DHCR inspection was mailed to both the owner and the Tenants Association and the notices were not returned by the Post office as undeliverable.

The claim that there were irregularities in the processing of the MCI application is without merit. The record shows that the application was processed in accordance with DHCR established procedures and that the Rent Administrator's determination was properly based on the record, including the DHCR inspection which found that the MCI work was properly performed in a workmanlike manner.

Based on the reasons set forth above, the Commissioner finds no error in the Rent Administrator's order.

Pursuant to Section 26-511.1 (a)(8) of the Rent Stabilization Law and to Section 26-405.1 (a)(8) of the City Rent and Rehabilitation Law, the collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the laws, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be denied and that the Rent Administrator's order be affirmed.

ISSUED: DEC 24 2021

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
Web Site: www.hcr.ny.gov

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party, only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this "Article 78 proceeding" with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60-day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

Note: During the period of the current Covid-19 emergency, as a courtesy, if the Article 78 proceeding is commenced by efiling pursuant to the Court Rules service may be effectuated, as limited as follows, by forwarding the court's email indicating the assignment of the Index Number and the documents received by the court, i.e., Notice of Petition, Petition, and other efiled documents to DHCRLegalMail@nysher.org. Upon receipt of the complete filings, the receipt of such documents will be acknowledged by email. Only after such acknowledgement of receipt of such documents will the service by email be deemed good service on New York State Division of Housing and Community Renewal (DHCR). DHCR is not the agent for service for any other entity of the State of New York or any third party. In addition, the Attorney General must be served at 28 Liberty Street, 18th Floor, New York, NY 10005. Since Article 78 proceedings take place in the Supreme Court, it is advisable that you consult legal counsel.

There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

317 WEST 89TH STREET TENANTS ASSOCIATION

PETITIONER

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ADMINISTRATIVE REVIEW DOCKET NO.: GV430020RT

RENT ADMINISTRATOR'S DOCKET NO.: FU430123OM

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal against an order issued on September 12, 2018 by the Rent Administrator concerning the housing accommodations known as 317 West 89th Street, New York, New York which granted the owner's application for a rent increase based on the installation of a major capital improvement (MCI), to wit: elevator upgrade.

The petitioner claims, in substance, that the rent increase should not have been granted because the Rent Stabilization Code bars the granting of an MCI when an order reducing rent based on the owner's failure to maintain building-wide services has been issued while the MCI proceeding is pending before the Administrator but after the initial filing of the MCI application. The Commissioner having reviewed the petitioner's appeal and any and all supporting documentation, any and all statements made by affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioner's appeal does not have merit and should be denied.

The Rent Administrator properly determined the qualifying scope of the improvement and the amount of the approved costs and the rent increase. The petitioner's claim that the Rent Stabilization Code (Code) bars the granting of an MCI when a DHCR order reducing rent for failure to maintain services has been issued after the filing date of the MCI application is without merit. At the time the subject Rent Administrator's order was issued the applicable law was the 2014 amendments to Section 2522.4(a)(13) of the Code which stated that an MCI cannot be granted if the owner is not maintaining all required services "as of the date of [the MCI] application." In accordance with this Code amendment, rent reduction orders ("B" Dockets) which were issued after the Administrator had searched DHCR's records for any outstanding or pending B Dockets upon receipt of the MCI application, and which were not pending at the time the MCI application was filed, did not present a bar to granting an MCI for a qualifying installation. The record of the MCI proceeding at hand shows that, upon receipt of the MCI application on September 5, 2017, the Administrator conducted a search of DHCR's records in order to ascertain whether there were any outstanding or pending B Dockets for the subject premises. This search revealed that, as of the date on which the MCI application had been filed, there were no B Dockets either outstanding or pending for the subject premises.

ADMINISTRATIVE REVIEW DOCKET NO. GV430020RT

It is noted that the rent reduction orders cited by the petitioners on appeal (Docket GO430040B) were issued on September 5, 2018, nearly a full year after the Administrator's search of DHCR's records upon receipt of the MCI application. Additionally, DHCR records show that the application for rent reduction pertaining to the GO430040B proceeding was docketed on March 3, 2018, and thus this services proceeding was not pending on the date the MCI application was filed. Therefore, in light of the applicable Code provision noted above, the issuance of the GO430040B order did not present a bar to granting the MCI at issue in the proceeding at hand.

As for the three Commissioner orders cited by the petitioner on appeal, two of them were issued prior to the 2014 Code amendment, and therefore, those PAR orders are not applicable. The third order cited by the petitioner (Docket BQ910049RO) is distinguishable from the proceeding at hand and thus presents no grounds for a revocation of the MCI at issue in the current proceeding. In the BQ910049RO proceeding, the MCI was denied because the B Docket in question (GB930002B) had been outstanding at the time the MCI application had been filed, which, in accordance with the applicable Code amendment described herein above, barred the granting of the MCI. In the case at hand, however, as noted, there were no outstanding or pending B Dockets on record for the subject premises at the time the MCI application was filed.

Pursuant to Section 26-511.1 (a)(8) of the Rent Stabilization Law and to Section 26-405.1 (a)(8) of the City Rent and Rehabilitation Law, the collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the laws, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is

ORDERED, that this petition be denied and that the Rent Administrator's order be affirmed.

ISSUED: DEC 29 2021

Woody Pascal
Deputy Commissioner

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There is no other method of appeal.