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.: HX410096RO
Legacy Sponsor Holdings, LLC	RENT ADMINISTRATOR'S DOCKET NO.: GQ410564LD
PETITIONER X	[redacted]

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner timely filed a petition for administrative review (PAR) of an Order issued on November 13, 2019, by the Rent Administrator (RA) concerning the housing accommodation known as apartment [redacted] at 300 East 40th Street, New York, New York, 10016.

On May 30, 2018, the owner filed with the rent agency a Petition for High-Rent/High-Income rent deregulation wherein the owner stated that the "owner contests the household income stated by the tenant(s) in the attached Income Certification Form and requests verification."

On November 13, 2019, the RA issued an Order Denying Petition or Terminating Proceeding 2018 Filing Period. The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 [HSTPA], as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR and in its supplement, the owner asserts that the RA's Order must be reversed as arbitrary, capricious and unlawful; that DHCR's delay in processing the petition was negligent or willful; that the law at the time the High-Rent/High-Income deregulation petition was filed should be applied; that the RA was required to have processed the petition on the merits because, if the apartment met the requirements for High-Rent/High-Income deregulation, the apartment, pursuant to the Rent Stabilization Law (RSL), would have become deregulated prior to the effective date of HSTPA; that the retroactive application of HSTPA to this case violated the owner's due process rights and was contrary to the intent of the Legislature; and that the RA's retroactive application of HSTPA was improper based upon DHCR's delay in processing the deregulation petition.

The Commissioner denies the PAR.

On June 14, 2019, the New York State Legislature enacted HSTPA which repealed the provisions of the Rent Stabilization Law which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulations shall take effect immediately. (See HSTPA, Part "D" § 8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to this proceeding. If an apartment remains regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of High Rent/High Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes that, as of June 14, 2019, no deregulation order had been issued for the subject apartment and the subject apartment was under the jurisdiction of the Rent Stabilization Law and Code.

The Commissioner notes that the owner seeks a revocation of the RA's November 13, 2019 Order and for determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income rent deregulation for an apartment that was rent-stabilized as of June 14, 2019 and creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income rent deregulated, as there are no longer any standards under Rent Regulatory Laws and Regulations that permits the review that petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Comty. Renewal, (Index No. 15833/2020)(Hon. Carol R. Edmead)(Sup. Ct, NY Ct., May 19, 2021 (wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019") See also Matter of 160 E. 84th St. Assocs. LLC v. New York State Div. of Housing & Comty. Renewal,2022 NY Slip Op 01229, ¶ 1, 202 A.D. 3d 610, 611. 159 N.Y.S. 3d 845, 845 (App. Div. 1st Dept.).

The application of HSTPA to this matter is not based upon the independent judgment of the rent agency, but, rather, is pursuant to the plain text in HSTPA, and DHCR is statutorily obliged to apply HSTPA to this case. HSTPA specifically states that the law is to "take effect immediately" and that "if an apartment remains rent regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of high rent/high income deregulation."

The Commissioner rejects petitioner's assertion that the RA's retroactive application of HSTPA was improper. The Commissioner notes that the New York Court of Appeals decision in Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal 35 N.Y.3d (2020) does not apply to High Rent/High Income deregulation case. While the Court of Appeals disallowed the retroactive application of certain rent overcharge provisions which created additional liability for owners and eliminated a four-year safe harbor for that liability contained in Part F of HSTPA, it stated that:

> The question we address here is relatively narrow — we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation **only to determine whether certain Part F amendments**...*must be applied retroactively*...We *conclude that the* **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. *See supra* Matter of 160 E. 84th St. Assoc. LLC (wherein the Appellate Division, First Department, stated that "the application of HSTPA Part "D" affect[ed} only the propriety of prospective relief...[and] ha[d} no potentially problematic retroactive effect").

The fact that the 2018 Petition would have been determined based on tenant's income in 2016-2017, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify the nature and content of deregulation and the fact that such prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v DHCR, 257 A.D.2d 391 (1st Dept. 1999), aff'd 94 N.Y.2d 851 (1999).

Contrary to petitioner's claims, the dismissal of its deregulation application pursuant to HSTPA does not constitute a retroactive application of the statute. On June 14, 2019, the law changed so that rent stabilized units could no longer be deregulated based on High-Rent/High-Income. This change precluded DHCR's granting such applications on or after June 14, 2019. As a result, the subject unit remained regulated. The owner's due process argument, which is premised on its claim of retroactivity, is not meritorious and must be denied.

There can also be no remedy based on any assertion of denial of due process based on a "delay" in processing the owner's application. While there may be variances in terms of processing, there is no question that DHCR was issuing these deregulation determinations on the merits almost to the exact date of the passage of the HSTPA. Indeed, the various and multiple litigations over the "explanatory addenda" cases where DHCR issued such deregulation orders (but the second prong of that deregulation, that the lease in effect had not expired), themselves demonstrate that DHCR was not withholding its issuance of determinations. *See* In the Matter of 160 E. 84th Steet Assoc LLC, et al. v. New York State Division of Housing and Community Renewal, 2022 N.Y. App. Div. LEXIS 1243, 2022 NY Slip Op 01229, aff'g 87th Street Sherry Assoc LLC v DHCR, N.Y. Co. Index No. 153999/2020 (Edmead, J. 12/22/20)(DHCR's explanatory addenda explained the effect of HSTPA part D which prohibited the deregulation of units with leases expiring after June 14, 2019 and the statute "affected only the propriety of prospective relief . . . and had no potential problematic retroactive effect"). Any delay argument is further upended by the fact that in 2018 a total of 105 apartments of the close to one million units subject to rent regulation were issued deregulating orders and 52 apartments in 2019. It is noteworthy that these numbers were consistent between 2018 and half the year of 2019, further establishing that there was no delay in their issuance in anticipation of the 2019 legislative change.

The Commissioner further notes that, even where there had been delay, the Appellate Court in Matter of Partnership 92 LP and Bldg Mgt Co Inc v NY State Division of Housing and Community Renewal,46 A.D.3d 425(1st Dept. 2007) aff'd 13 N.Y.3d 859 (2008) has noted that the express and explicit command of the legislature shall control. Moreover, DHCR could not have predicted the express language of any potential modifications that could be encompassed by HSTPA and how they would impact this application for High-Rent/High-Income deregulation. Significantly, even where remedies based on delay have been made available, such delay must be deliberate or negligent in anticipation of a change of statute. See Matter of IG Second Generation Partners L.P. v N.Y. State Div. of Hous. & Community Renewal, 10 N.Y.3d 474 (2008) (Court of Appeals refused to award remedies for an alleged delay since it was not proven that the delay resulted from DHCR's negligent or deliberate conduct). See also Rudin E. 55th St. LLC v Div. of Hous. & Community Renewal, 2021 NY Slip Op 31576[U], *15 [Sup Ct, NY County 2021)(Supreme Court recently rejected an owner's assertion that "DHCR committed an unreasonable 16-month delay in issuing a deregulation order . . .").1

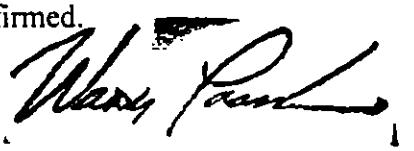
The expiration of the time period prescribed by the applicable luxury deregulation sections of the Code, shall not divest DHCR of its authority to process these petitions and to issue determinations. See Dworman v NYS Div of Housing and Community Renewal, 94 NY2d 359 (1999). As such, the expiration of the time periods asserted by the petitioner for processing this deregulation petition did not divest DHCR from issuing the November 13, 2019 Order, which under the clear direction of the legislature was now required to be dismissed and, absent evidence of negligence, did not constitute unreasonable delay. See Schutt v NYS Division of Housing and Community Renewal, 278 A.D.2d 58 (1st Dept. 2000).

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

ORDERED, that the owner's petition be, and the same hereby is, denied; and that the Rent Administrator's order be, and the same hereby is, affirmed.

ISSUED

SEP 07 2022



Woody Pascal
Deputy Commissioner

1 In Rudin E. 55th St. LLC, the Court agreed that the Deputy Commissioner's findings were reasonable because: 1) the text of RSC § 2531.9 plainly states that the agency "shall not [be] divest[ed] . . . of its authority to process petitions," by "[t]he expiration of the time periods prescribed . . . for [agency] action"; and 2) appellate case law clearly provides that a party claiming unreasonable delay bears the burden of demonstrating that it was "the result of DHCR's negligent or deliberate conduct." The Court noted that the evidentiary record was devoid of evidence of negligent or deliberate conduct by DHCR.

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 (DHCR)
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.: HX410293RO

RENT ADMINISTRATOR'S
DOCKET NO.: GR410489LD

SP 141 E 33 LLC,

TENANT: [redacted]

PETITIONER X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a petition for administrative review (PAR) of an Order issued on November 13, 2019, by the Rent Administrator (RA) concerning the housing accommodation known as Apartment [redacted] located at 141 East 33rd Street, New York, New York, 10016.

On June 25, 2018, the owner filed a Petition for High-Rent/High-Income deregulation, wherein the owner stated that "the owner contests the household income stated by the tenant(s) in the attached Income Certification Form and requests verification."

On November 13, 2019, the RA issued the Order herein under review. The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR, the owner alleges, among other things, that the Order must be annulled as it is arbitrary, capricious, and illegal; that HSTPA violates the owner's due process rights by retroactively applying newly enacted laws to a proceeding that's essence is predicated on the review of the prior two (2) years of household income; that the Petition was for the 2018 filing period; that the statutory high-income deregulation threshold has been met if it is determined that the total annual household income of the occupants of the subject housing accommodation is more than $200,000.00 in each of the two preceding calendar years - 2016 and 2017; that the implementation of HSTPA to luxury decontrol proceedings currently pending, where the scope of review is from 2016 and 2017, deprives owners of all the rights of ownership, and also eliminates property owners' rights to use their property for anything other than the compelled use of a stabilized rental; that DHCR violated the owner's Due Process rights and condoned a violation of the Takings Clause by applying the act of 2019 to the instant proceeding; that these very substantial restrictions on property owners' rights effect an uncompensated physical taking that is a *per se* violation of the Takings Clause; that owner submits this PAR without prejudice to on-going litigation challenging the validity of HSTPA; and that, in the alternative, this proceeding should be held in abeyance until a final order is issued in the on-going litigation challenging the validity of HSPTA.

After a careful consideration of the evidence of record, the Commissioner finds that the owner's petition should be denied.

On June 14, 2019, the New York State Legislature enacted HSTPA (Chapter 36 of the Laws of 2019) which repealed the provisions of the Rent Stabilization Laws and Regulations which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulation shall take effect immediately. (See HSTPA, Part "D" §8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to this proceeding. If an apartment remains regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of High-Rent/High-Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes that, as of June 14, 2019, no

deregulation order had been issued for the subject apartment and the subject apartment was under the jurisdiction of the Rent Stabilization Laws and Regulations.

The Commissioner notes that the owner seeks a revocation of the November 13, 2019 Order and for a determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income rent deregulation for an apartment that was rent stabilized as of June 14, 2019 and creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income deregulated as there is no longer any standard under Rent Stabilization that permits the review that petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Cmty. Renewal, (Index No.: 158833/2020)(Hon. Carol R. Edmead)(Sup. Ct. New York Co. May 19, 2021)(wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019"). See also Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 2022 NY Slip Op 01229, ¶ 1, 202 A.D.3d 610, 611, 159 N.Y.S.3d 845, 845 (App. Div. 1st Dept.).

The application of HSTPA to this matter is not based upon the independent judgment of DHCR but, rather, it is pursuant to the plain text in HSTPA, and DHCR is statutorily obliged to apply HSTPA to this case. HSTPA specifically stated that the law is to "take effect immediately" and that "if an apartment remains rent regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of high rent/high income deregulation."

The Commissioner rejects petitioner's assertions that the RA's retroactive application of HSTPA was improper. The Commissioner notes that the New York Court of Appeals decision in Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal, (35 NY3d 332 [2020]), does not apply to High-Rent/High-Income deregulation cases. While the Court of Appeals disallowed the retroactive application of certain rent overcharge provisions which created additional liability for owners and eliminated a four-year safe harbor for that liability contained in Part F of the HSTPA, it stated that:

> The question we address here is relatively narrow – we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation

> **only to determine whether certain Part F amendments**...must be applied retroactively....We conclude that the **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. See supra Matter of 160 E. 84th St. Assocs. LLC (wherein, the Appellate Division, First Department, stated that "the application of HSTPA Part "D" "affect[ed] only the propriety of prospective relief . . . [and] ha[d] no potentially problematic retroactive effect").

The fact that the 2018 Petition would have been determined based on tenant's income in 2016-2017, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify the nature and content of deregulation and the fact that such prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v DHCR, 257 A.D.2d 391 (1st Dept. 1999), aff'd 94 N.Y.2d 851 (1999).

Contrary to petitioner's claims, the dismissal of its deregulation application pursuant to HSTPA does not constitute a retroactive application of the statute. On June 14, 2019, the law changed so that rent stabilized units could no longer be deregulated based on High-Rent/High-Income. This change precluded DHCR's granting such applications on or after June 14, 2019. As a result, the subject unit remained regulated. The owner's due process argument, which is premised on its claim of retroactivity, is not meritorious and must be denied.

The Commissioner notes that the rent agency does not and would not declare acts of state law unconstitutional but does enforce, implement, and administer the State laws consistent therewith. The application here is clearly consistent. The owner claims that the repeal of deregulation provisions constitutes a Taking under the US Constitution, that it has suffered harm, and that such repeal lacks a rational basis. However, the Commissioner notes that there is a strong presumption of constitutionality of the rent laws as enacted by the New York State Legislature. In Community Hous. Improvement Program v City of NY, 2020 US Dist LEXIS 181189, at *34-35 [EDNY Sep. 30, 2020, No. 19-cv-4087(EK)(RLM)(appeal pending), the Court dismissed an owner's arguments that HSTPA's provisions are facially invalid based on

physical and regulatory takings claims. The Court also found that claimants who allege an as applied regulatory takings claim face a "heavy burden". It rejected an owner's claim that the effect of HSTPA is not rationally related to increasing the supply of affordable housing, helping low-income New Yorkers, or promoting socio-economic diversity and that HSTPA's amendments "perpetuates New York's housing crisis and fails to target the people it claims to serve". The Court in Community Hous. Improvement Program v City of NY et al, found that the legislative purposes and justifications offered for the regulations were valid.

The Commissioner also notes that no party has a vested right to any remedy under the Rent Stabilization Law, thus diminishing the petitioner's claim that the application of HSTPA deprives the petitioner of due process and constitutes a taking of property. The petitioner had no vested right in the continuation of a particular provision of the law or of any policy or procedure followed by DHCR. The New York Court of Appeals in I. L. F. Y. Co. v Temporary State Hous. Rent Com., 10 NY2d 263 (1961), (appeal dismissed), 369 U.S. 795, 82 S.Ct. 1155, 8 L.Ed.2d 285 (1962), held that an owner does not have an interest in any particular rule of the system of rent regulation so vested as to entitle it to keep the rule unchanged. In this matter, the owner cannot identify any vested property interest impaired by HSTPA because the owner did not have a vested right to deregulate the apartment before the enactment of HSTPA. See Pledge v DHCR, supra. Accordingly, DHCR finds that the owner has not identified a particular right that vested by virtue of changes in prior processing rules.

The Commissioner also will not honor petitioner's alternative request to hold this proceeding in abeyance "until a final order is issued in the on-going litigation challenging the validity of HSTPA." The Commissioner notes that the Courts in those challenges have not placed any stay on the processing of Luxury Deregulation proceedings nor any other provision of the Rent Stabilization Law, nor have the parties to the above-referenced actions even requested the relief that the owner seeks by virtue of its administrative litigation.

As indicated above, the United States District Court in Community Hous. Improvement Program v City of NY et al, had dismissed all claims against New York State and DHCR which sought to challenge the validity of HSTPA's repeal of the luxury and high-income decontrol provisions. District Court Judge, Eric Komitee,

stated in his decision that "no precedent binding on this Court has ever found any provision of a rent-stabilization statute to violate the Constitution...rent regulations have now been the subject of almost a hundred years of case law." See Community Hous. Improvement Program v City of NY et al, 2020 US Dist LEXIS 181189, at *34-35 (EDNY Sep. 30, 2020, No. 19-cv-4087)(EK)(RLM).

The Commissioner accordingly rejects petitioner's statement that this PAR is submitted without prejudice to "on-going litigation challenging the validity of HSTPA". This generalized reservation is without meaning or substance. Once a final order is issued in this proceeding, any further claims raised by either party will be considered in accordance with the restrictions found in court precedent and in various provisions of the rent laws and regulations. As with any other final order determining a PAR, the Commissioner opines that Petitioner's challenge to the November 13, 2019 Order is limited to the specific arguments that the petitioner raised in its PAR application and is subject to the scope of review restrictions set forth in RSC §2529.6.

The Commissioner further points out agency records indicate that, the owner renewed the tenant's lease for the term of April 1, 2018 through March 31, 2019. Prior to HSTPA, RSL §26-504.3 conditioned High-Rent/High-Income deregulation on the expiration of an existing lease. The condition was something that existed when the owner filed its application and was something that the owner was, or should have been, well aware of. Given that the granting of the petition for High-Rent/High-Income deregulation was contingent on the expiration of the lease, any deregulation order issued prior to June 14, 2019, would not have been effective, because the current lease in effect expired after the passage of HSTPA. See supra Matter of 160 E. 84th St. Assocs. LLC (DHCR's explanatory addenda explained the effect of HSTPA part D which prohibited the deregulation of units with leases expiring after June 14, 2019, and the statute "affected only the propriety of prospective relief . . . [and] ha[d] no potential problematic retroactive effect").

The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

THEREFORE, in accordance with the relevant provisions of the Rent Stabilization Law and Regulations, it is

ORDERED, that the petition be, and the same hereby is, denied.

ISSUED

SEP 07 2022

Woody Pascal
Deputy Commissioner

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Division of Housing and Community Renewal
Office of Rent Administration
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There is no other method of appeal.

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: : HX410218RO
Legacy Sponsor Holdings, LLC	RENT ADMINISTRATOR'S
PETITIONER	DOCKET NO.: GR410053LD

_____X [redacted]

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner timely filed a petition for administrative review (PAR) of an Order issued on November 13, 2019, by the Rent Administrator (RA) concerning the housing accommodation known as apartment [redacted] at 300 East 40th Street, New York, New York, 10016

On June 5, 2018, the owner filed with the rent agency a Petition for High-Rent/High-Income deregulation wherein the owner stated that the "owner contests the household income stated by the tenant(s) in the attached Income Certification Form and requests verification."

On November 13, 2019, the RA issued an Order Denying Petition or Terminating Proceeding 2018 Filing Period. The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 [HSTPA], as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR and in its supplement, the owner asserts that the RA's Order must be reversed as arbitrary, capricious and unlawful; that DHCR's delay in processing the petition was negligent or willful; that the law at the time the High-Rent/High-Income deregulation petition was filed should be applied; that the RA was required to have processed the petition on the merits because, if the apartment met the requirements for High-Rent/High-Income deregulation, the apartment, pursuant to the Rent Stabilization Law (RSL), would have become deregulated prior to the effective date of HSTPA; that retroactive application of HSTPA was a due process violation and was contrary to the intent of the Legislature; and that the RA's retroactive application of HSTPA was improper based upon DHCR's delay in processing the deregulation petition.

The Commissioner denies the PAR.

On June 14, 2019, the New York State Legislature enacted HSTPA which repealed the provisions of the Rent Stabilization Law which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulations shall take effect immediately. (See HSTPA, Part "D" § 8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to this proceeding. If an apartment remains regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of High Rent/High Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes that, as of June 14, 2019, no deregulation order had been issued for the subject apartment and the subject apartment was under the jurisdiction of the Rent Stabilization Law and Code.

The Commissioner notes that the owner seeks a revocation of the RA's November 13, 2019 Order and for determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income rent deregulation for an apartment that was rent-stabilized as of June 14, 2019 and creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income rent deregulated, as there are no longer any standards under Rent Regulatory Laws and Regulations that permits the review that petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Comty. Renewal, (Index No. 15833/2020)(Hon. Carol R. Edmead)(Sup. Ct, NY Ct., May 19, 2021 (wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019") See also Matter of 160 E. 84th St. Assocs. LLC v. New York State Div. of Housing & Comty. Renewal,2022 NY Slip Op 01229, ¶ 1, 202 A.D. 3d 610, 611. 159 N.Y.S. 3d 845, 845 (App. Div. 1st Dept.).

The application of HSTPA to this matter is not based upon the independent judgment of the rent agency, but, rather, is pursuant to the plain text in HSTPA, and DHCR is statutorily obliged to apply HSTPA to this case. HSTPA specifically states that the law is to "take effect immediately" and that "if an apartment remains rent regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of high rent/high income deregulation."

The Commissioner rejects petitioner's assertion that the RA's retroactive application of HSTPA was improper. The Commissioner notes that the New York Court of Appeals decision in Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal 35 N.Y.3d (2020) does not apply to High Rent/High Income deregulation case. While the Court of Appeals disallowed the retroactive application of certain rent overcharge provisions which created additional liability for owners and eliminated a four-year safe harbor for that liability contained in Part F of HSTPA, it stated that:

> The question we address here is relatively narrow — we have no occasion to address the prospective application of any portion of the HSTPA, including Part F.

> We address the new legislation **only to determine whether certain Part F amendments**...must be applied retroactively...We conclude that the **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. *See supra* Matter of 160 E. 84th St. Assoc. LLC (wherein the Appellate Division, First Department, stated that "the application of HSTPA Part "D" affect[ed} only the propriety of prospective relief...[and] ha[d} no potentially problematic retroactive effect").

The fact that the 2018 Petition would have been determined based on tenant's income in 2016-2017, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify the nature and content of deregulation and the fact that such prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v DHCR, 257 A.D.2d 391 (1st Dept. 1999), aff'd 94 N.Y.2d 851 (1999).

Contrary to petitioner's claims, the dismissal of its deregulation application pursuant to HSTPA does not constitute a retroactive application of the statute. On June 14, 2019, the law changed so that rent stabilized units could no longer be deregulated based on High-Rent/High-Income. This change precluded DHCR's granting such applications on or after June 14, 2019. As a result, the subject unit remained regulated. The owner's due process argument, which is premised on its claim of retroactivity, is not meritorious and must be denied.

There can also be no remedy based on any assertion of denial of due process based on a "delay" in processing the owner's application. While there may be variances in terms of processing, there is no question that DHCR was issuing these deregulation determinations on the merits almost to the exact date of the passage of the HSTPA. Indeed, the various and multiple litigations over the "explanatory addenda" cases where DHCR issued such deregulation orders (but the second prong of that deregulation, that the lease in effect had not expired), themselves demonstrate that DHCR was not withholding its issuance of determinations. *See* In the Matter of 160 E. 84th Steet Assoc LLC, et al. v. New York State Division of Housing and Community Renewal, 2022 N.Y. App. Div. LEXIS 1243, 2022 NY Slip Op 01229, aff'g 87th Street Sherry Assoc LLC v DHCR, N.Y. Co. Index No. 153999/2020 (Edmead, J. 12/22/20)(DHCR's explanatory addenda explained the effect of HSTPA part D which prohibited the deregulation of units with leases expiring after June 14, 2019 and the statute "affected only the propriety of prospective relief . . . and had no potential problematic retroactive effect"). Any delay argument is further upended by the fact that in 2018 a total of 105 apartments of the close to one million units subject to rent regulation were issued deregulating orders and 52 apartments in 2019. It is noteworthy that these numbers were consistent between 2018 and half the year of 2019, further establishing that there was no delay in their issuance in anticipation of the 2019 legislative change.

The Commissioner further notes that, even where there had been delay, the Appellate Court in Matter of Partnership 92 LP and Bldg Mgt Co Inc v NY State Division of Housing and Community Renewal,46 A.D.3d 425(1st Dept. 2007) aff'd 13 N.Y.3d 859 (2008) has noted that

the express and explicit command of the legislature shall control. Moreover, DHCR could not have predicted the express language of any potential modifications that could be encompassed by HSTPA and how they would impact this application for High-Rent/High-Income deregulation. Significantly, even where remedies based on delay have been made available, such delay must be deliberate or negligent in anticipation of a change of statute. See Matter of IG Second Generation Partners L.P. v N.Y. State Div. of Hous. & Community Renewal, 10 N.Y.3d 474 (2008) (Court of Appeals refused to award remedies for an alleged delay since it was not proven that the delay resulted from DHCR's negligent or deliberate conduct). See also Rudin E. 55th St. LLC v Div. of Hous. & Community Renewal, 2021 NY Slip Op 31576[U], *15 (Sup Ct, NY County 2021)(Supreme Court recently rejected an owner's assertion that "DHCR committed an unreasonable 16-month delay in issuing a deregulation order . . .").1

The expiration of the time period prescribed by the applicable luxury deregulation sections of the Code, shall not divest DHCR of its authority to process these petitions and to issue determinations. See Dworman v NYS Div of Housing and Community Renewal, 94 NY2d 359 (1999). As such, the expiration of the time periods asserted by the petitioner for processing this deregulation petition did not divest DHCR from issuing the November 13, 2019 Order, which under the clear direction of the legislature was now required to be dismissed and, absent evidence of negligence, did not constitute unreasonable delay. See Schutt v NYS Division of Housing and Community Renewal, 278 A.D.2d 58 (1st Dept. 2000).

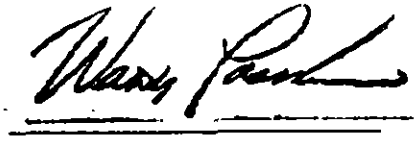
The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

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

ORDERED, that the owner's petition be, and the same hereby is, denied; and that the Rent Administrator's order be, and the same hereby is, affirmed.

ISSUED

SEP 08 2022



Woody Pascal
Deputy Commissioner

1 In Rudin E. 55th St. LLC, the Court agreed that the Deputy Commissioner's findings were reasonable because: 1) the text of RSC § 2531.9 plainly states that the agency "shall not [be] divest[ed] . . . of its authority to process petitions," by "[t]he expiration of the time periods prescribed . . . for [agency] action"; and 2) appellate case law clearly provides that a party claiming unreasonable delay bears the burden of demonstrating that it was "the result of DHCR's negligent or deliberate conduct." The Court noted that the evidentiary record was devoid of evidence of negligent or deliberate conduct by DHCR.

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

_____X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: HV410163RO

RENT ADMINISTRATOR'S
DOCKET NO.: HQ410617LD

231 EAST 76TH STREET LLC

[redacted]

PETITIONER _____X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a petition for administrative review (PAR) of an Order issued on August 29, 2019, by the Rent Administrator (RA) concerning the housing accommodation known as Apartment [redacted] located at 231 East 76th Street, New York, New York, 10021.

On May 24, 2019, the owner filed a petition for High-Rent/High-Income deregulation, wherein the owner stated that "the owner requests verification of the household income because the tenant failed to properly return the Income Certification Form (ICF) to the owner."

On August 29, 2019, the RA issued the Order herein under review. The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR, the owner alleges, among other things, that the Order must be annulled as it is arbitrary, capricious, and illegal; that

HSTPA violates the owner's due process rights by retroactively applying newly enacted laws to a proceeding that's essence is predicated on the review of the prior two (2) years of household income; that the Petition was for the 2019 filing period; that the statutory high-income deregulation threshold has been met if it is determined that the total annual household income of the occupants of the subject housing accommodation is more than $200,000.00 in each of the two preceding calendar years - 2017 and 2018; that the implementation of HSTPA to luxury decontrol proceedings currently pending, where the scope of review is from 2017 and 2018, deprives owners of all the rights of ownership, and also eliminates property owner's rights to use their property for anything other than the compelled use of a stabilized rental; that DHCR violated the owner's Due Process rights and condoned a violation of the Takings Clause by applying the act of 2019 to the instant proceeding; that these very substantial restrictions on property owners' rights effect an uncompensated physical taking that is a *per se* violation of the Takings Clause; that owner submits this PAR without prejudice to on-going litigation challenging the validity of HSTPA; and that, in the alternative, this proceeding should be held in abeyance until a final order is issued in the on-going litigation challenging the validity of HSPTA.

After a careful consideration of the evidence of record, the Commissioner finds that the owner's petition should be denied.

On June 14, 2019, the New York State Legislature enacted HSTPA (Chapter 36 of the Laws of 2019) which repealed the provisions of the Rent Stabilization Laws and Regulations which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulation shall take effect immediately. (See HSTPA, Part "D" §8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to this proceeding. If an apartment remains regulated on or after June 14, 2019, then that apartment is no longer subject to

the statutory provisions of High-Rent/High-Income deregulation, as those statutes have been repealed by the Legislature in passing HSTPA. The Commissioner notes that, as of June 14, 2019, no deregulation order had been issued for the subject apartment and the subject apartment was under the jurisdiction of the Rent Stabilization Laws and Regulations.

The Commissioner notes that the owner seeks a revocation of the August 29, 2019 Order and for a determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income deregulation for an apartment that was rent stabilized as of June 14, 2019 and creates a bright-line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income deregulated as there is no longer any standard under Rent Stabilization that permits the review that petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Cmty. Renewal, (Index No.: 158833/2020)(Hon. Carol R. Edmead)(Sup. Ct. New York Co. May 19, 2021)(wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019"). See also Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 2022 NY Slip Op 01229, ¶ 1, 202 A.D.3d 610, 611, 159 N.Y.S.3d 845, 845 (App. Div. 1st Dept.).

The Commissioner rejects petitioner's assertions that the RA's retroactive application of HSTPA was improper. The Commissioner notes that the New York Court of Appeals decision in Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal 35 N.Y.3d 332 (2020) does not apply to High-Rent/High-Income deregulation cases. While the Court of Appeals disallowed the retroactive application of certain rent overcharge provisions which created additional liability for owners and eliminated a four-year safe harbor for that liability contained in Part F of the HSTPA, it stated that:

> The question we address here is relatively narrow – we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation **only to determine whether certain**

> **Part F amendments**...must be applied retroactively...We conclude that the **overcharge calculation amendments** *cannot* be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. See supra Matter of 160 E. 84th St. Assocs. LLC (wherein, the Appellate Division, First Department, stated that "the application of HSTPA Part "D" "affect[ed] only the propriety of prospective relief . . . [and] ha[d] no potentially problematic retroactive effect").

The fact that the 2019 petition would have been determined based on tenant's income in 2017 and 2018, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify the nature and content of deregulation and the fact that such prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v DHCR, 257 A.D.2d 391 (1st Dept. 1999), aff'd 94 N.Y.2d 851 (1999).

Contrary to petitioner's claims, the dismissal of its deregulation application pursuant to HSTPA does not constitute a retroactive application of the statute. On June 14, 2019, the law changed so that rent stabilized units could no longer be deregulated based on High-Rent/High-Income. This change precluded DHCR's granting such applications on or after June 14, 2019. As a result, the subject unit remained regulated. The owner's due process argument, which is premised on its claim of retroactivity, is not meritorious and must be denied.

The Commissioner notes that the rent agency does not and would not declare acts of state law unconstitutional but does enforce, implement, and administer the State laws consistent therewith. The application here is clearly consistent. The owner claims that the repeal of deregulation provisions constitutes a Taking under the US Constitution, that it has suffered harm, and that such repeal lacks a rational basis. However, the Commissioner notes that there is a strong presumption of constitutionality of the rent laws as enacted by the New York State Legislature. In

Community Hous. Improvement Program v City of NY et al, 2020 US Dist LEXIS 181189, at *34-35 (EDNY Sep. 30, 2020, No. 19-cv-4087)(EK)(RLM)(Appeal pending), the Court dismissed an owner's arguments that HSTPA's provisions are facially invalid based on physical and regulatory takings claims. The Court also found that claimants who allege an as applied regulatory takings claim face a "heavy burden". It rejected an owner's claim that the effect of HSTPA is not rationally related to increasing the supply of affordable housing, helping low-income New Yorkers, or promoting socio-economic diversity and that HSTPA's amendments "perpetuates New York's housing crisis and fails to target the people it claims to serve". The Court in Community Hous. Improvement Program found that the legislative purposes and justifications offered for the regulations were valid.

The Commissioner also notes that no party has a vested right to any remedy under the Rent Stabilization Laws and Regulations, thus diminishing the petitioner's claim that the application of HSTPA deprives the petitioner of due process and constitutes a taking of property. The petitioner had no vested right in the continuation of a particular provision of the law or of any policy or procedure followed by DHCR. The New York Court of Appeals in I. L. F. Y. Co. v Temporary State Hous. Rent Com., 10 NY2d 263 (1961), appeal dismissed 369 U.S. 795 (1962) held 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. In this matter, the owner cannot identify any vested property interest in the continued processing of its application because the owner did not have a vested right to deregulate the subject apartment before the enactment of HSTPA. See Pledge v DHCR, supra. Accordingly, DHCR finds that the owner has not identified a particular right that vested by virtue of changes in prior processing rules.

The Commissioner also will not honor petitioner's alternative request to hold this proceeding in abeyance "until a final order is issued in the on-going litigation challenging the validity of HSTPA." The Commissioner notes that the Courts in those challenges have not placed any stay on the processing of Luxury Deregulation proceedings nor any other provision of the Rent Stabilization Law, nor have the parties to the above-referenced actions even requested

the relief that the owner seeks by virtue of its administrative litigation.

As indicated above, the United States District Court in Community Hous. Improvement Program had dismissed all claims against New York State and DHCR which sought to challenge the validity of HSTPA's repeal of the luxury and high-income decontrol provisions. District Court Judge, Eric Komitee, stated in his decision that "no precedent binding on this Court has ever found any provision of a rent-stabilization statute to violate the Constitution...rent regulations have now been the subject of almost a hundred years of case law." See Community Hous. Improvement Program v City of NY et al, 2020 US Dist LEXIS 181189, at *34-35 (EDNY Sep. 30, 2020, No. 19-cv-4087)(EK)(RLM).

The Commissioner accordingly rejects petitioner's statement that this PAR is submitted without prejudice to "on-going litigation challenging the validity of HSTPA". This generalized reservation is without meaning or substance. Once a final order is issued in this proceeding, any further claims raised by either party will be considered in accordance with the restrictions found in court precedent and in various provisions of the rent laws and regulations. As with any other final order determining a PAR, the Commissioner opines that Petitioner's challenge to the August 29, 2019 Order is limited to the specific arguments that the petitioner raised in its PAR application and is subject to the scope of review restrictions set forth in RSC §2529.6.

The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

THEREFORE, in accordance with the relevant provisions of the Rent Stabilization Law and Regulations, it is

ORDERED, that the petition be, and the same hereby is, denied.

ISSUED:
SEP 08 2022

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

_____X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

SP 167 E. 82 LLC.,

ADMINISTRATIVE REVIEW
DOCKET NO.: HX410113RO

RENT ADMINISTRATOR'S
DOCKET NO.: GR410421LD

TENANTS: [redacted]

PETITIONER _____X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a petition for administrative review (PAR) of an Order issued on November 13, 2019, by the Rent Administrator (RA) concerning the housing accommodation known as Apartment [redacted], located at 167 E. 82nd Street, New York, New York, 10028.

On June 25, 2018, the owner filed a Petition for High-Rent/High-Income deregulation, wherein the owner stated that "the owner contests the household income stated by the tenant(s) in the attached Certification Form and requests verification."

On November 13, 2019, the RA issued the Order herein under review. The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR, the owner alleges, among other things, that the Order must be annulled as it is arbitrary, capricious, and illegal; that HSTPA violates the owner's due process rights by retroactively applying newly enacted laws to a proceeding that is in essence predicated on the review of the prior two (2) years of household income; that the Petition was for the 2018 filing period; that the statutory high-income deregulation threshold has been met if it is determined that the total annual household income of the occupants of the subject housing accommodation is more than $200,000.00 in each of the two preceding calendar years - 2016 and 2017; that the implementation of HSTPA to luxury decontrol proceedings currently pending, where the scope of review is from 2016 and 2017, deprives owners of all the rights of ownership, and also eliminates property owner's rights to use their property for anything other than the compelled use of a stabilized rental; that DHCR violated the owner's Due Process rights and condoned a violation of the Takings Clause by applying the act of 2019 to the instant proceeding; that these very substantial restrictions on property owners' rights effect an uncompensated physical taking that is a *per se* violation of the Takings Clause; that the owner submits this PAR without prejudice to on-going litigation challenging the validity of HSTPA; and that, in the alternative, this proceeding should be held in abeyance until a final order is issued in the on-going litigation challenging the validity of HSPTA.

After a careful consideration of the evidence of record, the Commissioner finds that the owner's petition should be denied.

On June 14, 2019, the New York State Legislature enacted HSTPA (Chapter 36 of the Laws of 2019) which repealed the provisions of the Rent Stabilization Laws and Regulations which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulation shall take effect immediately. (See HSTPA, Part "D" §8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to this proceeding. If an apartment remains regulated on or

after June 14, 2019, that apartment is no longer subject to the statutory provisions of High-Rent/High-Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes, as of June 14, 2019, no deregulation order had been issued for the subject apartment and the subject apartment was under the jurisdiction of the Rent Stabilization Laws and Regulations.

The Commissioner notes that the owner seeks a revocation of the November 13, 2019, Order and for a determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income rent deregulation for an apartment that was rent stabilized as of June 14, 2019. HSTPA creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income deregulated as there is no longer any standard under Rent Stabilization that permits the review petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Cmty. Renewal, (Index No.: 158833/2020)(Hon. Carol R. Edmead)(Sup. Ct. New York Co. May 19, 2021)(wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019"). See also Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 202 A.D.3d 610 (App. Div. 1st Dept. 2022).

The application of HSTPA to this matter is not based upon the independent judgment of DHCR but, rather, is pursuant to the plain text in HSTPA, and DHCR is statutorily obliged to apply HSTPA to this case. HSTPA specifically stated that the law is to "take effect immediately" and that "if an apartment remains rent regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of high rent/high income deregulation."

The Commissioner rejects petitioner's assertions that the RA's retroactive application of HSTPA was improper. The Commissioner notes the New York Court of Appeals decision in Matter of Regina Metro. Co., LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 35 N.Y.3d 332 (2020) does not apply to High-Rent/High-Income deregulation cases. While the Court of Appeals in Matter

of Regina Metro. Co., LLC disallowed the retroactive application of certain rent overcharge provisions, which created additional liability for owners, and eliminated a four-year safe harbor for that liability contained in Part F of the HSTPA, it stated that:

> The question we address here is relatively narrow – we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation **only to determine whether certain Part F amendments**...must be applied retroactively....We conclude that the **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. See supra Matter of 160 E. 84th St. Assocs. LLC, wherein, the Appellate Division, First Department, stated that "the application of HSTPA Part "D" "affect[ed] only the propriety of prospective relief . . . [and] ha[d] no potentially problematic retroactive effect".

The fact that the 2018 Petition would have been determined based on tenant(s) income in 2016-2017, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify the nature and content of deregulation and the fact that such prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v. N.Y. State Div. of Hous. & Cmty. Renewal, 257 A.D.2d 391, 683 N.Y.S.2d 76 (App. Div. 1st Dept. 1999).

Contrary to petitioner's claims, the dismissal of its deregulation application pursuant to HSTPA does not constitute a retroactive application of the statute. On June 14, 2019, the law changed so that rent stabilized units could no longer be deregulated based on High Income/High Rent. This change precluded DHCR's granting such applications on or after June 14, 2019. As a result, the subject unit remained regulated. The owner's Due Process argument, which is premised on its claim of retroactivity, is not meritorious and must be denied.

The Commissioner further points out that agency records indicate that the owner renewed the tenants' lease for the term of October 1, 2017, through September 30, 2019. Prior to HSTPA, RSL §26-504.3 conditioned High-Rent/High-Income deregulation on the expiration of an existing lease. The condition was something that existed when the owner filed its application and was something that the owner was, or should have been, well aware of. Given that the granting of the petition for High-Rent/High-Income deregulation was contingent on the expiration of the lease, any deregulation order issued prior to June 14, 2019, would not have been effective, because the current lease in effect expired after the passage of HSTPA. See supra Matter of 160 E. 84th St. Assocs. LLC (DHCR's explanatory addenda explained the effect of HSTPA part D which prohibited the deregulation of units with leases expiring after June 14, 2019, and the statute "affected only the propriety of prospective relief . . . [and] ha[d] no potential problematic retroactive effect").

The Commissioner notes that the rent agency does not and would not declare acts of state law unconstitutional but does enforce, implement, and administer the State laws consistent therewith. The application here is clearly consistent. The owner claims that the repeal of deregulation provisions constitutes a Taking under the US Constitution, that it has suffered harm, and that such repeal lacks a rational basis. However, the Commissioner notes that there is a strong presumption of constitutionality of the rent laws as enacted by the New York State Legislature. In Community Hous. Improvement Program v City of NY et al, 2020 US Dist LEXIS 181189, at *34-35 (EDNY Sep. 30, 2020, No. 19-cv-4087)(EK)(RLM)(Appeal pending), the Court dismissed an owner's arguments that HSTPA's provisions are facially invalid based on physical and regulatory takings claims. The Court also found that claimants who allege an as applied regulatory takings claim face a "heavy burden". It rejected an owner's claim that the effect of HSTPA is not rationally related to increasing the supply of affordable housing, helping low-income New Yorkers, or promoting socio-economic diversity and that HSTPA's amendments "perpetuates New York's housing crisis and fails to target the people it claims to serve". The Court in Community Hous. Improvement Program v City of NY et al, found that the legislative purposes and justifications offered for the regulations were valid.

The Commissioner also notes that no party has a vested right to any remedy under the Rent Stabilization Laws and Regulations, thus diminishing the petitioner's claim that the application of HSTPA deprives the petitioner of due process and constitutes a taking of property. The petitioner had no vested right in the continuation of a particular provision of the law or of any policy or procedure followed by DHCR. The New York Court of Appeals in I. L. F. Y. Co. v Temporary State Hous. Rent Com., 10 NY2d 263 (1961), appeal dismissed 369 U.S. 795 (1962) held 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. In this matter, the owner cannot identify any vested property interest in the continued processing of its application because the owner did not have a vested right to deregulate the subject apartment before the enactment of HSTPA. See Pledge v DHCR, supra. Accordingly, DHCR finds that the owner has not identified a particular right that vested by virtue of changes in prior processing rules.

The Commissioner also will not honor petitioner's alternative request to hold this proceeding in abeyance "until a final order is issued in the on-going litigation challenging the validity of HSTPA." The Commissioner notes that the Courts in those challenges have not placed any stay on the processing of Luxury Deregulation proceedings nor any other provision of the Rent Stabilization Law, nor have the parties to the above-referenced actions even requested the relief that the owner seeks by virtue of its administrative litigation.

As indicated above, the United States District Court in Community Hous. Improvement Program v City of NY et al had dismissed all claims against New York State and DHCR which sought to challenge the validity of HSTPA's repeal of the luxury and high-income decontrol provisions. District Court Judge, Eric Komitee, stated in his decision that "no precedent binding on this Court has ever found any provision of a rent-stabilization statute to violate the Constitution...rent regulations have now been the subject of almost a hundred years of case law."

The Commissioner accordingly rejects petitioner's statement that this PAR is submitted without prejudice to "on-going litigation challenging the validity of HSTPA". This generalized reservation is without meaning or substance. Once a final order is issued in this proceeding, any further claims raised by either party will be considered in accordance with the restrictions found in court precedent and in various provisions of the rent laws and regulations. As with any other final order determining a PAR, the Commissioner opines that petitioner's challenge to the November 13, 2019, Order is limited to the specific arguments that the petitioner raised in its PAR application and is subject to the scope of review restrictions set forth in RSC §2529.6.

The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

THEREFORE, in accordance with the relevant provisions of the Rent Stabilization Law and Regulations, it is

ORDERED, that the petition be, and the same hereby is, denied.

ISSUED:

SEP 09 2022

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 (DHCR)
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: HX410195RO

RENT ADMINISTRATOR'S
DOCKET NO.: GP410011LD

231 EAST 76TH STREET LLC.,

TENANT: [redacted]

PETITIONER X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a petition for administrative review (PAR) of an Order issued on November 13, 2019, by the Rent Administrator (RA) concerning the housing accommodation known as Apartment [redacted], located at 231 East 76th Street, New York, New York, 10021.

On April 6, 2018, the owner filed a Petition for High-Rent/High-Income deregulation, wherein the owner stated that "the owner contests the household income stated by the tenant(s) in the attached Income Certification Form and requests verification."

On November 13, 2019, the RA issued the Order herein under review. The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR, the owner alleges, among other things, that the Order must be annulled as it is arbitrary, capricious, and illegal; that HSTPA violates the owner's due process rights by retroactively applying newly enacted laws to a proceeding that is in essence

predicated on the review of the prior two (2) years of household income; that the Petition was for the 2018 filing period; that the statutory high-income deregulation threshold has been met if it is determined that the total annual household income of the occupants of the subject housing accommodation is more than $200,000.00 in each of the two preceding calendar years - 2016 and 2017; that the implementation of HSTPA to luxury decontrol proceedings currently pending, where the scope of review is from 2016 and 2017, deprives owners of all the rights of ownership, and also eliminates property owners' rights to use their property for anything other than the compelled use of a stabilized rental; that DHCR violated the owner's Due Process rights and condoned a violation of the Takings Clause by applying the act of 2019 to the instant proceeding; that these very substantial restrictions on property owners' rights effect an uncompensated physical taking that is a *per se* violation of the Takings Clause; that the owner submits this PAR without prejudice to on-going litigation challenging the validity of HSTPA; and that, in the alternative, this proceeding should be held in abeyance until a final order is issued in the on-going litigation challenging the validity of HSPTA.

After a careful consideration of the evidence of record, the Commissioner finds that the owner's petition should be denied.

On June 14, 2019, the New York State Legislature enacted HSTPA (Chapter 36 of the Laws of 2019) which repealed the provisions of the Rent Stabilization Laws and Regulations which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulation shall take effect immediately. (See HSTPA, Part "D" §8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to this proceeding. If an apartment remains regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of High-Rent/High-Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes that, as of June 14, 2019, no deregulation order had been issued for the subject apartment and the subject apartment was under the jurisdiction of the Rent Stabilization Laws and Regulations.

The Commissioner notes that the owner seeks a revocation of the November 13, 2019 Order and for a determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income rent deregulation for an apartment that was rent stabilized as of June 14, 2019 and creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income deregulated as there is no longer any standard under Rent Stabilization that permits the review that petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Cmty. Renewal, (Index No.: 158833/2020)(Hon. Carol R. Edmead)(Sup. Ct. New York Co. May 19, 2021)(wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019"). See also Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 2022 NY Slip Op 01229, ¶ 1, 202 A.D.3d 610, 611, 159 N.Y.S.3d 845, 845 (App. Div. 1st Dept.).

The application of HSTPA to this matter is not based upon the independent judgment of DHCR but, rather, is pursuant to the plain text in HSTPA, and DHCR is statutorily obliged to apply HSTPA to this case. HSTPA specifically stated that the law is to "take effect immediately" and that "if an apartment remains rent regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of high rent/high income deregulation."

The Commissioner rejects petitioner's assertions that the RA's retroactive application of HSTPA was improper. The Commissioner notes that the New York Court of Appeals decision in Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal, (35 NY3d 332 [2020]), does not apply to High-Rent/High-Income deregulation cases. While the Court of Appeals disallowed the retroactive application of certain rent overcharge provisions which created additional liability for owners and eliminated a four-year safe harbor for that liability contained in Part F of the HSTPA, it stated that:

> The question we address here is relatively narrow – we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation **only to determine whether certain Part F amendments**...must be applied retroactively....We conclude that the **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred

prior to their enactment..."

There is no such liability created here and no retroactive liability. See supra Matter of 160 E. 84th St. Assocs. LLC (wherein, the Appellate Division, First Department, stated that "the application of HSTPA Part "D" "affect[ed] only the propriety of prospective relief . . . [and] ha[d] no potentially problematic retroactive effect").

The fact that the 2018 Petition would have been determined based on tenant's income in 2016-2017, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify the nature and content of deregulation and the fact that such prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v DHCR, 257 A.D.2d 391 (1st Dept. 1999), aff'd 94 N.Y.2d 851 (1999).

Contrary to petitioner's claims, the dismissal of its deregulation application pursuant to HSTPA does not constitute a retroactive application of the statute. On June 14, 2019, the law changed so that rent stabilized units could no longer be deregulated based on High-Rent/High-Income. This change precluded DHCR's granting such applications on or after June 14, 2019. As a result, the subject unit remained regulated. The owner's due process argument, which is premised on its claim of retroactivity, is not meritorious and must be denied.

The Commissioner notes that the rent agency does not and would not declare acts of state law unconstitutional but does enforce, implement, and administer the State laws consistent therewith. The application here is clearly consistent. The owner claims that the repeal of deregulation provisions constitutes a Taking under the US Constitution, that it has suffered harm, and that such repeal lacks a rational basis. However, the Commissioner notes that there is a strong presumption of constitutionality of the rent laws as enacted by the New York State Legislature. In Community Hous. Improvement Program v City of NY, 2020 US Dist LEXIS 181189, at *34-35 [EDNY Sep. 30, 2020, No. 19-cv-4087(EK)(RLM)(appeal pending), the Court dismissed an owner's arguments that HSTPA's provisions are facially invalid based on physical and regulatory takings claims. The Court also found that claimants who allege an as applied regulatory takings claim face a "heavy burden". It rejected an owner's claim that the effect of HSTPA is not rationally related to increasing the supply of

affordable housing, helping low-income New Yorkers, or promoting socio-economic diversity and that HSTPA's amendments "perpetuates New York's housing crisis and fails to target the people it claims to serve". The Court in Community Hous. Improvement Program v City of NY et al, found that the legislative purposes and justifications offered for the regulations were valid.

The Commissioner also notes that no party has a vested right to any remedy under the Rent Stabilization Law and Regulations, thus diminishing the petitioner's claim that the application of HSTPA deprives the petitioner of due process and constitutes a taking of property. The petitioner had no vested right in the continuation of a particular provision of the law or of any policy or procedure followed by DHCR. The New York Court of Appeals in I. L. F. Y. Co. v Temporary State Hous. Rent Com., 10 NY2d 263 (1961), appeal dismissed, 369 U.S. 795, (1962), held that an owner does not have an interest in any particular rule of the system of rent regulation so vested as to entitle it to keep the rule unchanged. In this matter, the owner cannot identify any vested property interest impaired by HSTPA because the owner did not have a vested right to deregulate the apartment before the enactment of HSTPA. See Pledge v DHCR, supra. Accordingly, DHCR finds that the owner has not identified a particular right that vested by virtue of changes in prior processing rules.

The Commissioner also will not honor petitioner's alternative request to hold this proceeding in abeyance "until a final order is issued in the on-going litigation challenging the validity of HSTPA." The Commissioner notes that the Courts in those challenges have not placed any stay on the processing of Luxury Deregulation proceedings nor any other provision of the Rent Stabilization Law, nor have the parties to the above-referenced actions even requested the relief that the owner seeks by virtue of its administrative litigation.

As indicated above, the United States District Court in Community Hous. Improvement Program v City of NY et al, had dismissed all claims against New York State and DHCR which sought to challenge the validity of HSTPA's repeal of the luxury and high-income decontrol provisions. District Court Judge, Eric Komitee, stated in his decision that "no precedent binding on this Court has ever found any provision of a rent-stabilization statute to violate the Constitution...rent regulations have now been the subject of almost a hundred years of case law." See Community Hous.

Improvement Program v City of NY et al, 2020 US Dist LEXIS 181189, at *34-35 (EDNY Sep. 30, 2020, No. 19-cv-4087)(EK)(RLM).

The Commissioner accordingly rejects petitioner's statement that this PAR is submitted without prejudice to "on-going litigation challenging the validity of HSTPA". This generalized reservation is without meaning or substance. Once a final order is issued in this proceeding, any further claims raised by either party will be considered in accordance with the restrictions found in court precedent and in various provisions of the rent laws and regulations. As with any other final order determining a PAR, the Commissioner opines that Petitioner's challenge to the November 13, 2019 Order is limited to the specific arguments that the petitioner raised in its PAR application and is subject to the scope of review restrictions set forth in RSC §2529.6.

The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

THEREFORE, in accordance with the relevant provisions of the Rent Stabilization Law and Regulations, it is

ORDERED, that the petition be, and the same hereby is, denied.

ISSUED

SEP 09 2022

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

_____X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

SP 167 E. 82 LLC.,

ADMINISTRATIVE REVIEW
DOCKET NO.: HU410068RO

RENT ADMINISTRATOR'S
DOCKET NO.: HR410205LD

TENANT: [redacted]

_____PETITIONER_____X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a petition for administrative review (PAR) of an Order issued on August 29, 2019, by the Rent Administrator (RA) concerning the housing accommodation known as Apartment [redacted], located at 167 E 82nd Street, New York, New York, 10028.

On June 7, 2019, the owner filed a Petition for High-Rent/High-Income deregulation, wherein the owner stated that "the owner contests the household income stated by the tenant(s) in the attached Certification Form and requests verification."

On August 29, 2019, the RA issued the Order herein under review. The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR, the owner alleges, among other things, that the Order must be annulled as it is arbitrary, capricious, and illegal; that HSTPA violates the owner's due process rights by retroactively applying newly enacted laws to a proceeding that is in essence predicated on the review of the prior two (2) years of household income; that the Petition was for the 2019 filing period; that the statutory high-income deregulation threshold has been met if it is determined that the total annual household income of the occupants of the subject housing accommodation is more than $200,000.00 in each of the two preceding calendar years - 2017 and 2018; that the implementation of HSTPA to luxury decontrol proceedings currently pending, where the scope of review is from 2017 and 2018, deprives owners of all the rights of ownership, and also eliminates property owner's rights to use their property for anything other than the compelled use of a stabilized rental; that DHCR violated the owner's Due Process rights and condoned a violation of the Takings Clause by applying the act of 2019 to the instant proceeding; that these very substantial restrictions on property owners' rights effect an uncompensated physical taking that is a *per se* violation of the Takings Clause; that owner submits this PAR without prejudice to on-going litigation challenging the validity of HSTPA; and that, in the alternative, this proceeding should be held in abeyance until a final order is issued in the on-going litigation challenging the validity of HSPTA.

After a careful consideration of the evidence of record, the Commissioner finds that the owner's petition should be denied.

On June 14, 2019, the New York State Legislature enacted HSTPA (Chapter 36 of the Laws of 2019) which repealed the provisions of the Rent Stabilization Laws and Regulations which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulation shall take effect immediately. (See HSTPA, Part "D" §8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to this proceeding. If an apartment remains regulated on or

after June 14, 2019, that apartment is no longer subject to the statutory provisions of High-Rent/High-Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes that, as of June 14, 2019, no deregulation order had been issued for the subject apartment and the subject apartment was under the jurisdiction of the Rent Stabilization Laws and Regulations.

The Commissioner notes that the owner seeks a revocation of the August 29, 2019, Order and for a determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income rent deregulation for an apartment that was rent stabilized as of June 14, 2019. HSTPA creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income deregulated as there is no longer any standard under Rent Stabilization that permits the review petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Cmty. Renewal, (Index No.: 158833/2020)(Hon. Carol R. Edmead)(Sup. Ct. New York Co. May 19, 2021)(wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019"). See also Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 202 A.D.3d 610 (App. Div. 1st Dept. 2022).

The application of HSTPA to this matter is not based upon the independent judgment of DHCR but, rather, it is pursuant to the plain text in HSTPA, and DHCR is statutorily obliged to apply HSTPA to this case. HSTPA specifically stated that the law is to "take effect immediately" and that "if an apartment remains rent regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of high rent/high income deregulation."

The Commissioner rejects petitioner's assertions that the RA's retroactive application of HSTPA was improper. The Commissioner notes the New York Court of Appeals decision in Matter of Regina Metro. Co., LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 35 N.Y.3d 332 (2020) does not apply to High-Rent/High-Income deregulation cases. While the Court of Appeals in Matter

of Regina Metro. Co., LLC disallowed the retroactive application of certain rent overcharge provisions, which created additional liability for owners, and eliminated a four-year safe harbor for that liability contained in Part F of the HSTPA, it stated that:

> The question we address here is relatively narrow – we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation **only to determine whether certain Part F amendments**...must be applied retroactively....We conclude that the **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. See supra Matter of 160 E. 84th St. Assocs. LLC, wherein, the Appellate Division, First Department, stated that "the application of HSTPA Part "D" "affect[ed] only the propriety of prospective relief . . . [and] ha[d] no potentially problematic retroactive effect".

The fact that the 2019 Petition would have been determined based on tenant(s) income in 2017-2018, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify the nature and content of deregulation and the fact that such prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v. N.Y. State Div. of Hous. & Cmty. Renewal, 257 A.D.2d 391, 683 N.Y.S.2d 76 (App. Div. 1st Dept. 1999).

Contrary to petitioner's claims, the dismissal of its deregulation application pursuant to HSTPA does not constitute a retroactive application of the statute. On June 14, 2019, the law changed so that rent stabilized units could no longer be deregulated based on High Income/High Rent. This change precluded DHCR's granting such applications on or after June 14, 2019. As a result, the subject unit remained regulated. The owner's Due Process argument, which is premised on its claim of retroactivity, is not meritorious and must be denied.

The Commissioner further points out agency records indicate that, the owner renewed the tenant's lease for the term of October 1, 2017, through September 30, 2019. Prior to HSTPA, RSL §26-504.3 conditioned High-Rent/High-Income deregulation on the expiration of an existing lease. The condition was something that existed when the owner filed its application and was something that the owner was, or should have been, well aware of. Given that the granting of the petition for High-Rent/High-Income deregulation was contingent on the expiration of the lease, any deregulation order issued prior to June 14, 2019, would not have been effective, because the current lease in effect expired after the passage of HSTPA. See supra Matter of 160 E. 84th St. Assocs. LLC (DHCR's explanatory addenda explained the effect of HSTPA part D which prohibited the deregulation of units with leases expiring after June 14, 2019, and the statute "affected only the propriety of prospective relief . . . [and] ha[d] no potential problematic retroactive effect").

The Commissioner notes that the rent agency does not and would not declare acts of state law unconstitutional but does enforce, implement, and administer the State laws consistent therewith. The application here is clearly consistent. The owner claims that the repeal of deregulation provisions constitutes a Taking under the US Constitution, that it has suffered harm, and that such repeal lacks a rational basis. However, the Commissioner notes that there is a strong presumption of constitutionality of the rent laws as enacted by the New York State Legislature. In Community Hous. Improvement Program v City of NY et al, 2020 US Dist LEXIS 181189, at *34-35 (EDNY Sep. 30, 2020, No. 19-cv-4087)(EK)(RLM)(Appeal pending), the Court dismissed an owner's arguments that HSTPA's provisions are facially invalid based on physical and regulatory takings claims. The Court also found that claimants who allege an as applied regulatory takings claim face a "heavy burden". It rejected an owner's claim that the effect of HSTPA is not rationally related to increasing the supply of affordable housing, helping low-income New Yorkers, or promoting socio-economic diversity and that HSTPA's amendments "perpetuates New York's housing crisis and fails to target the people it claims to serve". The Court in Community Hous. Improvement Program v City of NY et al, found that the legislative purposes and justifications offered for the regulations were valid.

The Commissioner also notes that no party has a vested right to any remedy under the Rent Stabilization Laws and Regulations, thus diminishing the petitioner's claim that the application of HSTPA deprives the petitioner of due process and constitutes a taking of property. The petitioner had no vested right in the continuation of a particular provision of the law or of any policy or procedure followed by DHCR. The New York Court of Appeals in I. L. F. Y. Co. v Temporary State Hous..Rent Com., 10 NY2d 263 (1961), appeal dismissed 369 U.S. 795 (1962) held 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. In this matter, the owner cannot identify any vested property interest in the continued processing of its application because the owner did not have a vested right to deregulate the subject apartment before the enactment of HSTPA. See Pledge v DHCR, supra. Accordingly, DHCR finds that the owner has not identified a particular right that vested by virtue of changes in prior processing rules.

The Commissioner also will not honor petitioner's alternative request to hold this proceeding in abeyance "until a final order is issued in the on-going litigation challenging the validity of HSTPA." The Commissioner notes that the Courts in those challenges have not placed any stay on the processing of Luxury Deregulation proceedings nor any other provision of the Rent Stabilization Law, nor have the parties to the above-referenced actions even requested the relief that the owner seeks by virtue of its administrative litigation.

As indicated above, the United States District Court in Community Hous. Improvement Program v. City of NY et al, had dismissed all claims against New York State and DHCR which sought to challenge the validity of HSTPA's repeal of the luxury and high-income decontrol provisions. District Court Judge, Eric Komitee, stated in his decision that "no precedent binding on this Court has ever found any provision of a rent-stabilization statute to violate the Constitution...rent regulations have now been the subject of almost a hundred years of case law."

The Commissioner accordingly rejects petitioner's statement that this PAR is submitted without prejudice to "on-going litigation challenging the validity of HSTPA". This generalized reservation is without meaning or substance. Once a final order is issued in this proceeding, any further claims raised by either party will be considered in accordance with the restrictions found in court precedent and in various provisions of the rent laws and regulations. As with any other final order determining a PAR, the Commissioner opines that Petitioner's challenge to the August 29, 2019 Order is limited to the specific arguments that the petitioner raised in its PAR application and is subject to the scope of review restrictions set forth in RSC §2529.6.

The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

THEREFORE, in accordance with the relevant provisions of the Rent Stabilization Law and Regulations, it is

ORDERED, that the petition be, and the same hereby is, denied.

ISSUED:

SEP 09 2022

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

_____X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ASPENLY CO. LLC.,

ADMINISTRATIVE REVIEW
DOCKET NO.: HX410099RO

RENT ADMINISTRATOR'S
DOCKET NO.: GQ410556LD

TENANT: [redacted]

PETITIONER _____X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a petition for administrative review (PAR) of an Order issued on November 13, 2019, by the Rent Administrator (RA) concerning the housing accommodation known as Apartment [redacted], located at 45 E 89th Street, New York, New York, 10128.

On May 30, 2018, the owner filed a Petition for High-Rent/High-Income deregulation, wherein the owner stated that "the owner contests the household income stated by the tenant(s) in the attached Income Certification Form (ICF) and requests verification."

On November 13, 2019, the RA issued the Order herein under review. The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR and in the owner's supplement, the owner asserts, among other things, that the RA's Order must be reversed as arbitrary, capricious and unlawful; that DHCR's delay in processing the petition was negligent or willful; that the law at the time the High-Rent/High-Income deregulation Petition was filed should be applied; that the RA was required to have processed the petition on the merits because, if the apartment met the requirements for High-Rent/High-Income deregulation, the apartment, pursuant to the Rent Stabilization Law (RSL), would have become deregulated prior to the effective date of HSTPA; that the RA's retractive application of HSTPA violated the owner's constitutional rights and was contrary to the intent of the Legislature; and that the RA's retroactive application of HSTPA was improper based upon DHCR's delay in processing the deregulation Petition.

After a careful consideration of the evidence of record, the Commissioner finds that the owner's petition should be denied.

On June 14, 2019, the New York State Legislature enacted HSTPA (Chapter 36 of the Laws of 2019) which repealed the provisions of the Rent Stabilization Laws and Regulations which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulation shall take effect immediately. (See HSTPA, Part "D" §8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to this proceeding. If an apartment remains regulated on or after June 14, 2019, that apartment is no longer subject to the statutory provisions of High-Rent/High-Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes, as of June 14, 2019, no deregulation order had been issued for the subject apartment and the subject apartment was under the jurisdiction of the Rent Stabilization Laws and Regulations.

The Commissioner notes the owner seeks a revocation of the November 13, 2019, Order and for a determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income rent deregulation for an apartment that was rent stabilized as of June 14, 2019. HSTPA creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income deregulated as there is no longer any standard under Rent Stabilization that permits the review that petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Cmty. Renewal, (Index No.: 158833/2020)(Hon. Carol R. Edmead)(Sup. Ct. New York Co. May 19, 2021)(wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019"). See also Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 202 A.D.3d 610 (App. Div. 1st Dept. 2022).

The application of HSTPA to this matter is not based upon the independent judgment of DHCR but, rather, it is pursuant to the plain text in HSTPA, and DHCR is statutorily obliged to apply HSTPA to this case. HSTPA specifically stated that the law is to "take effect immediately" and that "if an apartment remains rent regulated on or after June 14, 2019, that apartment is no longer subject to the statutory provisions of high rent/high income deregulation." Supra Matter of 160 E. 84th St. Assocs. LLC.

The Commissioner rejects petitioner's assertions that the RA's retroactive application of HSTPA was improper. The Commissioner notes the New York Court of Appeals decision in Matter of Regina Metro. Co., LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 35 N.Y.3d 332 (2020) does not apply to High-Rent/High-Income deregulation cases. While the Court of Appeals in Matter of Regina Metro. Co., LLC disallowed the retroactive application of certain rent overcharge provisions, which created additional liability for owners, and eliminated a four-year safe harbor for that liability contained in Part F of the HSTPA, it stated that:

> The question we address here is relatively narrow — we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation **only to determine whether certain Part F amendments**...must be applied retroactively....We conclude that the **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. See supra Matter of 160 E. 84th St. Assocs. LLC, wherein, the Appellate Division, First Department, stated that "the application of HSTPA Part "D" "affect[ed] only the propriety of prospective relief . . . [and] ha[d] no potentially problematic retroactive effect".

The fact that the 2018 Petition would have been determined based on tenant(s) income in 2016-2017, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify the nature and content of deregulation and the fact that such prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v. N.Y. State Div. of Hous. & Cmty. Renewal, 257 A.D.2d 391, 683 N.Y.S.2d 76 (App. Div. 1st Dept. 1999).

Contrary to petitioner's claims, the dismissal of its deregulation application pursuant to HSTPA does not constitute a retroactive application of the statute. On June 14, 2019, the law changed so that rent stabilized units could no longer be deregulated based on High-Rent/High-Income. This change precluded DHCR's granting such applications on or after June 14, 2019. As a result, the subject unit remained regulated. The owner's due process argument, which is premised on its claim of retroactivity, is not meritorious and must be denied.

There can also be no remedy based on any assertion of denial of Due Process and based on a "delay" in processing the owner's applications. While there may be variances in terms of processing, there is no question that DHCR was issuing these deregulation

determinations on the merits almost to the exact date of the passage of the HSTPA. Indeed, the various and multiple litigations over the "explanatory addenda" cases where DHCR issued such deregulation orders (but the second prong of that deregulation, that the lease in effect had not expired), themselves demonstrate that DHCR was not withholding its issuance of determinations. See Matter of 160 E. 84th St. Assocs. LLC, which held that DHCR's explanatory addenda explained the effect of HSTPA part D which prohibited the deregulation of units with leases expiring after June 14, 2019, and the statute "affected only the propriety of prospective relief . . . [and] ha[d] no potential problematic retroactive effect"). Any delay argument is further upended by the fact that in 2018 a total of 105 apartments of the close to one million units subject to rent regulation were issued deregulating orders and 52 apartments in 2019. It is noteworthy that these numbers were consistent between 2018 and half the year of 2019, further establishing that there was no delay in their issuance in anticipation of the 2019 legislative change.

The Commissioner further notes, even where there had been delay, the Appellate Court in Matter of P'ship 92 LP & Bldg. Mgmt. Co., Inc. v. State of N.Y. Div. of Hous. & Cmty. Renewal, 46 A.D.3d 425 (App. Div. 1st Dept. 2007) has noted the express and explicit command of the Legislature shall control. Moreover, DHCR could not have predicted the express language of any potential modifications that could be encompassed by HSTPA and how they would impact this application for High-Rent/High-Income deregulation. Significantly, even where remedies based on delay have been made available, such delay must be deliberate or negligent in anticipation of a change of statute. See Matter of IG Second Generation Partners L.P. v N.Y. State Div. of Hous. & Community Renewal, 10 N.Y.3d 474 (2008) (Court of Appeals refused to award remedies for an alleged delay since it was not proven that the delay resulted from DHCR's negligent or deliberate conduct). See also Rudin E. 55th St. LLC v Div. of Hous. & Community Renewal, 2021 NY Slip Op 31576[U], *15 [Sup Ct, NY County 2021)(Supreme Court recently rejected an owner's assertion that "DHCR committed an unreasonable 16-month delay in issuing a deregulation order . . .").[1]

1 In Rudin E. 55th St. LLC, the Court agreed that the Deputy Commissioner's findings were reasonable because: 1) the text of RSC § 2531.9 plainly states that the agency "shall not [be] divest[ed] . .

The expiration of the time periods prescribed by the applicable luxury deregulation sections of the Code, shall not divest DHCR of its authority to process these petitions and to issue determinations. See Dworman v NYS Div of Housing and Community Renewal, 94 NY2d 359 (1999). As such, the expiration of the time periods asserted by the petitioner for processing this deregulation Petition did not divest the agency from issuing the November 13, 2019 Order, which under the clear direction of the Legislature was now required to be dismissed and, absent evidence of negligence, did not constitute unreasonable delay. See Schutt v NYS Division of Housing and Community Renewal, 278 A.D.2d 58 (1st Dept. 2000).

The Commissioner notes that the rent agency does not and would not declare acts of state law unconstitutional but does enforce, implement, and administer the State laws consistent therewith. The application here is clearly consistent. The owner claims that HSTPA violates the owners' due process rights under the New York [and Federal] Constitutions. However, the Commissioner notes that there is a strong presumption of constitutionality of the rent laws as enacted by the New York State Legislature. In Community Hous. Improvement Program v City of NY et al, 2020 US Dist LEXIS 181189, at *34-35 (EDNY Sep. 30, 2020, No. 19-cv-4087)(EK)(RLM)(Appeal pending), the Court dismissed all claims against New York State and DHCR which sought to challenge the validity of HSTPA's repeal of the luxury and high-income decontrol provisions. District Court Judge, Eric Komitee, stated in his decision that "no precedent binding on this Court has ever found any provision of a rent-stabilization statute to violate the Constitution...rent regulations have now been the subject of almost a hundred years of case law."

The Commissioner also notes that no party has a vested right to any remedy under the Rent Stabilization Laws and Regulations, thus diminishing the petitioner's claim that the application of HSTPA deprives the petitioner of due process. The petitioner had no vested right in the continuation of a particular provision of

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. of its authority to process petitions," by "[t]he expiration of the time periods prescribed . . . for [agency] action"; and 2) appellate case law clearly provides that a party claiming unreasonable delay bears the burden of demonstrating that it was "the result of DHCR's negligent or deliberate conduct." The Court noted that the evidentiary record was devoid of evidence of negligent or deliberate conduct by DHCR.

the law or of any policy or procedure followed by DHCR. The New York Court of Appeals in I. L. F. Y. Co. v Temporary State Hous. Rent Com., 10 NY2d 263 (1961), appeal dismissed 369 U.S. 795 (1962) held 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. In this matter, the owner cannot identify any vested property interest in the continued processing of its application because the owner did not have a vested right to deregulate the subject apartment before the enactment of HSTPA. See Pledge v DHCR, supra. Accordingly, DHCR finds that the owner has not identified a particular right that vested by virtue of changes in prior processing rules.

The Commissioner notes that the owner filed a 2017 petition which was assigned Docket number FR410015LD. According to agency records, the 2017 application was processed in the normal course of agency business, and it was determined that the tenant's annual income in the preceding two years (2015 and 2016) did not exceed the threshold of $200,000.00. The Order denying the 2017 petition was issued on May 30, 2019. The Commissioner finds that it was reasonable for the Rent Administrator to process the 2017 application first and make a finding on that petition before processing the 2018 petition. The Commissioner also notes that the essential facts in the owner's 2017 application and this 2018 overlap given that both applications required this agency to confirm with the New York Department of Tax and Finance whether the tenant's income exceeded $200,000.00 in 2016. The Owner was specifically advised in the FR410015LD Order that the 2018 petition would also be denied given that the tenant's income was below the threshold in 2016.

The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

THEREFORE, in accordance with the relevant provisions of the Rent Stabilization Law and Regulations, it is

ORDERED, that the petition be, and the same hereby is, denied.

ISSUED:

SEP 13 2022

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 (DHCR)
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: HX410192RO
	RENT ADMINISTRATOR'S DOCKET NO.: FP410045LD
340 EAST 52ND STREET, LLC.	TENANT: [redacted]
PETITIONER	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a petition for administrative review (PAR) of an Order issued on November 13, 2019, by the Rent Administrator (RA) concerning the housing accommodation known as Apartment [redacted] located at 340 East 52nd Street, New York, New York, 10022.

On April 6, 2017, the owner filed a Petition for High-Rent/High-Income deregulation, wherein the owner stated that "the owner contests the household income stated by the tenant(s) in the attached Income Certification Form and requests verification."

On November 13, 2019, the RA issued the Order herein under review. The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR, the owner alleges, among other things, that the Order must be annulled as it is arbitrary, capricious, and illegal; that

HSTPA violates the owner's due process rights by retroactively applying newly enacted laws to a proceeding that's essence is predicated on the review of the prior two (2) years of household income; that the Petition was for the 2017 filing period; that the statutory high-income deregulation threshold has been met if it is determined that the total annual household income of the occupants of the subject housing accommodation is more than $200,000.00 in each of the two preceding calendar years - 2015 and 2016; that the implementation of HSTPA to luxury decontrol proceedings currently pending, where the scope of review is from 2015 and 2016, deprives owners of all the rights of ownership, and also eliminates property owners' rights to use their property for anything other than the compelled use of a stabilized rental; that DHCR violated the owner's Due Process rights and condoned a violation of the Takings Clause by applying the act of 2019 to the instant proceeding; that these very substantial restrictions on property owners' rights effect an uncompensated physical taking that is a *per se* violation of the Takings Clause; that owner submits this PAR without prejudice to on-going litigation challenging the validity of HSTPA; and that, in the alternative, this proceeding should be held in abeyance until a final order is issued in the on-going litigation challenging the validity of HSPTA.

After a careful consideration of the evidence of record, the Commissioner finds that the owner's petition should be denied.

On June 14, 2019, the New York State Legislature enacted HSTPA (Chapter 36 of the Laws of 2019) which repealed the provisions of the Rent Stabilization Laws and Regulations which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulation shall take effect immediately. (See HSTPA, Part "D" §8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to this proceeding. If an apartment remains regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of High-Rent/High-Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes that, as of June 14, 2019, no deregulation order had been issued for the subject apartment and the subject apartment was under the jurisdiction of the Rent

Stabilization Laws and Regulations.

The Commissioner notes that the owner seeks a revocation of the November 13, 2019 Order and for a determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income rent deregulation for an apartment that was rent stabilized as of June 14, 2019 and creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income deregulated as there is no longer any standard under Rent Stabilization that permits the review that petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Cmty. Renewal, (Index No.: 158833/2020)(Hon. Carol R. Edmead)(Sup. Ct. New York Co. May 19, 2021)(wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019"). See also Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 2022 NY Slip Op 01229, ¶ 1, 202 A.D.3d 610, 611, 159 N.Y.S.3d 845, 845 (App. Div. 1st Dept.).

The application of HSTPA to this matter is not based upon the independent judgment of DHCR but, rather, it is pursuant to the plain text in HSTPA, and DHCR is statutorily obliged to apply HSTPA to this case. HSTPA specifically stated that the law is to "take effect immediately" and that "if an apartment remains rent regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of high rent/high income deregulation."

The Commissioner rejects petitioner's assertions that the RA's retroactive application of HSTPA was improper. The Commissioner notes that the New York Court of Appeals decision in Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal, (35 NY3d 332 [2020]), does not apply to High-Rent/High-Income deregulation cases. While the Court of Appeals disallowed the retroactive application of certain rent overcharge provisions which created additional liability for owners and eliminated a four-year safe harbor for that liability contained in Part F of the HSTPA, it stated that:

> The question we address here is relatively narrow — we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation **only to determine whether certain Part F amendments**...must be applied retroactively....We conclude that the

> **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. See supra Matter of 160 E. 84th St. Assocs. LLC (wherein, the Appellate Division, First Department, stated that "the application of HSTPA Part "D" "affect[ed] only the propriety of prospective relief . . . [and] ha[d] no potentially problematic retroactive effect").

The fact that the 2017 Petition would have been determined based on tenant's income in 2015-2016, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify the nature and content of deregulation and the fact that such prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v DHCR, 257 A.D.2d 391 (1st Dept. 1999), aff'd 94 N.Y.2d 851 (1999).

Contrary to petitioner's claims, the dismissal of its deregulation application pursuant to HSTPA does not constitute a retroactive application of the statute. On June 14, 2019, the law changed so that rent stabilized units could no longer be deregulated based on High-Rent/High-Income. This change precluded DHCR's granting such applications on or after June 14, 2019. As a result, the subject unit remained regulated. The owner's due process argument, which is premised on its claim of retroactivity, is not meritorious and must be denied.

The Commissioner notes that the rent agency does not and would not declare acts of state law unconstitutional but does enforce, implement, and administer the State laws consistent therewith. The application here is clearly consistent. The owner claims that the repeal of deregulation provisions constitutes a Taking under the US Constitution, that it has suffered harm, and that such repeal lacks a rational basis. However, the Commissioner notes that there is a strong presumption of constitutionality of the rent laws as enacted by the New York State Legislature. In Community Hous. Improvement Program v City of NY, 2020 US Dist LEXIS 181189, at *34-35 [EDNY Sep. 30, 2020, No. 19-cv-4087(EK)(RLM)(appeal pending), the Court dismissed an owner's arguments that HSTPA's provisions are facially invalid based on physical and regulatory takings claims. The Court also found that claimants who allege an as applied regulatory takings claim face

a "heavy burden". It rejected an owner's claim that the effect of HSTPA is not rationally related to increasing the supply of affordable housing, helping low-income New Yorkers, or promoting socio-economic diversity and that HSTPA's amendments "perpetuates New York's housing crisis and fails to target the people it claims to serve". The Court in Community Hous. Improvement Program v City of NY et al, found that the legislative purposes and justifications offered for the regulations were valid.

The Commissioner also notes that no party has a vested right to any remedy under the Rent Stabilization Law, thus diminishing the petitioner's claim that the application of HSTPA deprives the petitioner of due process and constitutes a taking of property. The petitioner had no vested right in the continuation of a particular provision of the law or of any policy or procedure followed by DHCR. The New York Court of Appeals in I. L. F. Y. Co. v Temporary State Hous. Rent Com., 10 NY2d 263 (1961), (appeal dismissed), 369 U.S. 795, 82 S.Ct. 1155, 8 L.Ed.2d 285 (1962), held that an owner does not have an interest in any particular rule of the system of rent regulation so vested as to entitle it to keep the rule unchanged. In this matter, the owner cannot identify any vested property interest impaired by HSTPA because the owner did not have a vested right to deregulate the apartment before the enactment of HSTPA. See Pledge v DHCR, supra. Accordingly, DHCR finds that the owner has not identified a particular right that vested by virtue of changes in prior processing rules.

The Commissioner also will not honor petitioner's alternative request to hold this proceeding in abeyance "until a final order is issued in the on-going litigation challenging the validity of HSTPA." The Commissioner notes that the Courts in those challenges have not placed any stay on the processing of Luxury Deregulation proceedings nor any other provision of the Rent Stabilization Law, nor have the parties to the above-referenced actions even requested the relief that the owner seeks by virtue of its administrative litigation.

As indicated above, the United States District Court in Community Hous. Improvement Program v City of NY et al, had dismissed all claims against New York State and DHCR which sought to challenge the validity of HSTPA's repeal of the luxury and high-income decontrol provisions. District Court Judge, Eric Komitee, stated in his decision that "no precedent binding on this Court has ever found any provision of a rent-stabilization statute to

violate the Constitution...rent regulations have now been the subject of almost a hundred years of case law.". See Community Hous. Improvement Program v City of NY et al, 2020 US Dist LEXIS 181189, at *34-35 (EDNY Sep. 30, 2020, No. 19-cv-4087)(EK)(RLM).

The Commissioner accordingly rejects petitioner's statement that this PAR is submitted without prejudice to "on-going litigation challenging the validity of HSTPA". This generalized reservation is without meaning or substance. Once a final order is issued in this proceeding, any further claims raised by either party will be considered in accordance with the restrictions found in court precedent and in various provisions of the rent laws and regulations. As with any other final order determining a PAR, the Commissioner opines that Petitioner's challenge to the November 13, 2019 Order is limited to the specific arguments that the petitioner raised in its PAR application and is subject to the scope of review restrictions set forth in RSC §2529.6.

The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

THEREFORE, in accordance with the relevant provisions of the Rent Stabilization Law and Regulations, it is

ORDERED, that the petition be, and the same hereby is, denied.

ISSUED

SEP 13 2022

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

_____X

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: : HX410323RO
Legacy Sponsor Holdings, LLC PETITIONER	RENT ADMINISTRATOR'S DOCKET NO.: GQ410563LD

_____X TENANT: [redacted]

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner timely filed a petition for administrative review (PAR) of an order issued on November 13, 2019, by the Rent Administrator (RA) concerning the housing accommodation known as apartment [redacted] 300 East 40th Street, New York, New York, 10016

On May 30, 2018, the owner filed with the rent agency a Petition for High-Rent/High-Income rent deregulation wherein the owner stated that the "owner contests the household income stated by the tenant(s) in the attached Income Certification Form and requests verification."

On November 13, 2019, the RA issued an Order Denying the owner's Petition for the 2018 filing period.

The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 [HSTPA], as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR and its supplements, the owner asserts that: the RA's Order must be reversed as arbitrary, capricious and unlawful; that DHCR's delay in processing the petition was negligent or willful; that the law at the time the High-Rent/High-Income deregulation petition was filed should be applied; that the RA was required to have processed the petition on the merits because, if the apartment met the requirements for High-Rent/High-Income deregulation, the apartment, pursuant to the Rent Stabilization Law (RSL), would have become deregulated prior to the effective date of HSTPA; and that the RA's retroactive application of HSTPA was improper based upon DHCR's

delay in processing the deregulation petition.

The Commissioner denies the PAR.

On June 14, 2019, the New York State Legislature enacted HSTPA which repealed the provisions of the Rent Stabilization Law which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulations shall take effect immediately. (See HSTPA, Part "D" § 8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to this proceeding. If an apartment remains regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of High Rent/High Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes that, as of June 14, 2019, no deregulation order had been issued for the subject apartment and the subject apartment was under the jurisdiction of the Rent Stabilization Law and Code.

The Commissioner notes that the owner seeks a revocation of the RA's November 13, 2019 order and for determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income rent deregulation for an apartment that was rent-stabilized as of June 14, 2019 and creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income rent deregulated, as there are no longer any standards under Rent Regulatory Laws and Regulations that permits the review that petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Comty. Renewal, (Index No. 15833/2020)(Hon. Carol R. Edmead)(Sup. Ct, NY Ct., May 19, 2021 (wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019") See also Matter of 160 E. 84th St. Assocs. LLC v. New York State Div. of Housing & Comty. Renewal,2022 NY Slip Op 01229, ¶ 1, 202 A.D. 3d 610, 611. 159 N.Y.S. 3d 845, 845 (App. Div. 1st Dept.).

The application of HSTPA to this matter is not based upon the independent judgment of the rent agency, but, rather, is pursuant to the plain text in HSTPA, and DHCR is statutorily obliged to apply HSTPA to this case. HSTPA specifically states that the law is to "take effect immediately" and that "if an apartment remains rent regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of high rent/high income deregulation."

The Commissioner rejects petitioner's assertion that the RA's retroactive application of HSTPA was improper. The Commissioner notes that the New York Court of Appeals decision in Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal 35 N.Y.3d (2020) does not apply to High Rent/High Income deregulation cases. While the Court of Appeals disallowed the retroactive application of certain rent overcharge provisions which created additional liability for owners and eliminated a four-year safe harbor for that liability contained in Part F of HSTPA, it stated that:

> The question we address here is relatively narrow — we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation **only to determine whether certain Part F amendments**...must be applied retroactively...We conclude that the **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. *See supra* Matter of 160 E. 84th St. Assoc. LLC (wherein the Appellate Division, First Department, stated that "the application of HSTPA Part "D" affect[ed} only the propriety of prospective relief...[and] ha[d} no potentially problematic retroactive effect").

The fact that the 2018 Petition would have been determined based on tenant's income in 2016-2017, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify the nature and content of deregulation and the fact that such prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v DHCR, 257 A.D.2d 391 (1st Dept. 1999), aff'd 94 N.Y.2d 851 (1999).

There can also be no remedy based on any assertion of denial of due process based on a "delay" in processing the owner's application. While there may be variances in terms of processing, there is no question that DHCR was issuing these deregulation determinations on the merits almost to the exact date of the passage of the HSTPA. Indeed, the various and multiple litigations over the "explanatory addenda" cases where DHCR issued such deregulation orders (but the second prong of that deregulation, that the lease in effect had not expired), themselves demonstrate that DHCR was not withholding its issuance of determinations. *See* In the Matter of 160 E. 84th Steet Assoc LLC, et al. v. New York State Division of Housing and Community Renewal, 2022 N.Y. App. Div. LEXIS 1243, 2022 NY Slip Op 01229, aff'g 87th Street Sherry Assoc LLC v DHCR, N.Y. Co. Index No. 153999/2020 (Edmead, J. 12/22/20)(DHCR's explanatory addenda explained the effect of HSTPA part D which prohibited the deregulation of units with leases expiring after June 14, 2019 and the statute "affected only the propriety of prospective relief . . . and had no potential problematic retroactive effect"). Any delay argument is further upended by the fact that in 2018 a total of 105 apartments of the close to one million units subject to rent regulation were issued deregulating orders and 52 apartments in 2019. It is noteworthy that these numbers were consistent between 2018 and half the year of 2019, further establishing that there was no delay in their issuance in anticipation of the 2019 legislative change.

The Commissioner further notes that, even where there had been delay, the Appellate Court in Matter of Partnership 92 LP and Bldg Mgt Co Inc v NY State Division of Housing and Community Renewal,46 A.D.3d 425(1st Dept. 2007) aff'd 13 N.Y.3d 859 (2008) has noted that the express and explicit command of the legislature shall control. Moreover, DHCR could not have predicted the express language of any potential modifications that could be encompassed by HSTPA and how they would impact this application for High-Rent/High-Income deregulation. Significantly, even where remedies based on delay have been made available, such delay must be deliberate or negligent in anticipation of a change of statute. See Matter of IG Second Generation

Partners L.P. v N.Y. State Div. of Hous. & Community Renewal, 10 N.Y.3d 474 (2008) (Court of Appeals refused to award remedies for an alleged delay since it was not proven that the delay resulted from DHCR's negligent or deliberate conduct). See also Rudin E. 55th St. LLC v Div. of Hous. & Community Renewal, 2021 NY Slip Op 31576[U], *15 [Sup Ct, NY County 2021)(Supreme Court recently rejected an owner's assertion that "DHCR committed an unreasonable 16-month delay in issuing a deregulation order . . .").1

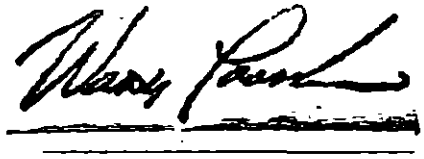
The expiration of the time period prescribed by the applicable luxury deregulation sections of the Code, shall not divest DHCR of its authority to process these petitions and to issue determinations. See Dworman v NYS Div of Housing and Community Renewal, 94 NY2d 359 (1999). As such, the expiration of the time periods asserted by the petitioner for processing this deregulation petition did not divest DHCR from issuing the November 13, 2019 Order, which under the clear direction of the legislature was now required to be dismissed and, absent evidence of negligence, did not constitute unreasonable delay. See Schutt v NYS Division of Housing and Community Renewal, 278 A.D.2d 58 (1st Dept. 2000).

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

ORDERED, that the owner's petition be, and the same hereby is, denied; and that the Rent Administrator's order be, and the same hereby is, affirmed.

ISSUED

SEP 13 2022



Woody Pascal
Deputy Commissioner

1 In Rudin E. 55th St. LLC, the Court agreed that the Deputy Commissioner's findings were reasonable because: 1) the text of RSC § 2531.9 plainly states that the agency "shall not [be] divest[ed] . . . of its authority to process petitions," by "[t]he expiration of the time periods prescribed . . . for [agency] action"; and 2) appellate case law clearly provides that a party claiming unreasonable delay bears the burden of demonstrating that it was "the result of DHCR's negligent or deliberate conduct." The Court noted that the evidentiary record was devoid of evidence of negligent or deliberate conduct by DHCR.

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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

_____X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: HX410125RO

SP 167 E. 82 LLC.,

RENT ADMINISTRATOR'S
DOCKET NO.: FQ410225LD

TENANT(S): [redacted] &

_____PETITIONER_____X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a petition for administrative review (PAR) of an Order issued on November 13, 2019, by the Rent Administrator (RA) concerning the housing accommodation known as Apartment [redacted] located at 167 E 82ND ST, New York, New York, 10028.

On May 11, 2017, the owner filed a Petition for High-Rent/High-Income deregulation, wherein the owner stated that "the owner contests the household income stated by the tenant(s) in the attached Certification Form and requests verification."

On November 13, 2019, the RA issued the Order herein under review.

The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR, the owner alleges, among other things, that the Order must be annulled as it is arbitrary, capricious, and illegal; that HSTPA violates the owner's due process rights by retroactively applying newly enacted laws to a proceeding that's essence is predicated on the review of the prior two (2) years of household income; that the Petition was for the 2017 filing period; that the statutory high-income deregulation threshold has been met if it is determined that the total annual household income of the occupants of the subject housing accommodation is more than $200,000.00 in each of the two preceding calendar years - 2015 and 2016; that the implementation of HSTPA to luxury decontrol proceedings currently pending, where the scope of review is from 2015 and 2016, deprives owners of all the rights of ownership, and also eliminates property owner's rights to use their property for anything other than the compelled use of a stabilized rental; that DHCR violated the owner's Due Process rights and condoned a violation of the Takings Clause by applying the act of 2019 to the instant proceeding; that these very substantial restrictions on property owners' rights effect an uncompensated physical taking that is a *per se* violation of the Takings Clause; that owner submits this PAR without prejudice to on-going litigation challenging the validity of HSTPA; and that, in the alternative, this proceeding should be held in abeyance until a final order is issued in the on-going litigation challenging the validity of HSPTA.

After a careful consideration of the evidence of record, the Commissioner finds that the owner's petition should be denied.

On June 14, 2019, the New York State Legislature enacted HSTPA (Chapter 36 of the Laws of 2019) which repealed the provisions of the Rent Stabilization Laws and Regulations which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulation shall take effect immediately. (See HSTPA, Part "D" §8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not

apply to this proceeding. If an apartment remains regulated on or after June 14, 2019, that apartment is no longer subject to the statutory provisions of High-Rent/High-Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes, as of June 14, 2019, no deregulation order had been issued for the subject apartment and the subject apartment was under the jurisdiction of the Rent Stabilization Laws and Regulations.

The Commissioner notes that the owner seeks a revocation of the November 13, 2019, Order and for a determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income rent deregulation for an apartment that was rent stabilized as of June 14, 2019. HSTPA creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income deregulated as there is no longer any standard under Rent Stabilization that permits the review petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Cmty. Renewal, (Index No.: 158833/2020)(Hon. Carol R. Edmead)(Sup. Ct. New York Co. May 19, 2021)(wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019"). See also Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 202 A.D.3d 610 (App. Div. 1st Dept. 2022).

The application of HSTPA to this matter is not based upon the independent judgment of DHCR but, rather, it is pursuant to the plain text in HSTPA, and DHCR is statutorily obliged to apply HSTPA to this case. HSTPA specifically stated that the law is to "take effect immediately" and that "if an apartment remains rent regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of high rent/high income deregulation."

The Commissioner rejects petitioner's assertions that the RA's retroactive application of HSTPA was improper. The Commissioner notes the New York Court of Appeals decision in Matter of Regina Metro. Co., LLC v. N.Y. State Div. of Hous. & Cmty.

Renewal, 35 N.Y.3d 332 (2020) does not apply to High-Rent/High-Income deregulation cases. While the Court of Appeals in Matter of Regina Metro. Co., LLC disallowed the retroactive application of certain rent overcharge provisions, which created additional liability for owners, and eliminated a four-year safe harbor for that liability contained in Part F of the HSTPA, it stated that:

> The question we address here is relatively narrow – we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation **only to determine whether certain Part F amendments**...must be applied retroactively....We conclude that the **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. See supra Matter of 160 E. 84th St. Assocs. LLC, wherein, the Appellate Division, First Department, stated that "the application of HSTPA Part "D" "affect[ed] only the propriety of prospective relief . . . [and] ha[d] no potentially problematic retroactive effect".

The fact that the 2017 Petition would have been determined based on tenant(s) income in 2015-2016, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify the nature and content of deregulation and the fact that such prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v. N.Y. State Div. of Hous. & Cmty. Renewal, 257 A.D.2d 391, 683 N.Y.S.2d 76 (App. Div. 1st Dept. 1999).

Contrary to petitioner's claims, the dismissal of its deregulation application pursuant to HSTPA does not constitute a retroactive application of the statute. On June 14, 2019, the law changed so that rent stabilized units could no longer be deregulated based on High Income/High Rent. This change precluded DHCR's granting such applications on or after June 14, 2019. As a result, the subject unit remained regulated. The owner's Due

Process argument, which is premised on its claim of retroactivity, is not meritorious and must be denied.

The Commissioner further points out that on May 22, 2019, this agency mailed the tenant(s) a Notice of Proposed Deregulation. The Notice of Proposed Deregulation provided the tenant(s) with thirty-days (30) to respond. Given that thirty-days (30) days from May 22, 2019, was after the June 14, 2019, effective date of HSTPA, this agency could not have issued an Order of deregulation before HSTPA was passed. HSTPA specifically stated that the law is to "take effect immediately" and that "if an apartment remains rent regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of high rent/high income deregulation."

The Commissioner notes that the rent agency does not and would not declare acts of state law unconstitutional but does enforce, implement, and administer the State laws consistent therewith. The application here is clearly consistent. The owner claims that the repeal of deregulation provisions constitutes a Taking under the US Constitution, that it has suffered harm, and that such repeal lacks a rational basis. However, the Commissioner notes that there is a strong presumption of constitutionality of the rent laws as enacted by the New York State Legislature. In Community Hous. Improvement Program v City of NY et al, 2020 US Dist LEXIS 181189, at *34-35 (EDNY Sep. 30, 2020, No. 19-cv-4087)(EK)(RLM)(Appeal pending), the Court dismissed an owner's arguments that HSTPA's provisions are facially invalid based on physical and regulatory takings claims. The Court also found that claimants who allege an as applied regulatory takings claim face a "heavy burden". It rejected an owner's claim that the effect of HSTPA is not rationally related to increasing the supply of affordable housing, helping low-income New Yorkers, or promoting socio-economic diversity and that HSTPA's amendments "perpetuates New York's housing crisis and fails to target the people it claims to serve". The Court in Community Hous. Improvement Program v City of NY et al, found that the legislative purposes and justifications offered for the regulations were valid.

The Commissioner also notes that no party has a vested right to any remedy under the Rent Stabilization Laws and Regulations, thus diminishing the petitioner's claim that the application of HSTPA deprives the petitioner of due process and constitutes a taking of property. The petitioner had no vested right in the continuation of a particular provision of the law or of any policy or procedure followed by DHCR. The New York Court of Appeals in I. L. F. Y. Co. v Temporary State Hous. Rent Com., 10 NY2d 263 (1961), appeal dismissed 369 U.S. 795 (1962) held 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. In this matter, the owner cannot identify any vested property interest in the continued processing of its application because the owner did not have a vested right to deregulate the subject apartment before the enactment of HSTPA. See Pledge v DHCR, supra. Accordingly, DHCR finds that the owner has not identified a particular right that vested by virtue of changes in prior processing rules.

The Commissioner also will not honor petitioner's alternative request to hold this proceeding in abeyance "until a final order is issued in the on-going litigation challenging the validity of HSTPA." The Commissioner notes that the Courts in those challenges have not placed any stay on the processing of Luxury Deregulation proceedings nor any other provision of the Rent Stabilization Law, nor have the parties to the above-referenced actions even requested the relief that the owner seeks by virtue of its administrative litigation.

As indicated above, the United States District Court in Community Hous. Improvement Program v City of NY et al, had dismissed all claims against New York State and DHCR which sought to challenge the validity of HSTPA's repeal of the luxury and high-income decontrol provisions. District Court Judge, Eric Komitee, stated in his decision that "no precedent binding on this Court has ever found any provision of a rent-stabilization statute to violate the Constitution...rent regulations have now been the subject of almost a hundred years of case law."

The Commissioner accordingly rejects petitioner's statement that this PAR is submitted without prejudice to "on-going litigation challenging the validity of HSTPA". This generalized reservation is without meaning or substance. Once a final order is issued in this proceeding, any further claims raised by either party will be considered in accordance with the restrictions found in court precedent and in various provisions of the rent laws and regulations. As with any other final order determining a PAR, the Commissioner opines that Petitioner's challenge to the November 13, 2019, Order is limited to the specific arguments that the petitioner raised in its PAR application and is subject to the scope of review restrictions set forth in RSC §2529.6.

The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

THEREFORE, in accordance with the relevant provisions of the Rent Stabilization Law and Regulations, it is

ORDERED, that the petition be, and the same hereby is, denied.

ISSUED:
SEP 14 2022

Woody Pascal
Deputy Commissioner

State of New York
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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 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.

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

---X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: HX410193RO

RENT ADMINISTRATOR'S
DOCKET NO.: GP410014LD

340 EAST 52ND STREET, LLC.

TENANT: [redacted]

PETITIONER ---X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a petition for administrative review (PAR) of an Order issued on November 13, 2019, by the Rent Administrator (RA) concerning the housing accommodation known as Apartment [redacted] located at 340 East 52nd Street, New York, New York, 10022.

On April 6, 2018, the owner filed a Petition for High-Rent/High-Income deregulation, wherein the owner stated that "the owner requests verification of the household income because the tenant failed to properly return the Income Certification Form (ICF) to the owner."

On November 13, 2019, the RA issued the Order herein under review. The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR, the owner alleges, among other things, that the Order must be annulled as it is arbitrary, capricious, and illegal; that

HSTPA violates the owner's due process rights by retroactively applying newly enacted laws to a proceeding that's essence is predicated on the review of the prior two (2) years of household income; that the Petition was for the 2018 filing period; that the statutory high-income deregulation threshold has been met if it is determined that the total annual household income of the occupants of the subject housing accommodation is more than $200,000.00 in each of the two preceding calendar years - 2016 and 2017; that the implementation of HSTPA to luxury decontrol proceedings currently pending, where the scope of review is from 2016 and 2017, deprives owners of all the rights of ownership, and also eliminates property owners' rights to use their property for anything other than the compelled use of a stabilized rental; that DHCR violated the owner's Due Process rights and condoned a violation of the Takings Clause by applying the act of 2019 to the instant proceeding; that these very substantial restrictions on property owners' rights effect an uncompensated physical taking that is a *per se* violation of the Takings Clause; that owner submits this PAR without prejudice to on-going litigation challenging the validity of HSTPA; and that, in the alternative, this proceeding should be held in abeyance until a final order is issued in the on-going litigation challenging the validity of HSPTA.

After a careful consideration of the evidence of record, the Commissioner finds that the owner's petition should be denied.

On June 14, 2019, the New York State Legislature enacted HSTPA (Chapter 36 of the Laws of 2019) which repealed the provisions of the Rent Stabilization Laws and Regulations which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulation shall take effect immediately. (See HSTPA, Part "D" §8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to this proceeding. If an apartment remains regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of High-Rent/High-Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes that, as of June 14, 2019, no deregulation order had been issued for the subject apartment and the subject apartment was under the jurisdiction of the Rent

Stabilization Laws and Regulations.

The Commissioner notes that the owner seeks a revocation of the November 13, 2019 Order and for a determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income rent deregulation for an apartment that was rent stabilized as of June 14, 2019 and creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income deregulated as there is no longer any standard under Rent Stabilization that permits the review that petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Cmty. Renewal, (Index No.: 158833/2020)(Hon. Carol R. Edmead)(Sup. Ct. New York Co. May 19, 2021)(wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019"). See also Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 2022 NY Slip Op 01229, ¶ 1, 202 A.D.3d 610, 611, 159 N.Y.S.3d 845, 845 (App. Div. 1st Dept.).

The application of HSTPA to this matter is not based upon the independent judgment of DHCR but, rather, it is pursuant to the plain text in HSTPA, and DHCR is statutorily obliged to apply HSTPA to this case. HSTPA specifically stated that the law is to "take effect immediately" and that "if an apartment remains rent regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of high rent/high income deregulation."

The Commissioner rejects petitioner's assertions that the RA's retroactive application of HSTPA was improper. The Commissioner notes that the New York Court of Appeals decision in Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal, (35 NY3d 332 [2020]), does not apply to High-Rent/High-Income deregulation cases. While the Court of Appeals disallowed the retroactive application of certain rent overcharge provisions which created additional liability for owners and eliminated a four-year safe harbor for that liability contained in Part F of the HSTPA, it stated that:

> The question we address here is relatively narrow – we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation **only to determine whether certain Part F amendments**...must be applied retroactively....We conclude that the

> **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. See supra Matter of 160 E. 84th St. Assocs. LLC (wherein, the Appellate Division, First Department, stated that "the application of HSTPA Part "D" "affect[ed] only the propriety of prospective relief . . . [and] ha[d] no potentially problematic retroactive effect").

The fact that the 2018 Petition would have been determined based on tenant's income in 2016-2017, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify the nature and content of deregulation and the fact that such prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v DHCR, 257 A.D.2d 391 (1st Dept. 1999), aff'd 94 N.Y.2d 851 (1999).

Contrary to petitioner's claims, the dismissal of its deregulation application pursuant to HSTPA does not constitute a retroactive application of the statute. On June 14, 2019, the law changed so that rent stabilized units could no longer be deregulated based on High-Rent/High-Income. This change precluded DHCR's granting such applications on or after June 14, 2019. As a result, the subject unit remained regulated. The owner's due process argument, which is premised on its claim of retroactivity, is not meritorious and must be denied.

The Commissioner notes that the rent agency does not and would not declare acts of state law unconstitutional but does enforce, implement, and administer the State laws consistent therewith. The application here is clearly consistent. The owner claims that the repeal of deregulation provisions constitutes a Taking under the US Constitution, that it has suffered harm, and that such repeal lacks a rational basis. However, the Commissioner notes that there is a strong presumption of constitutionality of the rent laws as enacted by the New York State Legislature. In Community Hous. Improvement Program v City of NY, 2020 US Dist LEXIS 181189, at *34-35 [EDNY Sep. 30, 2020, No. 19-cv-4087(EK)(RLM)(appeal pending), the Court dismissed an owner's arguments that HSTPA's provisions are facially invalid based on physical and regulatory takings claims. The Court also found that claimants who allege an as applied regulatory takings claim face

a "heavy burden". It rejected an owner's claim that the effect of HSTPA is not rationally related to increasing the supply of affordable housing, helping low-income New Yorkers, or promoting socio-economic diversity and that HSTPA's amendments "perpetuates New York's housing crisis and fails to target the people it claims to serve". The Court in Community Hous. Improvement Program v City of NY et al, found that the legislative purposes and justifications offered for the regulations were valid.

The Commissioner also notes that no party has a vested right to any remedy under the Rent Stabilization Law, thus diminishing the petitioner's claim that the application of HSTPA deprives the petitioner of due process and constitutes a taking of property. The petitioner had no vested right in the continuation of a particular provision of the law or of any policy or procedure followed by DHCR. The New York Court of Appeals in I. L. F. Y. Co. v Temporary State Hous. Rent Com., 10 NY2d 263 (1961), (appeal dismissed), 369 U.S. 795, 82 S.Ct. 1155, 8 L.Ed.2d 285 (1962), held that an owner does not have an interest in any particular rule of the system of rent regulation so vested as to entitle it to keep the rule unchanged. In this matter, the owner cannot identify any vested property interest impaired by HSTPA because the owner did not have a vested right to deregulate the apartment before the enactment of HSTPA. See Pledge v DHCR, supra. Accordingly, DHCR finds that the owner has not identified a particular right that vested by virtue of changes in prior processing rules.

The Commissioner also will not honor petitioner's alternative request to hold this proceeding in abeyance "until a final order is issued in the on-going litigation challenging the validity of HSTPA." The Commissioner notes that the Courts in those challenges have not placed any stay on the processing of Luxury Deregulation proceedings nor any other provision of the Rent Stabilization Law, nor have the parties to the above-referenced actions even requested the relief that the owner seeks by virtue of its administrative litigation.

As indicated above, the United States District Court in Community Hous. Improvement Program v City of NY et al, had dismissed all claims against New York State and DHCR which sought to challenge the validity of HSTPA's repeal of the luxury and high-income decontrol provisions. District Court Judge, Eric Komitee, stated in his decision that "no precedent binding on this Court has ever found any provision of a rent-stabilization statute to

violate the Constitution...rent regulations have now been the subject of almost a hundred years of case law." See Community Hous. Improvement Program v City of NY et al, 2020 US Dist LEXIS 181189, at *34-35 (EDNY Sep. 30, 2020, No. 19-cv-4087)(EK)(RLM).

The Commissioner accordingly rejects petitioner's statement that this PAR is submitted without prejudice to "on-going litigation challenging the validity of HSTPA". This generalized reservation is without meaning or substance. Once a final order is issued in this proceeding, any further claims raised by either party will be considered in accordance with the restrictions found in court precedent and in various provisions of the rent laws and regulations. As with any other final order determining a PAR, the Commissioner opines that Petitioner's challenge to the November 13, 2019 Order is limited to the specific arguments that the petitioner raised in its PAR application and is subject to the scope of review restrictions set forth in RSC §2529.6.

The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

THEREFORE, in accordance with the relevant provisions of the Rent Stabilization Law and Regulations, it is

ORDERED, that the petition be, and the same hereby is, denied.

ISSUED

SEP 14 2022

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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JAMAICA, NEW YORK 11433

X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

340 EAST 52ND STREET LLC

PETITIONER

X

ADMINISTRATIVE REVIEW
DOCKET NO.: HV410158RO

RENT ADMINISTRATOR'S
DOCKET NO.: HQ410624LD

TENANTS: [redacted]

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a petition for administrative review (PAR) of an Order issued on August 29, 2019, by the Rent Administrator (RA) concerning the housing accommodation known as Apartment [redacted], located at 340 East 52nd Street, New York, New York, 10022.

On May 24, 2019, the owner filed a petition for High-Rent/High-Income deregulation, wherein the owner stated that "the owner contests the household income stated by the tenant(s) in the attached Income Certification Form and requests verification."

On August 29, 2019, the RA issued the Order herein under review. The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR, the owner alleges, among other things, that the Order must be annulled as it is arbitrary, capricious, and illegal; that application of HSTPA violates the owner's due process rights by

retroactively applying newly enacted laws to a proceeding that's essence is predicated on the review of the prior two (2) years of household income; that the implementation of HSTPA to luxury decontrol proceedings currently pending, where the scope of review is from 2017 and 2018, deprives owners of all the rights of ownership, and also eliminates property owner's rights to use their property for anything other than the compelled use of a stabilized rental; that DHCR violated the owner's Due Process rights and condoned a violation of the Takings Clause by applying HSTPA to the instant proceeding; that these very substantial restrictions on property owners' rights effect an uncompensated physical taking that is a *per se* violation of the Takings Clause; that the owner submits this PAR without prejudice to on-going litigation challenging the validity of HSTPA; and that, in the alternative, this proceeding should be held in abeyance until a final order is issued in the on-going litigation challenging the validity of HSPTA.

After a careful consideration of the evidence of record, the Commissioner finds that the owner's petition should be denied.

On June 14, 2019, the New York State Legislature enacted HSTPA (Chapter 36 of the Laws of 2019) which repealed the provisions of the Rent Stabilization Laws and Regulations which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulation shall take effect immediately. (See HSTPA, Part "D" §8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to this proceeding. If an apartment remains regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of High-Rent/High-Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes that, as of June 14, 2019, no deregulation order had been issued for the subject apartment and the subject apartment was under the jurisdiction of the Rent

Stabilization Laws and Regulations.

The Commissioner notes that the owner seeks a revocation of the August 29, 2019 Order and for a determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income deregulation for an apartment that was rent stabilized as of June 14, 2019 and creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income deregulated as there is no longer any standard under Rent Stabilization that permits the review that petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Cmty. Renewal, (Index No.: 158833/2020)(Hon. Carol R. Edmead)(Sup. Ct. New York Co. May 19, 2021)(wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019"). See also Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 2022 NY Slip Op 01229, ¶ 1, 202 A.D.3d 610, 611, 159 N.Y.S.3d 845, 845 (App. Div. 1st Dept.).

The Commissioner rejects petitioner's assertions that the RA's retroactive application of HSTPA was improper. The Commissioner notes that the New York Court of Appeals decision in Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal 35 N.Y.3d 332 (2020) does not apply to High-Rent/High-Income deregulation cases. While the Court of Appeals disallowed the retroactive application of certain rent overcharge provisions which created additional liability for owners and eliminated a four-year safe harbor for that liability contained in Part F of the HSTPA, it stated that:

> The question we address here is relatively narrow – we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation **only to determine whether certain Part F amendments**...must be applied retroactively...We conclude that the **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. See supra Matter of 160 E. 84th St. Assocs. LLC (wherein, the Appellate Division, First Department, stated that "the application of HSTPA Part "D" "affect[ed] only the propriety of prospective relief . . . [and] ha[d] no potentially problematic retroactive effect").

The fact that the 2019 petition would have been determined based on tenant's income in 2017 and 2018, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify the nature and content of deregulation and the fact that such prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v DHCR, 257 A.D.2d 391 (1st Dept. 1999), aff'd 94 N.Y.2d 851 (1999).

Contrary to petitioner's claims, the dismissal of its deregulation application pursuant to HSTPA does not constitute a retroactive application of the statute. On June 14, 2019, the law changed so that rent stabilized units could no longer be deregulated based on high income/high rent. This change precluded DHCR's granting such applications on or after June 14, 2019. As a result, the subject unit remained regulated. The owner's due process argument, which is premised on its claim of retroactivity, is not meritorious and must be denied.

The Commissioner notes that the rent agency does not and would not declare acts of state law unconstitutional but does enforce, implement, and administer the State laws consistent therewith. The application here is clearly consistent. The owner claims that the repeal of deregulation provisions constitutes a Taking under the US Constitution, that it has suffered harm, and that such repeal lacks a rational basis. However, the Commissioner notes that there is a strong presumption of constitutionality of the rent laws as enacted by the New York State Legislature. In Community Hous. Improvement Program v City of NY et al, 2020 US Dist LEXIS 181189, at *34-35 (EDNY Sep. 30, 2020, No. 19-cv-4087)(EK)(RLM)(Appeal pending), the Court dismissed an owner's arguments that HSTPA's provisions are facially invalid based on physical and regulatory takings claims. The Court also found that

claimants who allege an as applied regulatory takings claim face a "heavy burden". It rejected an owner's claim that the effect of HSTPA is not rationally related to increasing the supply of affordable housing, helping low-income New Yorkers, or promoting socio-economic diversity and that HSTPA's amendments "perpetuates New York's housing crisis and fails to target the people it claims to serve". The Court in Community Hous. Improvement Program found that the legislative purposes and justifications offered for the regulations were valid.

The Commissioner also notes that no party has a vested right to any remedy under the Rent Stabilization Laws and Regulations, thus diminishing the petitioner's claim that the application of HSTPA deprives the petitioner of due process and constitutes a taking of property. The petitioner had no vested right in the continuation of a particular provision of the law or of any policy or procedure followed by DHCR. The New York Court of Appeals in I. L. F. Y. Co. v Temporary State Hous. Rent Com., 10 NY2d 263 (1961), appeal dismissed 369 U.S. 795 (1962) held 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. In this matter, the owner cannot identify any vested property interest in the continued processing of its application because the owner did not have a vested right to deregulate the subject apartment before the enactment of HSTPA. See Pledge v DHCR, supra. Accordingly, DHCR finds that the owner has not identified a particular right that vested by virtue of changes in prior processing rules.

The Commissioner also will not honor petitioner's alternative request to hold this proceeding in abeyance "until a final order is issued in the on-going litigation challenging the validity of HSTPA." The Commissioner notes that the Courts in those challenges have not placed any stay on the processing of Luxury Deregulation proceedings nor any other provision of the Rent Stabilization Law, nor have the parties to the above-referenced actions even requested the relief that the owner seeks by virtue of its administrative litigation.

As indicated above, the United States District Court in Community Hous. Improvement Program had dismissed all claims

against New York State and DHCR which sought to challenge the validity of HSTPA's repeal of the luxury and high-income decontrol provisions. District Court Judge, Eric Komitee, stated in his decision that "no precedent binding on this Court has ever found any provision of a rent-stabilization statute to violate the Constitution...rent regulations have now been the subject of almost a hundred years of case law." See Community Hous. Improvement Program v City of NY et al, 2020 US Dist LEXIS 181189, at *34-35 (EDNY Sep. 30, 2020, No. 19-cv-4087)(EK)(RLM).

The Commissioner accordingly rejects petitioner's statement that this PAR is submitted without prejudice to "on-going litigation challenging the validity of HSTPA". This generalized reservation is without meaning or substance. Once a final order is issued in this proceeding, any further claims raised by either party will be considered in accordance with the restrictions found in court precedent and in various provisions of the rent laws and regulations. As with any other final order determining a PAR, the Commissioner opines that Petitioner's challenge to the November 13, 2019 Order is limited to the specific arguments that the petitioner raised in its PAR application and is subject to the scope of review restrictions set forth in RSC §2529.6.

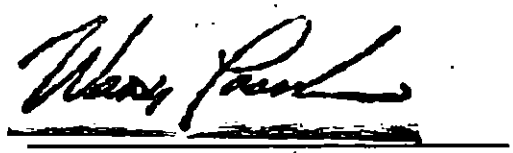
The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

THEREFORE, in accordance with the relevant provisions of the Rent Stabilization Law and Regulations, it is

ORDERED, that the petition be, and the same hereby is, denied.

ISSUED:

SEP 19 2022



Woody Pascal
Deputy Commissioner

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X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: HX410194RO

RENT ADMINISTRATOR'S
DOCKET NO.: GP410015LD

340 EAST 52ND STREET LLC

TENANTS: [redacted]

PETITIONER X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a petition for administrative review (PAR) of an Order issued on November 13, 2019, by the Rent Administrator (RA) concerning the housing accommodation known as Apartment [redacted], located at 340 East 52nd Street, New York, New York, 10022.

On April 6, 2018, the owner filed a petition for High-Rent/High-Income deregulation, wherein the owner stated that "the owner requests verification of the household income because the tenant failed to properly return the Income Certification Form (ICF) to the owner."

On November 13, 2019, the RA issued the Order herein under review. The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR, the owner alleges, among other things, that the Order must be annulled as it is arbitrary, capricious, and illegal; that

application of HSTPA violates the owner's due process rights by retroactively applying newly enacted laws to a proceeding that's essence is predicated on the review of the prior two (2) years of household income; that the implementation of HSTPA to luxury decontrol proceedings currently pending, where the scope of review is from 2016 and 2017, deprives owners of all the rights of ownership, and also eliminates property owner's rights to use their property for anything other than the compelled use of a stabilized rental; that DHCR violated the owner's Due Process rights and condoned a violation of the Takings Clause by applying HSTPA to the instant proceeding; that these very substantial restrictions on property owners' rights effect an uncompensated physical taking that is a *per se* violation of the Takings Clause; that the owner submits this PAR without prejudice to on-going litigation challenging the validity of HSTPA; and that, in the alternative, this proceeding should be held in abeyance until a final order is issued in the on-going litigation challenging the validity of HSPTA.

After a careful consideration of the evidence of record, the Commissioner finds that the owner's petition should be denied.

On June 14, 2019, the New York State Legislature enacted HSTPA (Chapter 36 of the Laws of 2019) which repealed the provisions of the Rent Stabilization Laws and Regulations which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulation shall take effect immediately. (See HSTPA, Part "D" §8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to this proceeding. If an apartment remains regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of High-Rent/High-Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes that, as of June 14, 2019, no deregulation order had been issued for the subject apartment and

the subject apartment was under the jurisdiction of the Rent Stabilization Laws and Regulations.

The Commissioner notes that the owner seeks a revocation of the November 13, 2019 Order and for a determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income deregulation for an apartment that was rent stabilized as of June 14, 2019 and creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income deregulated as there is no longer any standard under Rent Stabilization that permits the review that petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Cmty. Renewal, (Index No.: 158833/2020)(Hon. Carol R. Edmead)(Sup. Ct. New York Co. May 19, 2021)(wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019"). See also Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 2022 NY Slip Op 01229, ¶ 1, 202 A.D.3d 610, 611, 159 N.Y.S.3d 845, 845 (App. Div. 1st Dept.).

The Commissioner rejects petitioner's assertions that the RA's retroactive application of HSTPA was improper. The Commissioner notes that the New York Court of Appeals decision in Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal 35 N.Y.3d 332 (2020) does not apply to High-Rent/High-Income deregulation cases. While the Court of Appeals disallowed the retroactive application of certain rent overcharge provisions which created additional liability for owners and eliminated a four-year safe harbor for that liability contained in Part F of the HSTPA, it stated that:

> The question we address here is relatively narrow – we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation **only to determine whether certain Part F amendments**...must be applied retroactively...We conclude that the **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. See supra Matter of 160 E. 84th St. Assocs. LLC (wherein, the Appellate Division, First Department, stated that "the application of HSTPA Part "D" "affect[ed] only the propriety of prospective relief . . . [and] ha[d] no potentially problematic retroactive effect").

The fact that the 2018 petition would have been determined based on tenant's income in 2016 and 2017, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify the nature and content of deregulation and the fact that such prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v DHCR, 257 A.D.2d 391 (1st Dept. 1999), aff'd 94 N.Y.2d 851 (1999).

Contrary to petitioner's claims, the dismissal of its deregulation application pursuant to HSTPA does not constitute a retroactive application of the statute. On June 14, 2019, the law changed so that rent stabilized units could no longer be deregulated based on high income/high rent. This change precluded DHCR's granting such applications on or after June 14, 2019. As a result, the subject unit remained regulated. The owner's due process argument, which is premised on its claim of retroactivity, is not meritorious and must be denied.

The Commissioner notes that the rent agency does not and would not declare acts of state law unconstitutional but does enforce, implement, and administer the State laws consistent therewith. The application here is clearly consistent: The owner claims that the repeal of deregulation provisions constitutes a Taking under the US Constitution, that it has suffered harm, and that such repeal lacks a rational basis. However, the Commissioner notes that there is a strong presumption of constitutionality of the rent laws as enacted by the New York State Legislature. In Community Hous. Improvement Program v City of NY et al, 2020 US Dist LEXIS 181189, at *34-35 (EDNY Sep. 30, 2020, No. 19-cv-4087)(EK)(RLM)(Appeal pending), the Court dismissed an owner's arguments that HSTPA's provisions are facially invalid based on physical and regulatory takings claims. The Court also found that

claimants who allege an as applied regulatory takings claim face a "heavy burden". It rejected an owner's claim that the effect of HSTPA is not rationally related to increasing the supply of affordable housing, helping low-income New Yorkers, or promoting socio-economic diversity and that HSTPA's amendments "perpetuates New York's housing crisis and fails to target the people it claims to serve". The Court in Community Hous. Improvement Program found that the legislative purposes and justifications offered for the regulations were valid.

The Commissioner also notes that no party has a vested right to any remedy under the Rent Stabilization Laws and Regulations, thus diminishing the petitioner's claim that the application of HSTPA deprives the petitioner of due process and constitutes a taking of property. The petitioner had no vested right in the continuation of a particular provision of the law or of any policy or procedure followed by DHCR. The New York Court of Appeals in I. L. F. Y. Co. v Temporary State Hous. Rent Com., 10 NY2d 263 (1961), appeal dismissed 369 U.S. 795 (1962) held 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. In this matter, the owner cannot identify any vested property interest in the continued processing of its application because the owner did not have a vested right to deregulate the subject apartment before the enactment of HSTPA. See Pledge v DHCR, supra. Accordingly, DHCR finds that the owner has not identified a particular right that vested by virtue of changes in prior processing rules.

The Commissioner also will not honor petitioner's alternative request to hold this proceeding in abeyance "until a final order is issued in the on-going litigation challenging the validity of HSTPA." The Commissioner notes that the Courts in those challenges have not placed any stay on the processing of Luxury Deregulation proceedings nor any other provision of the Rent Stabilization Law, nor have the parties to the above-referenced actions even requested the relief that the owner seeks by virtue of its administrative litigation.

As indicated above, the United States District Court in Community Hous. Improvement Program had dismissed all claims

against New York State and DHCR which sought to challenge the validity of HSTPA's repeal of the luxury and high-income decontrol provisions. District Court Judge, Eric Komitee, stated in his decision that "no precedent binding on this Court has ever found any provision of a rent-stabilization statute to violate the Constitution...rent regulations have now been the subject of almost a hundred years of case law." See Community Hous. Improvement Program v City of NY et al, 2020 US Dist LEXIS 181189, at *34-35 (EDNY Sep. 30, 2020, No. 19-cv-4087)(EK)(RLM).

The Commissioner accordingly rejects petitioner's statement that this PAR is submitted without prejudice to "on-going litigation challenging the validity of HSTPA". This generalized reservation is without meaning or substance. Once a final order is issued in this proceeding, any further claims raised by either party will be considered in accordance with the restrictions found in court precedent and in various provisions of the rent laws and regulations. As with any other final order determining a PAR, the Commissioner opines that Petitioner's challenge to the November 13, 2019 Order is limited to the specific arguments that the petitioner raised in its PAR application and is subject to the scope of review restrictions set forth in RSC §2529.6.

The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

THEREFORE, in accordance with the relevant provisions of the Rent Stabilization Law and Regulations, it is

ORDERED, that the petition be, and the same hereby is, denied.

ISSUED:

SEP 19 2022

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

_____X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

220 East 72nd Street REIT LLC.

PETITIONER

ADMINISTRATIVE REVIEW
DOCKET NO.: HX410240RO

RENT ADMINISTRATOR'S
DOCKET NO.: GQ410099LD

TENANT: [redacted]

_____X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner timely filed a petition for administrative review (PAR) of an order issued on November 13, 2019, by the Rent Administrator (RA) concerning the housing accommodation known as Apartment [redacted], 220 East 72nd Street, New York, New York, 10021.

On May 7, 2018, the subject owner filed with the rent agency a petition for high income rent deregulation wherein the owner stated that the "owner contests the household income stated by the tenant(s) in the attached Income Certification Form and requests verification."

On November 13, 2019, the RA issued an Order Denying Petition or Terminating Proceeding 2018 Filing Period.

The RA stated the following:

Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 [HSTPA], as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR and in the petitioner's supplement, the owner asserts, among other things, that: the RA's Order must be reversed as arbitrary, capricious and unlawful; that DHCR's delay in

processing the petition was negligent or willful; that the law at the time the High-Rent/High-Income deregulation petition was filed should be applied; that the RA was required to have processed the petition on the merits because, if the apartment met the requirements for High-Rent/High-Income deregulation, the apartment, pursuant to the Rent Stabilization Law (RSL), would have become deregulated prior to the effective date of HSTPA; and that the RA's retroactive application of HSTPA was improper based upon DHCR's delay in processing the deregulation petition.

The Commissioner denies the PAR.

On June 14, 2019, the New York State Legislature enacted HSTPA which repealed the provisions of the Rent Stabilization Law which allowed for deregulation of apartments based upon high rent and high income. The stature further provides that the provisions for the repeal of deregulations shall take effect immediately. See HSTPA, Part "D §8 and Part "Q §8") The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to this proceeding. If an apartment remains regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of High Rent/High Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes that, as of June 14, 2019, no deregulation order had been issued for the subject apartment and the subject apartment was under the jurisdiction of the Rent Stabilization Law and Code.

The Commissioner notes that the owner seeks a revocation of the RA's November 13, 2019 order and for determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income rent deregulation for an apartment that was rent-stabilized as of June 14, 2019 and creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income rent deregulated, as there are no longer any standards under Rent Regulatory Laws and Regulations that permits the review that petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Comty. Renewal, (Index No. 15833/2020)(Hon. Carol R. Edmead)(Sup. Ct, NY Ct., May 19, 2021 (wherein the Court found

that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019") See also Matter of 160 E. 84th St. Assocs. LLC v. New York State Div. of Housing & Comty. Renewal,2022 NY Slip Op 01229, ¶ 1, 202 A.D. 3d 610, 611. 159 N.Y.S. 3d 845, 845 (App. Div. 1st Dept.).

The application of HSTPA to this matter is not based upon the independent judgment of the rent agency, but, rather, is pursuant to the plain text in HSTPA, and DHCR is statutorily obliged to apply HSTPA to this case. HSTPA specifically states that the law is to "take effect immediately" and that "if an apartment remains rent regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of high rent/high income deregulation."

The Commissioner rejects petitioner's assertion that the RA's retroactive application of HSTPA was improper. The Commissioner notes that the New York Court of Appeals decision in Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal 35 N.Y.3d (2020) does not apply to High Rent/High Income deregulation case. While the Court of Appeals disallowed the retroactive application of certain rent overcharge provisions which created additional liability for owners and eliminated a four-year safe harbor for that liability contained in Part F of HSTPA, it stated that:

> The question we address here is relatively narrow – we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation **only to determine whether certain Part F amendments**...must be applied retroactively...We conclude that the **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. *See supra* Matter of 160 E. 84th St. Assoc. LLC (wherein the Appellate Division, First Department, stated that "the application of HSTPA Part "D" affect[ed] only the propriety of prospective relief…[and] ha[d] no potentially problematic retroactive effect").

The fact that the 2018 Petition would have been determined based on tenant's income in 2016-2017, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify

the nature and content of deregulation and the fact that such prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v DHCR, 257 A.D.2d 391 (1st Dept. 1999), aff'd 94 N.Y.2d 851 (1999).

There can also be no remedy based on any assertion of denial of due process based on a "delay" in processing the owner's application. While there may be variances in terms of processing, there is no question that DHCR was issuing these deregulation determinations on the merits almost to the exact date of the passage of the HSTPA. Indeed, the various and multiple litigations over the "explanatory addenda" cases where DHCR issued such deregulation orders (but the second prong of that deregulation, that the lease in effect had not expired), themselves demonstrate that DHCR was not withholding its issuance of determinations. *See* In the Matter of 160 E. 84th Steet Assoc LLC, et al. v. New York State Division of Housing and Community Renewal, 2022 N.Y. App. Div. LEXIS 1243, 2022 NY Slip Op 01229, aff'g 87th Street Sherry Assoc LLC v DHCR, N.Y. Co. Index No. 153999/2020 (Edmead, J. 12/22/20)(DHCR's explanatory addenda explained the effect of HSTPA part D which prohibited the deregulation of units with leases expiring after June 14, 2019 and the statute "affected only the propriety of prospective relief . . . and had no potential problematic retroactive effect"). Any delay argument is further upended by the fact that in 2018 a total of 105 apartments of the close to one million units subject to rent regulation were issued deregulating orders and 52 apartments in 2019. It is noteworthy that these numbers were consistent between 2018 and half the year of 2019, further establishing that there was no delay in their issuance in anticipation of the 2019 legislative change.

The Commissioner further notes that, even where there had been delay, the Appellate Court in Matter of Partnership 92 LP and Bldg Mgt Co Inc v NY State Division of Housing and Community Renewal, 46 A.D.3d 425(1st Dept. 2007) aff'd 13 N.Y.3d 859 (2008) has noted that the express and explicit command of the legislature shall control. Moreover, DHCR could not have predicted the express language of any potential modifications that could be encompassed by HSTPA and how they would impact this application for High-Rent/High-Income deregulation. Significantly, even where remedies based on delay have been made available, such delay must be deliberate or negligent in anticipation of a change of statute. See Matter of IG Second Generation Partners L.P. v N.Y. State Div. of Hous. & Community Renewal, 10 N.Y.3d 474 (2008) (Court of Appeals refused to award remedies for an alleged delay since it

was not proven that the delay resulted from DHCR's negligent or deliberate conduct). See also Rudin E. 55th St. LLC v Div. of Hous. & Community Renewal, 2021 NY Slip Op 31576[U], *15 [Sup Ct, NY County 2021)(Supreme Court recently rejected an owner's assertion that "DHCR committed an unreasonable 16-month delay in issuing a deregulation order . . .").1

The expiration of the time period prescribed by the applicable luxury deregulation sections of the Code, shall not divest DHCR of its authority to process these petitions and to issue determinations. See Dworman v NYS Div of Housing and Community Renewal, 94 NY2d 359 (1999). As such, the expiration of the time periods asserted by the petitioner for processing this deregulation petition did not divest DHCR from issuing the November 13, 2019 Order, which under the clear direction of the legislature was now required to be dismissed and, absent evidence of negligence, did not constitute unreasonable delay. See Schutt v NYS Division of Housing and Community Renewal, 278 A.D.2d 58 (1st Dept. 2000).

The Commissioner notes that the owner filed a 2017 Petition to deregulate the apartment which was assigned Docket Number FQ410179LD. According to agency records, the 2017 application was processed in the normal course of agency business, and it was determined that the annual household income did not exceed the threshold of $200,000.00 in 2016. The Order denying the 2017 Petition was issued on May 30, 2019. The Commissioner finds that it was reasonable for the Rent Administrator to process the 2017 application first and to make a finding on that Petition before processing the 2018 Petition at issue. The Commissioner also notes that the essential facts in the owner's 2017 and 2018 applications overlap given that both applications required this agency to confirm with the New York Department of Tax and Finance whether the tenants' income exceeded $200,000.00 in 2016. The owner was specifically advised in the FQ410179LD Order that a 2018

1 In Rudin E. 55th St. LLC, the Court agreed that the Deputy Commissioner's findings were reasonable because: 1) the text of RSC § 2531.9 plainly states that the agency "shall not [be] divest[ed] . . . of its authority to process petitions," by "[t]he expiration of the time periods prescribed . . . for [agency] action"; and 2) appellate case law clearly provides that a party claiming unreasonable delay bears the burden of demonstrating that it was "the result of DHCR's negligent or deliberate conduct." The Court noted that the evidentiary record was devoid of evidence of negligent or deliberate conduct by DHCR.

Petition would also be denied given that the tenants' income was below the threshold in 2016.

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

ORDERED, that the owner's petition be, and the same hereby is, denied; and that the Rent Administrator's order be, and the same hereby is, affirmed.

ISSUED

SEP 19 2022

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

BELNORD PARTNERS LLC.,

ADMINISTRATIVE REVIEW
DOCKET NO.: HX410137RO

RENT ADMINISTRATOR'S
DOCKET NO.: GR410194LD

TENANTS: [redacted]

PETITIONER X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a petition for administrative review (PAR) of an Order issued on November 13, 2019, by a Rent Administrator (RA) concerning apartment 715 located at 207 West 86th Street, New York, New York, 10024.

On June 12, 2018, the owner filed a Petition for High-Rent/High-Income deregulation, wherein the owner stated that the owner contests the household income stated by the tenants in the Income Certification Form (ICF) and requests verification.

On November 13, 2019, the RA issued the Order herein under review. The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR and in a supplement, the owner asserts, among other things, that the Petition for High-Rent/High-Income deregulation

was filed on June 12, 2018; that, as of that filing date, the subject apartment's monthly legal regulated rent exceeded the statutory minimum for a finding of luxury deregulation; that the rent agency was to determine whether the tenant(s) total annual income exceeded $200,000.00 for the 2016 and the 2017 calendar years; that the above statutory requirements for a finding of luxury deregulation of the subject apartment relate to periods prior to the June 14, 2019 effective date of HSTPA; that the relevant Section of HSTPA relating to the repeal of luxury deregulation stated that "Sections 26-504.1, 26-504.2 and 26-504.3 of the administrative code of the city of New York are REPEALED"; that, unlike other sections of HSTPA, Part D, which repeals luxury deregulation, does not specify that it relates to pending proceedings; and that said Section does not state that it should be applied retroactively.

The owner further asserts that, as the petition for deregulation had been filed prior to the June 14, 2019 effective date of HSTPA, the RA's Order should not have denied the Petition for High-Rent/High-Income deregulation; that, contrary to the Rent Administrator's Order, prospective repeal does not prevent DHCR from issuing orders relating to pending proceedings based on pre-existing facts; that the rent agency must process the Petition for High-Rent/High-Income deregulation on the merits; and that Courts have routinely held that, where an administrative agency deliberately or negligently delays processing an application, there is a right to have the application processed under the previous law (citation omitted).

Finally, the owner asserts that, following the April 2, 2020 decision by the Court of Appeals in Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal, 35 NY3d 332 [2020]), DHCR's denial Order must be rescinded; that the owner's Petition for deregulation should be reopened; that, in Regina, the Court of Appeals held that retroactive application of Part F of the HSTPA violates the owner's due process rights under the New York and Federal Constitutions; that, although the Court in Regina addressed only the retroactive application of the overcharge provisions, the Court's reasoning should also be applied to the instant luxury deregulation proceeding; that the application of Regina to one provision of HSTPA but not others defies reason; that, by denying the owner's Petition, DHCR applied HSTPA to conditions that occurred prior to the passage of HSTPA; and that this type of retroactive application unjustly penalizes the owner, in the same manner as the Court warned against in Regina.

After a careful consideration of the evidentiary record, the Commissioner finds that the owner's petition should be denied.

On June 14, 2019, the New York State Legislature enacted HSTPA (Chapter 36 of the Laws of 2019) which repealed the provisions of the Rent Stabilization Laws and Regulations which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulation shall take effect immediately. (*See* HSTPA, Part "D" §8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to this proceeding. If an apartment remains regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of High-Rent/High-Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes that, as of June 14, 2019, no deregulation order had been issued for the subject apartment and the subject apartment was under the jurisdiction of the Rent Stabilization Laws and Regulations.

The Commissioner notes that the owner seeks a revocation of the November 13, 2019 Order and for a determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income deregulation for an apartment that was rent stabilized as of June 14, 2019 and creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income deregulated as there is no longer any standard under Rent Stabilization that permits the review that petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Cmty. Renewal, (Index No.: 158833/2020)(Hon. Carol R. Edmead)(Sup. Ct. New York Co. May 19, 2021)(wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019"). See also Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 2022 NY Slip Op 01229, ¶ 1, 202 A.D.3d 610, 611, 159 N.Y.S.3d 845, 845 (App. Div. 1st Dept.).

The application of HSTPA to this matter is not based upon the independent judgment of DHCR but; rather, it is pursuant to the plain text in HSTPA, and DHCR is statutorily obliged to apply HSTPA

to this case. HSTPA specifically stated that the law is to "take effect immediately" and that "if an apartment remains rent regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of high rent/high income deregulation."

The Commissioner rejects petitioner's assertions that the RA's retroactive application of HSTPA was improper. The Commissioner notes that the New York Court of Appeals decision in Matter of Regina does not apply to High-Rent/High-Income deregulation cases. While the Court of Appeals disallowed the retroactive application of certain rent overcharge provisions which created additional liability for owners and eliminated a four-year safe harbor for that liability contained in Part F of HSTPA, it stated that:

> The question we address here is relatively narrow – we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation **only to determine whether certain Part F amendments**...must be applied retroactively....We conclude that the **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. See supra Matter of 160 E. 84th St. Assocs. LLC (wherein, the Appellate Division, First Department, stated that "the application of HSTPA Part "D" "affect[ed] only the propriety of prospective relief . . . [and] ha[d] no potentially problematic retroactive effect").

The fact that the 2018 Petition would have been determined based on tenant's income in 2016-2017, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify the nature and content of deregulation and the fact that such prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v DHCR, 257 A.D.2d 391 (1st Dept. 1999), *aff'd* 94 N.Y.2d 851 (1999).

There can also be no remedy based on any assertion of denial of due process based on a "delay" in processing the owner's application. While there may be variances in terms of processing, there is no question that DHCR was issuing these deregulation determinations on the merits almost to the exact date of the

passage of the HSTPA. Indeed, the various and multiple litigations over the "explanatory addenda" cases where DHCR issued such deregulation orders (but the second prong of that deregulation, that the lease in effect had not expired), themselves demonstrate that DHCR was not withholding its issuance of determinations. See supra Matter of 160 E. 84th St. Assocs. LLC (DHCR's explanatory addenda explained the effect of HSTPA part D which prohibited the deregulation of units with leases expiring after June 14, 2019 and the statute "affected only the propriety of prospective relief . . . and had no potential problematic retroactive effect"). Any delay argument is further upended by the fact that in 2018 a total of 105 apartments of the close to one million units subject to rent regulation were issued deregulating orders and 52 apartments in 2019. It is noteworthy that these numbers were consistent between 2018 and half the year of 2019, further establishing that there was no delay in their issuance in anticipation of the 2019 legislative change.

The Commissioner further notes that, even where there had been delay, the Appellate Court in Matter of Partnership 92 LP and Bldg Mgt Co Inc v NY State Division of Housing and Community Renewal, 46 A.D.3d 425 (1st Dept. 2007) *aff'd* 13 N.Y.3d 859 (2008) has noted that the express and explicit command of the legislature shall control. Moreover, DHCR could not have predicted the express language of any potential modifications that could be encompassed by HSTPA and how they would impact this application for High-Rent/High-Income deregulation. Significantly, even where remedies based on delay have been made available, such delay must be deliberate or negligent in anticipation of a change of statute. See Matter of IG Second Generation Partners L.P. v N.Y. State Div. of Hous. & Community Renewal, 10 N.Y.3d 474 (2008) (Court of Appeals refused to award remedies for an alleged delay since it was not proven that the delay resulted from DHCR's negligent or deliberate conduct). See also Rudin E. 55th St. LLC v Div. of Hous. & Community Renewal, 2021 NY Slip Op 31576[U], *15 [Sup Ct, NY County 2021] (Supreme Court recently rejected an owner's assertion that "DHCR committed an unreasonable 16-month delay in issuing a deregulation order . . .").[1]

The expiration of the time periods prescribed by the applicable luxury deregulation Sections of the Code shall not divest the agency of its authority to process this Petition and to

[1] In *Rudin E. 55th St. LLC*, the Court agreed that the Deputy Commissioner's findings were reasonable because: 1) the text of RSC § 2531.9 plainly states that the agency "shall not [be] divest[ed] . . . of its authority to process petitions," by "[t]he expiration of the time periods prescribed . . . for [agency] action"; and 2) appellate case law clearly provides that a party claiming unreasonable delay bears the burden of demonstrating that it was "the result of DHCR's negligent or deliberate conduct." The Court noted that the evidentiary record was devoid of evidence of negligent or deliberate conduct by DHCR.

issue a determination. See Dworman v NYS Div of Housing and Community Renewal, 94 NY2d 359 (1999). As such, the expiration of the time periods asserted by the petitioner for processing this deregulation Petition did not divest the agency from issuing the November 13, 2019 Order which under the clear direction of the Legislature was now required to be dismissed and, absent evidence of negligence, did not constitute unreasonable delay. See Schutt v NYS Division of Housing and Community Renewal, 278 A.D.2d 58 (1st Dept. 2000).

Contrary to petitioner's claims, the dismissal of its deregulation application pursuant to HSTPA does not constitute a retroactive application of the statute. On June 14, 2019, the law changed so that rent stabilized units could no longer be deregulated based on High-Rent/High-Income. This change precluded DHCR's granting such applications on or after June 14, 2019. As a result, the subject unit remained regulated. The owner's due process argument, which is premised on its claim of retroactivity, is not meritorious and must be denied.

The Commissioner notes that the rent agency does not and would not declare acts of state law unconstitutional but does enforce, implement, and administer the State laws consistent therewith. The application here is clearly consistent. The owner claims that HSTPA violates the owner's due process rights under the New York and Federal Constitutions. However, the Commissioner notes that there is a strong presumption of constitutionality of the rent laws as enacted by the New York State Legislature. In Community Hous. Improvement Program v City of NY et al, 2020 US Dist LEXIS 181189, at *34-35 (EDNY Sep. 30, 2020, No. 19-cv-4087)(EK)(RLM)(Appeal pending), the Court dismissed all claims against New York State and DHCR which sought to challenge the validity of HSTPA's repeal of the luxury and high-income decontrol provisions. District Court Judge, Eric Komitee, stated in his decision that "no precedent binding on this Court has ever found any provision of a rent-stabilization statute to violate the Constitution...rent regulations have now been the subject of almost a hundred years of case law." Supra Community Hous. Improvement Program v City of NY et al.

The Commissioner also notes that no party has a vested right to any remedy under the Rent Stabilization Laws and Regulations, thus diminishing the petitioner's claim that the application of HSTPA deprives the petitioner of due process. The petitioner had no vested right in the continuation of a particular provision of the law or of any policy or procedure followed by DHCR. The New York Court of Appeals in I. L. F. Y. Co. v Temporary State Hous.

Rent Com., 10 NY2d 263 (1961), appeal dismissed 369 U.S. 795 (1962) held 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. In this matter, the owner cannot identify any vested property interest in the continued processing of its application because the owner did not have a vested right to deregulate the subject apartment before the enactment of HSTPA. See Pledge v DHCR, supra. Accordingly, DHCR finds that the owner has not identified a particular right that vested by virtue of changes in prior processing rules.

The Commissioner notes that the owner filed a 2017 petition which was assigned Docket number FR410210LD. According to agency records, the 2017 application was processed in the normal course of agency business, and it was determined that the tenant's annual income in the preceding year (2016) did not exceed the threshold of $200,000.00. The order denying the 2017 petition was issued on May 30, 2019. The Commissioner finds that it was reasonable for the Rent Administrator to process the 2017 application first and make a finding on that petition before processing the 2018 petition. The Commissioner also notes that the essential facts in the owner's 2017 and 2018 applications overlap given that both applications required this agency to confirm with the New York Department of Tax and Finance whether the tenant's income exceeded $200,000.00 in 2016. The Owner was specifically advised in the FR410210LD Order that the 2018 petition would also be denied given that the tenant's income was below the threshold in 2016.

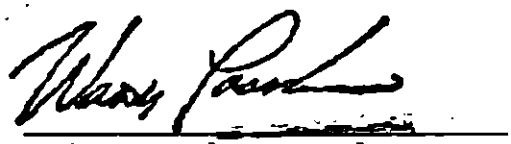
The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

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

ORDERED, that the petition be, and the same hereby is, denied.

ISSUED:

SEP 21 2022



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

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DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
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X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

BELNORD PARTNERS LLC.,

PETITIONER X

ADMINISTRATIVE REVIEW
DOCKET NO.: HX410171RO

RENT ADMINISTRATOR'S
DOCKET NO.: GR410189LD

[redacted]

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a petition for administrative review (PAR) of an Order issued on November 13, 2019, by a Rent Administrator (RA) concerning apartment [redacted] in the premise located at 225 West 86th Street, New York, New York, 10024.

On June 12, 2018, the owner filed a Petition for High-Rent/High-Income deregulation, wherein the owner stated that "the owner requests verification of the household income because the tenant(s) failed to properly return the Income Certification Form (ICF) to the owner."

On November 13, 2019, the RA issued the Order herein under review. The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR and in the owner's supplement, the owner asserts, among other things, that the Petition for High-Rent/High-Income deregulation was filed on June 12, 2018; that, as of that filing date, the subject apartment's monthly legal regulated rent exceeded the statutory minimum for a finding of luxury deregulation; that the rent agency was to determine whether the tenant(s) total annual income exceeded $200,000.00 for the 2016 and the 2017 calendar years; that the above statutory requirements for a finding of luxury deregulation of the subject apartment relate to periods prior to the June 14, 2019 effective date of HSTPA; that the relevant Section of HSTPA relating to the repeal of luxury deregulation stated that "Sections 26-504.1, 26-504.2 and 26-504.3 of the administrative code of the city of New York are REPEALED"; that, unlike other sections of HSTPA, Part D, which repeals luxury deregulation, does not specify that it relates to pending proceedings; and that said Section does not state that it should be applied retroactively.

The owner further asserts that, as the Petition for deregulation had been filed prior to the June 14, 2019 effective date of HSTPA, the RA's Order should not have denied the Petition for High-Rent/High-Income deregulation; that, contrary to the Rent Administrator's Order, prospective repeal does not prevent DHCR from issuing orders relating to pending proceedings based on pre-existing facts; that the rent agency must process the Petition for High-Rent/High-Income deregulation on the merits; that former Section 504.3(c)(3) of the RSL states that, "in the event the tenant or tenants fail to provide the information required pursuant to paragraph one of this subdivision, the division shall issue, on or before December first of such year [the year in which the Owner's Petition for Deregulation was filed], an order…" of deregulation; that, since the tenants failed to respond to the Income Certification Form (ICF), an order should have been issued pursuant to the above-mentioned statute; and that Courts have routinely held that, where an administrative agency deliberately or negligently delays processing an application, then there is a right to have the application processed under the previous law (citation omitted).

Finally, the owner asserts that, following the April 2, 2020 decision by the Court of Appeals in Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal, 35 NY3d 332 [2020], DHCR's denial Order must be rescinded; that the owner's Petition for deregulation should be reopened; that, in Regina, the Court of Appeals held that retroactive application of Part F of the HSTPA violates the owner's due process rights under the New York and Federal Constitutions; that, although the Court in Regina

addressed only the retroactive application of the overcharge provisions, the Court's reasoning should also be applied to the instant luxury deregulation proceeding; that the application of Regina to one provision of HSTPA but not others defies reason; that, by denying the owner's Petition, DHCR applied HSTPA to conditions that occurred prior to the passage of HSTPA; and that this type of retroactive application unjustly penalizes the owner, in the same manner as the Court warned against in Regina.

After a careful consideration of the evidence of record, the Commissioner finds that the owner's petition should be denied.

On June 14, 2019, the New York State Legislature enacted HSTPA (Chapter 36 of the Laws of 2019) which repealed the provisions of the Rent Stabilization Laws and Regulations which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulation shall take effect immediately. (*See* HSTPA, Part "D" §8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to this proceeding. If an apartment remains regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of High-Rent/High-Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes that, as of June 14, 2019, no final or effective order had been issued for this subject apartment and the subject apartment was under the jurisdiction of the Rent Stabilization Laws and Regulations.

The Commissioner notes that the owner seeks a revocation of the November 13, 2019 Order and for a determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income deregulation for an apartment that was rent stabilized as of June 14, 2019 and creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income deregulated as there is no longer any standard under Rent Stabilization that permits the review that petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Cmty. Renewal, (Index No.: 158833/2020)(Hon. Carol R. Edmead)(Sup. Ct. New York Co. May 19,

2021)(wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019"). See also Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 2022 NY Slip Op 01229, ¶ 1, 202 A.D.3d 610, 611, 159 N.Y.S.3d 845, 845 (App. Div. 1st Dept.).

The application of HSTPA to this matter is not based upon the independent judgment of DHCR but, rather, it is pursuant to the plain text in HSTPA, and DHCR is statutorily obliged to apply HSTPA to this case. HSTPA specifically stated that the law is to "take effect immediately" and that "if an apartment remains rent regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of high rent/high income deregulation."

The Commissioner rejects petitioner's assertions that the RA's retroactive application of HSTPA was improper. The Commissioner notes that the New York Court of Appeals decision in Matter of Regina, does not apply to High-Rent/High-Income deregulation cases. While the Court of Appeals disallowed the retroactive application of certain rent overcharge provisions which created additional liability for owners and eliminated a four-year safe harbor for that liability contained in Part F of HSTPA, it stated that:

> The question we address here is relatively narrow — we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation **only to determine whether certain Part F amendments**...must be applied retroactively....We conclude that the **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. See supra Matter of 160 E. 84th St. Assocs. LLC (wherein, the Appellate Division, First Department, stated that "the application of HSTPA Part "D" "affect[ed] only the propriety of prospective relief . . . [and] ha[d] no potentially problematic retroactive effect").

The fact that the 2018 Petition would have been determined based on tenant's income in 2016-2017, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify the nature and content of deregulation and the fact that such

prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v DHCR, 257 A.D.2d 391 (1st Dept. 1999), *aff'd* 94 N.Y.2d 851 (1999).

There can also be no remedy based on any assertion of denial of due process based on a "delay" in processing the owner's application. While there may be variances in terms of processing, there is no question that DHCR was issuing these deregulation determinations on the merits almost to the exact date of the passage of the HSTPA. Indeed, the various and multiple litigations over the "explanatory addenda" cases where DHCR issued such deregulation orders (but the second prong of that deregulation, that the lease in effect had not expired), themselves demonstrate that DHCR was not withholding its issuance of determinations. See supra Matter of 160 E. 84th St. Assocs. LLC (DHCR's explanatory addenda explained the effect of HSTPA part D which prohibited the deregulation of units with leases expiring after June 14, 2019 and the statute "affected only the propriety of prospective relief . . . and had no potential problematic retroactive effect"). Any delay argument is further upended by the fact that in 2018 a total of 105 apartments of the close to one million units subject to rent regulation were issued deregulating orders and 52 apartments in 2019. It is noteworthy that these numbers were consistent between 2018 and half the year of 2019, further establishing that there was no delay in their issuance in anticipation of the 2019 legislative change.

The Commissioner further notes that, even where there had been delay, the Appellate Court in Matter of Partnership 92 LP and Bldg Mgt Co Inc v NY State Division of Housing and Community Renewal, 46 A.D.3d 425 (1st Dept. 2007) *aff'd* 13 N.Y.3d 859 (2008) has noted that the express and explicit command of the legislature shall control. Moreover, DHCR could not have predicted the express language of any potential modifications that could be encompassed by HSTPA and how they would impact this application for High-Rent/High-Income deregulation. Significantly, even where remedies based on delay have been made available, such delay must be deliberate or negligent in anticipation of a change of statute. See Matter of IG Second Generation Partners L.P. v N.Y. State Div. of Hous. & Community Renewal, 10 N.Y.3d 474 (2008) (Court of Appeals refused to award remedies for an alleged delay since it was not proven that the delay resulted from DHCR's negligent or deliberate conduct). See also Rudin E. 55th St. LLC v Div. of Hous. & Community Renewal, 2021 NY Slip Op 31576[U], *15 [Sup Ct, NY County 2021) (Supreme Court recently rejected an owner's assertion that "DHCR committed an unreasonable 16-month delay in

issuing a deregulation order . . .").[1]

The expiration of the time period prescribed by the applicable luxury deregulation Sections of the Code shall not divest the agency of its authority to process this Petition and to issue a determination. See Dworman v NYS Div of Housing and Community Renewal, 94 NY2d 359 (1999). As such, the expiration of the time periods asserted by the petitioner for processing this deregulation Petition did not divest the agency from issuing the November 13, 2019, Order which under the clear direction of the Legislature was now required to be dismissed and, absent evidence of negligence, did not constitute unreasonable delay. See Schutt v NYS Division of Housing and Community Renewal, 278 A.D.2d 58 (1st Dept. 2000).

Petitioner's claim that the unit was deregulated because the tenant failed to provide information is inapposite. The New York Supreme Court in 315 E. 72nd St. Owners, Inc. v. N.Y. State Div. of Hous. & Cmty. Renewal, 2012 NY Slip Op 30137(U), ¶ 9 (Sup. Ct.) rejected an owner's assertion that DHCR should have defaulted a tenant pursuant to § 2531.4(b)(3). The Court in 315 E. 72nd St. Owners, Inc., held that DHCR's determination not to issue an order of deregulation based upon the default provisions set forth under § 2531.4(b)(3) was rational, *citing* Dworman.

Contrary to petitioner's claims, the dismissal of its deregulation application pursuant to HSTPA does not constitute a retroactive application of the statute. On June 14, 2019, the law changed so that rent stabilized units could no longer be deregulated based on High-Rent/High-Income. This change precluded DHCR's granting such applications on or after June 14, 2019. As a result, the subject unit remained regulated. The owner's due process argument, which is premised on its claim of retroactivity, is not meritorious and must be denied.

The Commissioner notes that the rent agency does not and would not declare acts of state law unconstitutional but does enforce, implement, and administer the State laws consistent therewith. The application here is clearly consistent. The owner claims that HSTPA violates the owner's due process rights under the New York and Federal Constitutions. However, the Commissioner notes that there is a strong presumption of constitutionality of the rent

[1] In *Rudin E. 55th St. LLC*, the Court agreed that the Deputy Commissioner's findings were reasonable because: 1) the text of RSC § 2531.9 plainly states that the agency "shall not [be] divest[ed] . . . of its authority to process petitions," by "[t]he expiration of the time periods prescribed . . . for [agency] action"; and 2) appellate case law clearly provides that a party claiming unreasonable delay bears the burden of demonstrating that it was "the result of DHCR's negligent or deliberate conduct." The Court noted that the evidentiary record was devoid of evidence of negligent or deliberate conduct by DHCR.

laws as enacted by the New York State Legislature. In Community Hous. Improvement Program v City of NY et al, 2020 US Dist LEXIS 181189, at *34-35 (EDNY Sep. 30, 2020, No. 19-cv-4087)(EK)(RLM)(Appeal pending), the Court dismissed all claims against New York State and DHCR which sought to challenge the validity of HSTPA's repeal of the luxury and high-income decontrol provisions. District Court Judge, Eric Komitee, stated in his decision that "no precedent binding on this Court has ever found any provision of a rent-stabilization statute to violate the Constitution...rent regulations have now been the subject of almost a hundred years of case law." Supra Community Hous. Improvement Program v City of NY et al.

The Commissioner also notes that no party has a vested right to any remedy under the Rent Stabilization Laws and Regulations, thus diminishing the petitioner's claim that the application of HSTPA deprives the petitioner of due process. The petitioner had no vested right in the continuation of a particular provision of the law or of any policy or procedure followed by DHCR. The New York Court of Appeals in I. L. F. Y. Co. v Temporary State Hous. Rent Com., 10 NY2d 263 (1961), appeal dismissed 369 U.S. 795 (1962) held 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. In this matter, the owner cannot identify any vested property interest in the continued processing of its application because the owner did not have a vested right to deregulate the subject apartment before the enactment of HSTPA. See Pledge v DHCR, supra. Accordingly, DHCR finds that the owner has not identified a particular right that vested by virtue of changes in prior processing rules.

The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

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

ORDERED, that the petition be, and the same hereby is, denied.

ISSUED:

SEP 21 2022

Woody Pascal
Deputy Commissioner

State of New York
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Office of Rent Administration
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X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

BELNORD PARTNERS LLC.,

PETITIONER X

ADMINISTRATIVE REVIEW
DOCKET NO.: HV410151RO

RENT ADMINISTRATOR'S
DOCKET NO.: HR410355LD

TENANTS: [redacted]

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a petition for administrative review (PAR) of an Order issued on August 29, 2019, by a Rent Administrator (RA) concerning apartment 715 located at 207 West 86th Street, New York, New York, 10024.

On June 13, 2019, the owner filed a Petition for High-Rent/High-Income deregulation, wherein the owner stated that "the owner requests verification of the household income because the tenant(s) failed to properly return the Income Certification Form (ICF) to the owner."

On August 29, 2019, the RA issued the Order herein under review. The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR and in the owner's supplement, the owner asserts, among other things, that the Petition for High-Rent/High-Income deregulation was filed on June 13, 2019; that, as of that filing

date, the subject apartment's monthly legal regulated rent exceeded the statutory minimum for a finding of luxury deregulation; that the rent agency was to determine whether the tenant(s) total annual income exceeded $200,000.00 for the 2017 and the 2018 calendar years; that the above statutory requirements for a finding of luxury deregulation of the subject apartment relate to periods prior to the June 14, 2019 effective date of HSTPA; that the relevant Section of HSTPA relating to the repeal of luxury deregulation stated that "Sections 26-504.1, 26-504.2 and 26-504.3 of the administrative code of the city of New York are REPEALED"; that, unlike other sections of HSTPA, Part D, which repeals luxury deregulation, does not specify that it relates to pending proceedings; and that said Section does not state that it should be applied retroactively.

The owner further asserts that, as the Petition for deregulation had been filed prior to the June 14, 2019 effective date of HSTPA, the RA's Order should not have denied the Petition for High-Rent/High-Income deregulation; that, contrary to the Rent Administrator's Order, prospective repeal does not prevent DHCR from issuing orders relating to pending proceedings based on pre-existing facts; that the rent agency must process the Petition for High-Rent/High-Income deregulation on the merits; and that Courts have routinely held that, where an administrative agency deliberately or negligently delays processing an application, there is a right to have the application processed under the previous law (citation omitted).

Finally, the owner asserts that, following the April 2, 2020 decision by the Court of Appeals in Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal, 35 NY3d 332 [2020], DHCR's denial Order must be rescinded; that the owner's Petition for deregulation should be reopened; that, in Regina, the Court of Appeals held that retroactive application of Part F of the HSTPA violates the owner's due process rights under the New York and Federal Constitutions; that, although the Court in Regina addressed only the retroactive application of the overcharge provisions, the Court's reasoning should also be applied to the instant luxury deregulation proceeding; that the application of Regina to one provision of HSTPA but not others defies reason; that, by denying the owner's Petition, DHCR applied HSTPA to conditions that occurred prior to the passage of HSTPA; and that this type of retroactive application unjustly penalizes the owner, in the same manner as the Court warned against in Regina.

After a careful consideration of the evidentiary record, the Commissioner finds that the owner's petition should be denied.

On June 14, 2019, the New York State Legislature enacted HSTPA (Chapter 36 of the Laws of 2019) which repealed the provisions of the Rent Stabilization Laws and Regulations which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulation shall take effect immediately. (*See* HSTPA, Part "D" §8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to this proceeding. If an apartment remains regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of High-Rent/High-Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes that, as of June 14, 2019, no deregulation order had been issued for this subject apartment and the subject apartment was under the jurisdiction of the Rent Stabilization Laws and Regulations.

The Commissioner notes that the owner seeks a revocation of the August 29, 2019 Order and for a determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income deregulation for an apartment that was rent stabilized as of June 14, 2019 and creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income deregulated as there is no longer any standard under Rent Stabilization that permits the review that petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Cmty. Renewal, (Index No.: 158833/2020)(Hon. Carol R. Edmead)(Sup. Ct. New York Co. May 19, 2021)(wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019"). See also Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 2022 NY Slip Op 01229, ¶ 1, 202 A.D.3d 610, 611, 159 N.Y.S.3d 845, 845 (App. Div. 1st Dept.).

The application of HSTPA to this matter is not based upon the independent judgment of DHCR but, rather, it is pursuant to the plain text in HSTPA, and DHCR is statutorily obliged to apply HSTPA to this case. HSTPA specifically stated that the law is to "take effect immediately" and that "if an apartment remains rent

regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of high rent/high income deregulation."

The Commissioner rejects petitioner's assertions that the RA's retroactive application of HSTPA was improper. The Commissioner notes that the New York Court of Appeals decision in Matter of Regina, does not apply to High-Rent/High-Income deregulation cases. While the Court of Appeals disallowed the retroactive application of certain rent overcharge provisions which created additional liability for owners and eliminated a four-year safe harbor for that liability contained in Part F of HSTPA, it stated that:

> The question we address here is relatively narrow – we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation **only to determine whether certain Part F amendments**...must be applied retroactively....We conclude that the **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. See supra Matter of 160 E. 84th St. Assocs. LLC (wherein, the Appellate Division, First Department, stated that "the application of HSTPA Part "D" "affect[ed] only the propriety of prospective relief . . . [and] ha[d] no potentially problematic retroactive effect").

The fact that the 2019 Petition would have been determined based on tenant's income in 2017-2018, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify the nature and content of deregulation and the fact that such prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v DHCR, 257 A.D.2d 391 (1st Dept. 1999), *aff'd* 94 N.Y.2d 851 (1999).

There can also be no remedy based on any assertion of denial of due process based on a "delay" in processing the owner's applications for high income/high rent deregulation. The Commissioner notes that the owner filed this petition for high income/high rent deregulation on June 13, 2019, which was one day before HSTPA was enacted. As such, there was no inordinate delay. Even where there had been delay, the Appellate Court in Matter of

Partnership 92 LP and Bldg Mgt Co Inc v NY State Division of Housing and Community Renewal, 46 A.D.3d 425 (1st Dept. 2007) *aff'd* 13 N.Y.3d 859 (2008) has noted that the express and explicit command of the legislature shall control.

DHCR could not have predicted the express language of any potential modifications that could be encompassed by HSTPA and how they would impact this application for high rent/high income deregulation. Moreover, even where remedies based on delay have been made available, such delay must be deliberate or negligent in anticipation of a change of statute. See Matter of IG Second Generation Partners L.P. v N.Y. State Div. of Hous. & Community Renewal, 10 N.Y.3d 474 (2008) (New York Court of Appeals refused to award remedies for an alleged delay since it was not proven that the delay resulted from DHCR's negligent or deliberate conduct).

The Commissioner notes that DHCR continued to process luxury deregulation cases in the ordinary course of business at the RA's level in 2019. (See RA Docket No. HQ410001LD, wherein the RA issued an Order on June 12, 2019). Moreover, the expiration of the time periods prescribed by the applicable luxury deregulation sections of the Code, shall not divest the agency of its authority to process petitions and to issue determinations. See Dworman v NYS Div of Housing and Community Renewal, 94 NY2d 359 (1999). As such, the expiration of the time periods asserted by the petitioner for processing deregulation petitions did not divest the agency from issuing the August 29, 2019 Order, which under the clear direction of the legislature was now required to be dismissed and, absent evidence of negligence, did not constitute unreasonable delay. See Schutt v NYS Division of Housing and Community Renewal, 278 A.D.2d 58 (1st Dept. 2000).

Contrary to petitioner's claims, the dismissal of its deregulation application pursuant to HSTPA does not constitute a retroactive application of the statute. On June 14, 2019, the law changed so that rent stabilized units could no longer be deregulated based on High-Rent/High-Income. This change precluded DHCR's granting such applications on or after June 14, 2019. As a result, the subject unit remained regulated. The owner's due process argument, which is premised on its claim of retroactivity, is not meritorious and must be denied.

The Commissioner notes that the rent agency does not and would not declare acts of state law unconstitutional but does enforce, implement, and administer the State laws consistent therewith. The application here is clearly consistent. The owner claims that

HSTPA violates the owner's due process rights under the New York and Federal Constitutions. However, the Commissioner notes that there is a strong presumption of constitutionality of the rent laws as enacted by the New York State Legislature. In Community Hous. Improvement Program v City of NY et al, 2020 US Dist LEXIS 181189, at *34-35 (EDNY Sep. 30, 2020, No. 19-cv-4087)(EK)(RLM)(Appeal pending), the Court dismissed all claims against New York State and DHCR which sought to challenge the validity of HSTPA's repeal of the luxury and high-income decontrol provisions. District Court Judge, Eric Komitee, stated in his decision that "no precedent binding on this Court has ever found any provision of a rent-stabilization statute to violate the Constitution...rent regulations have now been the subject of almost a hundred years of case law." Supra Community Hous. Improvement Program v City of NY et al.

The Commissioner also notes that no party has a vested right to any remedy under the Rent Stabilization Laws and Regulations, thus diminishing the petitioner's claim that the application of HSTPA deprives the petitioner of due process. The petitioner had no vested right in the continuation of a particular provision of the law or of any policy or procedure followed by DHCR. The New York Court of Appeals in I. L. F. Y. Co. v Temporary State Hous. Rent Com., 10 NY2d 263 (1961), appeal dismissed 369 U.S. 795 (1962) held 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. In this matter, the owner cannot identify any vested property interest in the continued processing of its application because the owner did not have a vested right to deregulate the subject apartment before the enactment of HSTPA. See Pledge v DHCR, supra. Accordingly, DHCR finds that the owner has not identified a particular right that vested by virtue of changes in prior processing rules.

The Commissioner further points out that agency records indicate that, the owner renewed the tenant's lease for the term of July 1, 2018 through June 30, 2020. Prior to HSTPA, RSL §26-504.3 conditioned High-Rent/High-Income deregulation on the expiration of an existing lease. The condition was something that existed when the owner filed its application and was something that the owner was, or should have been, well aware of. Given that the granting of the Petition for High-Income/High-Rent deregulation was contingent on the expiration of the lease, any deregulation order issued prior to June 14, 2019, would not have been effective because the current lease in effect expired after the passage of HSTPA. See Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 2022 NY Slip Op 01229,

¶ 1, 202 A.D.3d 610, 611, 159 N.Y.S.3d 845, 846 (App. Div. 1st Dept.) (DHCR's explanatory addenda explained the effect of HSTPA part D which prohibited the deregulation of units with leases expiring after June 14, 2019 and the statute "affected only the propriety of prospective relief . . . and had no potential problematic retroactive effect").

The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

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

ORDERED, that the petition be, and the same hereby is, denied.

ISSUED:

SEP 21 2022

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

---X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

BELNORD PARTNERS LLC.,

PETITIONER X

ADMINISTRATIVE REVIEW
DOCKET NO.: HV410152RO

RENT ADMINISTRATOR'S
DOCKET NO.: HR410353LD

TENANT: [redacted]

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a petition for administrative review (PAR) of an Order issued on August 29, 2019, by a Rent Administrator (RA) concerning apartment [redacted] in the premise located at 225 West 86th Street, New York, New York, 10024.

On June 13, 2019, the owner filed a Petition for High-Rent/High-Income deregulation, wherein the owner stated that "the owner requests verification of the household income because the tenant(s) failed to properly return the Income Certification Form (ICF) to the owner."

On August 29, 2019, the RA issued the Order herein under review. The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR and in the owner's supplement, the owner asserts, among other things, that the Petition for High-Rent/High-Income deregulation was filed on June 13, 2019; that, as of that filing date, the subject apartment's monthly legal regulated rent exceeded the statutory minimum for a finding of luxury deregulation; that the rent agency was to determine whether the tenant(s) total annual income exceeded $200,000.00 for the 2017 and the 2018 calendar years; that the above statutory requirements for a finding of luxury deregulation of the subject apartment relate to periods prior to the June 14, 2019 effective date of HSTPA; that the relevant Section of HSTPA relating to the repeal of luxury deregulation stated that "Sections 26-504.1, 26-504.2 and 26-504.3 of the administrative code of the city of New York are REPEALED"; that, unlike other sections of HSTPA, Part D, which repeals luxury deregulation, does not specify that it relates to pending proceedings; and that said Section does not state that it should be applied retroactively.

The owner further asserts that, as the Petition for deregulation had been filed prior to the June 14, 2019 effective date of HSTPA, the RA's Order should not have denied the Petition for High-Rent/High-Income deregulation; that, contrary to the Rent Administrator's Order, prospective repeal does not prevent DHCR from issuing orders relating to pending proceedings based on pre-existing facts; that the rent agency must process the Petition for High-Rent/High-Income deregulation on the merits; and that Courts have routinely held that, where an administrative agency deliberately or negligently delays processing an application, then there is a right to have the application processed under the previous law (citation omitted).

Finally, the owner asserts that, following the April 2, 2020 decision by the Court of Appeals in Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal, 35 NY3d 332 [2020], DHCR's denial Order must be rescinded; that the owner's Petition for deregulation should be reopened; that, in Regina, the Court of Appeals held that retroactive application of Part F of the HSTPA violates the owner's due process rights under the New York and Federal Constitutions; that, although the Court in Regina addressed only the retroactive application of the overcharge provisions, the Court's reasoning should also be applied to the instant luxury deregulation proceeding; that the application of Regina to one provision of HSTPA but not others defies reason; that, by denying the owner's Petition, DHCR applied HSTPA to conditions that occurred prior to the passage of HSTPA; and that this type of retroactive application unjustly penalizes the owner, in the same manner as the Court warned against in Regina.

After a careful consideration of the evidence of record, the Commissioner finds that the owner's petition should be denied.

On June 14, 2019, the New York State Legislature enacted HSTPA (Chapter 36 of the Laws of 2019) which repealed the provisions of the Rent Stabilization Laws and Regulations which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulation shall take effect immediately. (*See* HSTPA, Part "D" §8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to this proceeding. If an apartment remains regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of High-Rent/High-Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes that, as of June 14, 2019, no final or effective order had been issued for this subject apartment and the subject apartment was under the jurisdiction of the Rent Stabilization Laws and Regulations.

The Commissioner notes that the owner seeks a revocation of the August 29, 2019 Order and for a determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income deregulation for an apartment that was rent stabilized as of June 14, 2019 and creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income deregulated as there is no longer any standard under Rent Stabilization that permits the review that petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Cmty. Renewal, (Index No.: 158833/2020)(Hon. Carol R. Edmead)(Sup. Ct. New York Co. May 19, 2021)(wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019"). See also Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 2022 NY Slip Op 01229, ¶ 1, 202 A.D.3d 610, 611, 159 N.Y.S.3d 845, 845 (App. Div. 1st Dept.).

The application of HSTPA to these matters is not based upon the independent judgment of DHCR but, rather, it is pursuant to the plain text in HSTPA, and DHCR is statutorily obliged to apply

HSTPA to these cases. HSTPA specifically stated that the law is to "take effect immediately" and that "if an apartment remains rent regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of high rent/high income deregulation."

The Commissioner rejects petitioner's assertions that the RA's retroactive application of HSTPA was improper. The Commissioner notes that the New York Court of Appeals decision in Matter of Regina, does not apply to High-Rent/High-Income deregulation cases. While the Court of Appeals disallowed the retroactive application of certain rent overcharge provisions which created additional liability for owners and eliminated a four-year safe harbor for that liability contained in Part F of HSTPA, it stated that:

> The question we address here is relatively narrow – we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation **only to determine whether certain Part F amendments**...must be applied retroactively....We conclude that the **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. See supra Matter of 160 E. 84th St. Assocs. LLC (wherein, the Appellate Division, First Department, stated that "the application of HSTPA Part "D" "affect[ed] only the propriety of prospective relief . . . [and] ha[d] no potentially problematic retroactive effect").

The fact that the 2019 petition would have been determined based on tenant's income in 2017 and 2018, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify the nature and content of deregulation and the fact that such prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v DHCR, 257 A.D.2d 391 (1st Dept. 1999), *aff'd* 94 N.Y.2d 851 (1999).

There can also be no remedy based on any assertion of denial of due process based on a "delay" in processing the owner's applications for high income/high rent deregulation. The Commissioner notes that the owner filed this petition for high income/high rent deregulation on June 13, 2019, which was one day

before HSTPA was enacted. As such, there was no inordinate delay. Even where there had been delay, the Appellate Court in Matter of Partnership 92 LP and Bldg Mgt Co Inc v NY State Division of Housing and Community Renewal, 46 A.D.3d 425 (1st Dept. 2007) *aff'd* 13 N.Y.3d 859 (2008) has noted that the express and explicit command of the legislature shall control.

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The Commissioner notes that DHCR continued to process luxury deregulation cases in the ordinary course of business at the RA's level in 2019. (See RA Docket No. HQ410001LD, wherein the RA issued an Order on June 12, 2019). Moreover, the expiration of the time periods prescribed by the applicable luxury deregulation sections of the Code, shall not divest the agency of its authority to process petitions and to issue determinations. See Dworman v NYS Div of Housing and Community Renewal, 94 NY2d 359 (1999). As such, the expiration of the time periods asserted by the petitioner for processing deregulation petitions did not divest the agency from issuing the August 29, 2019 Order, which under the clear direction of the legislature was now required to be dismissed and, absent evidence of negligence, did not constitute unreasonable delay. See Schutt v NYS Division of Housing and Community Renewal, 278 A.D.2d 58 (1st Dept. 2000).

Contrary to petitioner's claims, the dismissal of its deregulation application pursuant to HSTPA does not constitute a retroactive application of the statute. On June 14, 2019, the law changed so that rent stabilized units could no longer be deregulated based on High-Rent/High-Income. This change precluded DHCR's granting such applications on or after June 14, 2019. As a result, the subject unit remained regulated. The owner's due process argument, which is premised on its claim of retroactivity, is not meritorious and must be denied.

The Commissioner notes that the rent agency does not and would not declare acts of state law unconstitutional but does enforce,

implement, and administer the State laws consistent therewith. The application here is clearly consistent. The owner claims that HSTPA violates the owner's due process rights under the New York and Federal Constitutions. However, the Commissioner notes that there is a strong presumption of constitutionality of the rent laws as enacted by the New York State Legislature. In Community Hous. Improvement Program v City of NY et al, 2020 US Dist LEXIS 181189, at *34-35 (EDNY Sep. 30, 2020, No. 19-cv-4087)(EK)(RLM)(Appeal pending), the Court dismissed all claims against New York State and DHCR which sought to challenge the validity of HSTPA's repeal of the luxury and high-income decontrol provisions. District Court Judge, Eric Komitee, stated in his decision that "no precedent binding on this Court has ever found any provision of a rent-stabilization statute to violate the Constitution...rent regulations have now been the subject of almost a hundred years of case law." Supra Community Hous. Improvement Program v City of NY et al.

The Commissioner also notes that no party has a vested right to any remedy under the Rent Stabilization Laws and Regulations, thus diminishing the petitioner's claim that the application of HSTPA deprives the petitioner of due process. The petitioner had no vested right in the continuation of a particular provision of the law or of any policy or procedure followed by DHCR. The New York Court of Appeals in I. L. F. Y. Co. v Temporary State Hous. Rent Com., 10 NY2d 263 (1961), appeal dismissed 369 U.S. 795 (1962) held 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. In this matter, the owner cannot identify any vested property interest in the continued processing of its application because the owner did not have a vested right to deregulate the subject apartment before the enactment of HSTPA. See Pledge v DHCR, supra. Accordingly, DHCR finds that the owner has not identified a particular right that vested by virtue of changes in prior processing rules.

The Commissioner further points out that agency records indicate that, the owner renewed the tenant's lease for the term of June 15, 2018 through June 14, 2020. Prior to HSTPA, RSL §26-504.3 conditioned High-Rent/High-Income deregulation on the expiration of an existing lease. The condition was something that existed when the owner filed its application and was something that the owner was, or should have been, well aware of. Given that the granting of the Petition for High-Income/High-Rent deregulation was contingent on the expiration of the lease, any deregulation order issued prior to June 14, 2019, would not have been effective because the current lease in effect expired after

the passage of HSTPA. See Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 2022 NY Slip Op 01229, ¶ 1, 202 A.D.3d 610, 611, 159 N.Y.S.3d 845, 846 (App. Div. 1st Dept.) (DHCR's explanatory addenda explained the effect of HSTPA part D which prohibited the deregulation of units with leases expiring after June 14, 2019 and the statute "affected only the propriety of prospective relief . . . and had no potential problematic retroactive effect").

The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

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

ORDERED, that the petition be, and the same hereby is, denied.

ISSUED: SEP 21 2022

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

X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

BELNORD PARTNERS LLC.,

PETITIONER X

ADMINISTRATIVE REVIEW
DOCKET NO.: HX410168RO

RENT ADMINISTRATOR'S
DOCKET NO.: GR410181LD

[redacted]

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a petition for administrative review (PAR) of an Order issued on November 13, 2019, by a Rent Administrator (RA) concerning apartment [redacted] in the premise located at 225 West 86th Street, New York, New York, 10024.

On June 12, 2018, the owner filed a Petition for High-Rent/High-Income deregulation, wherein the owner stated that "the owner requests verification of the household income because the tenant(s) failed to properly return the Income Certification Form (ICF) to the owner."

On November 13, 2019, the RA issued the Order herein under review. The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR and in the owner's supplement, the owner asserts, among other things, that the Petition for High-Rent/High-Income deregulation was filed on June 12, 2018; that, as of that filing date, the subject apartment's monthly legal regulated rent exceeded the statutory minimum for a finding of luxury deregulation; that the rent agency was to determine whether the tenant(s) total annual income exceeded $200,000.00 for the 2016 and the 2017 calendar years; that the above statutory requirements for a finding of luxury deregulation of the subject apartment relate to periods prior to the June 14, 2019 effective date of HSTPA; that the relevant Section of HSTPA relating to the repeal of luxury deregulation stated that "Sections 26-504.1, 26-504.2 and 26-504.3 of the administrative code of the city of New York are REPEALED"; that, unlike other sections of HSTPA, Part D, which repeals luxury deregulation, does not specify that it relates to pending proceedings; and that said Section does not state that it should be applied retroactively.

The owner further asserts that, as the Petition for deregulation had been filed prior to the June 14, 2019 effective date of HSTPA, the RA's Order should not have denied the Petition for High-Rent/High-Income deregulation; that, contrary to the Rent Administrator's Order, prospective repeal does not prevent DHCR from issuing orders relating to pending proceedings based on pre-existing facts; that the rent agency must process the Petition for High-Rent/High-Income deregulation on the merits; that former Section 504.3(c)(3) of the RSL states that, "in the event the tenant or tenants fail to provide the information required pursuant to paragraph one of this subdivision, the division shall issue, on or before December first of such year [the year in which the Owner's Petition for Deregulation was filed], an order…" of deregulation; that, since the tenants failed to respond to the Income Certification Form (ICF), an order should have been issued pursuant to the above-mentioned statute; and that Courts have routinely held that, where an administrative agency deliberately or negligently delays processing an application, then there is a right to have the application processed under the previous law (citation omitted).

Finally, the owner asserts that, following the April 2, 2020 decision by the Court of Appeals in Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal, 35 NY3d 332 [2020], DHCR's denial Order must be rescinded; that the owner's Petition for deregulation should be reopened; that, in Regina, the Court of Appeals held that retroactive application of Part F of the HSTPA violates the owner's due process rights under the New York and Federal Constitutions; that, although the Court in Regina

addressed only the retroactive application of the overcharge provisions, the Court's reasoning should also be applied to the instant luxury deregulation proceeding; that the application of Regina to one provision of HSTPA but not others defies reason; that, by denying the owner's Petition, DHCR applied HSTPA to conditions that occurred prior to the passage of HSTPA; and that this type of retroactive application unjustly penalizes the owner, in the same manner as the Court warned against in Regina.

After a careful consideration of the evidence of record, the Commissioner finds that the owner's petition should be denied.

On June 14, 2019, the New York State Legislature enacted HSTPA (Chapter 36 of the Laws of 2019) which repealed the provisions of the Rent Stabilization Laws and Regulations which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulation shall take effect immediately. (*See* HSTPA, Part "D" §8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to this proceeding. If an apartment remains regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of High-Rent/High-Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes that, as of June 14, 2019, no deregulation order had been issued for the subject apartment and the subject apartment was under the jurisdiction of the Rent Stabilization Laws and Regulations.

The Commissioner notes that the owner seeks a revocation of the November 13, 2019 Order and for a determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income deregulation for an apartment that was rent stabilized as of June 14, 2019 and creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income deregulated as there is no longer any standard under Rent Stabilization that permits the review that petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Cmty. Renewal, (Index No.: 158833/2020)(Hon. Carol R. Edmead)(Sup. Ct. New York Co. May 19,

2021)(wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019"). See also Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 2022 NY Slip Op 01229, ¶ 1, 202 A.D.3d 610, 611, 159 N.Y.S.3d 845, 845 (App. Div. 1st Dept.).

The application of HSTPA to this matter is not based upon the independent judgment of DHCR but, rather, it is pursuant to the plain text in HSTPA, and DHCR is statutorily obliged to apply HSTPA to this case. HSTPA specifically stated that the law is to "take effect immediately" and that "if an apartment remains rent regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of high rent/high income deregulation."

The Commissioner rejects petitioner's assertions that the RA's retroactive application of HSTPA was improper. The Commissioner notes that the New York Court of Appeals decision in Matter of Regina, does not apply to High-Rent/High-Income deregulation cases. While the Court of Appeals disallowed the retroactive application of certain rent overcharge provisions which created additional liability for owners and eliminated a four-year safe harbor for that liability contained in Part F of HSTPA, it stated that:

> The question we address here is relatively narrow – we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation **only to determine whether certain Part F amendments**...must be applied retroactively....We conclude that the **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. See supra Matter of 160 E. 84th St. Assocs. LLC (wherein, the Appellate Division, First Department, stated that "the application of HSTPA Part "D" "affect[ed] only the propriety of prospective relief . . . [and] ha[d] no potentially problematic retroactive effect").

The fact that the 2018 Petition would have been determined based on tenant's income in 2016-2017, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify the nature and content of deregulation and the fact that such

prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v DHCR, 257 A.D.2d 391 (1st Dept. 1999), *aff'd* 94 N.Y.2d 851 (1999).

There can also be no remedy based on any assertion of denial of due process based on a "delay" in processing the owner's application. While there may be variances in terms of processing, there is no question that DHCR was issuing these deregulation determinations on the merits almost to the exact date of the passage of the HSTPA. Indeed, the various and multiple litigations over the "explanatory addenda" cases where DHCR issued such deregulation orders (but the second prong of that deregulation, that the lease in effect had not expired), themselves demonstrate that DHCR was not withholding its issuance of determinations. See supra Matter of 160 E. 84th St. Assocs. LLC (DHCR's explanatory addenda explained the effect of HSTPA part D which prohibited the deregulation of units with leases expiring after June 14, 2019 and the statute "affected only the propriety of prospective relief . . . and had no potential problematic retroactive effect"). Any delay argument is further upended by the fact that in 2018 a total of 105 apartments of the close to one million units subject to rent regulation were issued deregulating orders and 52 apartments in 2019. It is noteworthy that these numbers were consistent between 2018 and half the year of 2019, further establishing that there was no delay in their issuance in anticipation of the 2019 legislative change.

The Commissioner notes that the agency processed a 2017 application filed by the owner under Docket Number FR410192LD under the normal course of agency business, and that final determination of the 2017 application was not made until April 23, 2019 (See PAR Docket Number GO410021RO). The Commissioner finds that it was reasonable for the RA to wait until final resolution of the 2017 application before working on the owner's 2018 application.

The Commissioner further notes that, even where there had been delay, the Appellate Court in Matter of Partnership 92 LP and Bldg Mgt Co Inc v NY State Division of Housing and Community Renewal, 46 A.D.3d 425 (1st Dept. 2007) *aff'd* 13 N.Y.3d 859 (2008) has noted that the express and explicit command of the legislature shall control. Moreover, DHCR could not have predicted the express language of any potential modifications that could be encompassed by HSTPA and how they would impact this application for High-Rent/High-Income deregulation. Significantly, even where remedies based on delay have been made available, such delay must be deliberate or negligent in anticipation of a change of statute. See Matter of IG Second Generation Partners L.P. v N.Y. State Div.

of Hous. & Community Renewal, 10 N.Y.3d 474 (2008) (Court of Appeals refused to award remedies for an alleged delay since it was not proven that the delay resulted from DHCR's negligent or deliberate conduct). See also Rudin E. 55th St. LLC v Div. of Hous. & Community Renewal, 2021 NY Slip Op 31576[U], *15 [Sup Ct, NY County 2021](Supreme Court recently rejected an owner's assertion that "DHCR committed an unreasonable 16-month delay in issuing a deregulation order . . .").[1]

The expiration of the time period prescribed by the applicable luxury deregulation Sections of the Code shall not divest the agency of its authority to process this Petition and to issue a determination. See Dworman v NYS Div of Housing and Community Renewal, 94 NY2d 359 (1999). As such, the expiration of the time periods asserted by the petitioner for processing this deregulation Petition did not divest the agency from issuing the November 13, 2019 Order which under the clear direction of the Legislature was now required to be dismissed and, absent evidence of negligence, did not constitute unreasonable delay. See Schutt v NYS Division of Housing and Community Renewal, 278 A.D.2d 58 (1st Dept. 2000).

Petitioner's claim that the unit was deregulated because the tenant failed to provide information is inapposite. The New York Supreme Court in 315 E. 72nd St. Owners, Inc. v. N.Y. State Div. of Hous. & Cmty. Renewal, 2012 NY Slip Op 30137(U), ¶ 9 (Sup. Ct.) rejected an owner's assertion that DHCR should have defaulted a tenant pursuant to § 2531.4(b)(3). The Court in 315 E. 72nd St. Owners, Inc., held that DHCR's determination not to issue an order of deregulation based upon the default provisions set forth under § 2531.4(b)(3) was rational, *citing* Dworman.

Contrary to petitioner's claims, the dismissal of its deregulation application pursuant to HSTPA does not constitute a retroactive application of the statute. On June 14, 2019, the law changed so that rent stabilized units could no longer be deregulated based on High-Rent/High-Income. This change precluded DHCR's granting such applications on or after June 14, 2019. As a result, the subject unit remained regulated. The owner's due process argument, which is premised on its claim of retroactivity, is not meritorious and must be denied.

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[1] In *Rudin E. 55th St. LLC*, the Court agreed that the Deputy Commissioner's findings were reasonable because: 1) the text of RSC § 2531.9 plainly states that the agency "shall not [be] divest[ed] . . . of its authority to process petitions," by "[t]he expiration of the time periods prescribed . . . for [agency] action"; and 2) appellate case law clearly provides that a party claiming unreasonable delay bears the burden of demonstrating that it was "the result of DHCR's negligent or deliberate conduct." The Court noted that the evidentiary record was devoid of evidence of negligent or deliberate conduct by DHCR.

The Commissioner notes that the rent agency does not and would not declare acts of state law unconstitutional but does enforce, implement, and administer the State laws consistent therewith. The application here is clearly consistent. The owner claims that HSTPA violates the owner's due process rights under the New York and Federal Constitutions. However, the Commissioner notes that there is a strong presumption of constitutionality of the rent laws as enacted by the New York State Legislature. In Community Hous. Improvement Program v City of NY et al, 2020 US Dist LEXIS 181189, at *34-35 (EDNY Sep. 30, 2020, No. 19-cv-4087)(EK)(RLM)(Appeal pending), the Court dismissed all claims against New York State and DHCR which sought to challenge the validity of HSTPA's repeal of the luxury and high-income decontrol provisions. District Court Judge, Eric Komitee, stated in his decision that "no precedent binding on this Court has ever found any provision of a rent-stabilization statute to violate the Constitution...rent regulations have now been the subject of almost a hundred years of case law." Supra Community Hous. Improvement Program v City of NY et al.

The Commissioner also notes that no party has a vested right to any remedy under the Rent Stabilization Laws and Regulations, thus diminishing the petitioner's claim that the application of HSTPA deprives the petitioner of due process. The petitioner had no vested right in the continuation of a particular provision of the law or of any policy or procedure followed by DHCR. The New York Court of Appeals in I. L. F. Y. Co. v Temporary State Hous. Rent Com., 10 NY2d 263 (1961), appeal dismissed 369 U.S. 795 (1962) held 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. In this matter, the owner cannot identify any vested property interest in the continued processing of its application because the owner did not have a vested right to deregulate the subject apartment before the enactment of HSTPA. See Pledge v DHCR, supra. Accordingly, DHCR finds that the owner has not identified a particular right that vested by virtue of changes in prior processing rules.

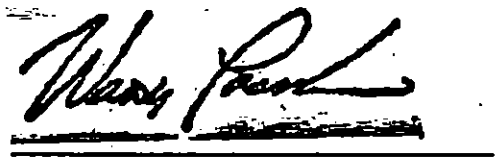
The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

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

ORDERED, that the petition be, and the same hereby is, denied.

ISSUED:

SEP 23 2022



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

80th REALTY LLC
c/o GLENWOOD MANAGEMENT CORP.

PETITIONER

ADMINISTRATIVE REVIEW
DOCKET NO. IO410021RO

RENT ADMINISTRATOR'S
DOCKET NO. HR410004RP

TENANT: [redacted]

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ORDER AND OPINION GRANTING PETITION
FOR ADMINISTRATIVE REVIEW

The above-named owner filed a timely petition for administrative review (PAR) of an order issued on February 4, 2020 by the Rent Administrator (RA) concerning the housing accommodation known as 1520 York Avenue, Apartment [redacted], New York, New York.

The Commissioner has reviewed all the evidence in the record and has carefully considered that portion of the record relevant to the issues raised in the administrative appeal.

On May 6, 2016, the owner filed a petition for high income rent deregulation alleging that the legal rent for the subject apartment was $2,700 or more per month and requesting verification of the household income to establish that the total annual income of the household was more than $200,000 in each of the two preceding calendar years.

In an order issued under Docket Number EQ410128LD on May 19, 2017, the RA denied/terminated the owner's petition for deregulation because a vacancy occurred in 2015 and the legal regulated rent of the apartment was $2,500 [sic] or more per month and therefore the apartment was exempt from Luxury Deregulation

and not under the jurisdiction of this agency.

The Commissioner, on June 3, 2019, by order issued under Docket Number FR410045RO, remanded the matter to the RA to process the luxury deregulation application on the merits. The Commissioner found that with the passage of the Rent Act of 2015 and given that there has not been a definitive judicial or agency determination on the issue of whether an apartment qualifies for high rent vacancy deregulation from 2015 and thereafter if the vacating tenant is not paying the deregulation threshold rent, the owner's Luxury Deregulation petition was improperly denied/terminated.

The RA re-opened the matter under Docket Number HR410004RP.

On February 4, 2020, the RA issued the Order herein under review.

The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

Now in the instant PAR, the owner alleges that the RA order must be annulled as it is arbitrary, capricious, and illegal; that the RA abused its discretion; that HSTPA violates the owner's due process rights by retroactively applying newly enacted laws to a proceeding that's essence is predicated on the review of the prior two (2) years of household income; that the Petition was for the 2016 filing period; that the statutory high-income deregulation threshold has been met if it is determined that the total annual household income of the occupants of the subject housing accommodation is more than $200,000 in each of the two preceding calendar years - 2014 and 2015; that the implementation of HSTPA to luxury decontrol proceedings currently pending, where the scope of review is from 2014 and 2015, deprives owners of all the rights of ownership, and also eliminates property owner's rights to use their property for anything other than the compelled use of a stabilized rental; that DHCR violated the owner's Due Process rights and condoned a violation of the Takings Clause by applying the act of 2019 to the instant proceeding; that these very

substantial restrictions on property owners' rights effect an uncompensated physical taking that is a *per se* violation of the Takings Clause; and that the owner submits this PAR without prejudice to its position that the subject apartment was lawfully deregulated by other means.

The PAR is granted.

Under 326 Starr, LLC v. Martinez, 74 Misc.3d. 77 (App. Term, 2nd Dept. 2021), the Court determined that the third sentence of former Rent Stabilization Law §26-504.2(a) excluded from regulation any housing accommodation with a legal regulated rent that was $2700 or more per month at any time on or after the effective date of the Rent Act of 2015, which becomes vacant after the effective date of the Rent Act of 2015. The Court held that this clause permitted removal of apartments from regulation without reference to the rent at the time of the vacancy and therefore would include any available post-vacancy statutory increases.

Under the 326 Starr, LLC holding, the Commissioner finds that the subject apartment was deregulated pursuant to high rent vacancy deregulation as of the current tenant's occupancy on July 27, 2015 because the legal regulated rent surpassed the deregulation threshold of $2,700 per month. Th record establishes that the current tenant took occupancy in July 2015 pursuant to a lease with a legal regulated rent of $3,063.29 per month and was charged and paid $2,995.00 per month during the initial lease term. The fact that the owner gave a rent stabilized lease and registered the apartment as rent stabilized is of no matter given that the rent level surpassed the deregulation threshold. As such, the original RA order under Docket Number EQ410128LD was correctly decided and is reinstated. There was no reason to process the 2016 luxury deregulation application given that the apartment was deregulated by other means, i.e. high rent vacancy deregulation, as of July 27, 2015.

Based on the foregoing, the Commissioner need not determine the issues concerning the applicability of HSTPA to this matter and the RA's order under Docket Number HR410004RP is revoked.

THEREFORE, pursuant to the provisions of the applicable statutes and regulations, it is

ORDERED, that this petition for administrative review be granted, that the RA's order under Docket Number HR410004RP is revoked and that the subject apartment was deregulated as of July 2015 pursuant to high rent vacancy deregulation.

ISSUED: SEP 26 2022

WOODY PASCAL
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
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Right to Court Appeal

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There is no other method of appeal.

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X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: HX410138RO

BELNORD PARTNERS LLC.,

RENT ADMINISTRATOR'S
DOCKET NO.: GR410207LD

[redacted]

PETITIONER X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a petition for administrative review (PAR) of an Order issued on November 13, 2019, by a Rent Administrator (RA) concerning apartment [redacted] in the premise located at 203 West 86th Street, New York, New York, 10024.

On June 12, 2018, the owner filed a Petition for High-Rent/High-Income deregulation, wherein the owner stated that "the owner requests verification of the household income because the tenant(s) failed to properly return the Income Certification Form (ICF) to the owner."

On November 13, 2019, the RA issued the Order herein under review. The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR and in the owner's supplement, the owner asserts, among other things, that the Petition for High-Rent/High-Income deregulation was filed on June 12, 2018; that, as of that filing date, the subject apartment's monthly legal regulated rent exceeded the statutory minimum for a finding of luxury deregulation; that the rent agency was to determine whether the tenant(s) total annual income exceeded $200,000.00 for the 2016 and the 2017 calendar years; that the above statutory requirements for a finding of luxury deregulation of the subject apartment relate to periods prior to the June 14, 2019 effective date of HSTPA; that the relevant Section of HSTPA relating to the repeal of luxury deregulation stated that "Sections 26-504.1, 26-504.2 and 26-504.3 of the administrative code of the city of New York are REPEALED"; that, unlike other sections of HSTPA, Part D, which repeals luxury deregulation, does not specify that it relates to pending proceedings; and that said Section does not state that it should be applied retroactively.

The owner further asserts that, as the Petition for deregulation had been filed prior to the June 14, 2019 effective date of HSTPA, the RA's Order should not have denied the Petition for High-Rent/High-Income deregulation; that, contrary to the Rent Administrator's Order, prospective repeal does not prevent DHCR from issuing orders relating to pending proceedings based on pre-existing facts; that the rent agency must process the Petition for High-Rent/High-Income deregulation on the merits; that former Section 504.3(c)(3) of the RSL states that, "in the event the tenant or tenants fail to provide the information required pursuant to paragraph one of this subdivision, the division shall issue, on or before December first of such year [the year in which the Owner's Petition for Deregulation was filed], an order…" of deregulation; that, since the tenants failed to respond to the Income Certification Form (ICF), an order should have been issued pursuant to the above-mentioned statute; and that Courts have routinely held that, where an administrative agency deliberately or negligently delays processing an application, then there is a right to have the application processed under the previous law (citation omitted).

Finally, the owner asserts that, following the April 2, 2020 decision by the Court of Appeals in Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal, (35 NY3d 332 [2020]), DHCR's denial Order must be rescinded; that the owner's Petition for deregulation should be reopened; that, in Regina, the Court of Appeals held that retroactive application of Part F of the HSTPA violates the owner's due process rights under the New York and Federal Constitutions; that, although the Court

in Regina addressed only the retroactive application of the overcharge provisions, the Court's reasoning should also be applied to the instant luxury deregulation proceeding; that the application of Regina to one provision of HSTPA but not others defies reason; that, by denying the owner's Petition, DHCR applied HSTPA to conditions that occurred prior to the passage of HSTPA; and that this type of retroactive application unjustly penalizes the owner, in the same manner as the Court warned against in Regina.

After a careful consideration of the evidence of record, the Commissioner finds that the owner's petition should be denied.

On June 14, 2019, the New York State Legislature enacted HSTPA (Chapter 36 of the Laws of 2019) which repealed the provisions of the Rent Stabilization Laws and Regulations which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulation shall take effect immediately. (*See* HSTPA, Part "D" §8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to this proceeding. If an apartment remains regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of High-Rent/High-Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes that, as of June 14, 2019, no final or effective order had been issued for this subject apartment and the subject apartment was under the jurisdiction of the Rent Stabilization Laws and Regulations.

The Commissioner notes that the owner seeks a revocation of the November 13, 2019 Order and for a determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income deregulation for an apartment that was rent stabilized as of June 14, 2019 and creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income deregulated as there is no longer any standard under Rent Stabilization that permits the review that petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Cmty. Renewal, (Index No.:

158833/2020)(Hon. Carol R. Edmead)(Sup. Ct. New York Co. May 19, 2021)(wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019"). See also Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 2022 NY Slip Op 01229, ¶ 1, 202 A.D.3d 610, 611, 159 N.Y.S.3d 845, 845 (App. Div. 1st Dept.).

The application of HSTPA to this matter is not based upon the independent judgment of DHCR but, rather, it is pursuant to the plain text in HSTPA, and DHCR is statutorily obliged to apply HSTPA to this case. HSTPA specifically stated that the law is to "take effect immediately" and that "if an apartment remains rent regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of high rent/high income deregulation."

The Commissioner rejects petitioner's assertions that the RA's retroactive application of HSTPA was improper. The Commissioner notes that the New York Court of Appeals decision in Matter of Regina, does not apply to High-Rent/High-Income deregulation cases. While the Court of Appeals disallowed the retroactive application of certain rent overcharge provisions which created additional liability for owners and eliminated a four-year safe harbor for that liability contained in Part F of HSTPA, it stated that:

> The question we address here is relatively narrow — we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation **only to determine whether certain Part F amendments**...must be applied retroactively....We conclude that the **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. See supra Matter of 160 E. 84th St. Assocs. LLC (wherein, the Appellate Division, First Department, stated that "the application of HSTPA Part "D" "affect[ed] only the propriety of prospective relief . . . [and] ha[d] no potentially problematic retroactive effect").

The fact that the 2018 Petition would have been determined based on tenant's income in 2016-2017, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify

the nature and content of deregulation and the fact that such prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v DHCR, 257 A.D.2d 391 (1st Dept. 1999), *aff'd* 94 N.Y.2d 851 (1999).

There can also be no remedy based on any assertion of denial of due process based on a "delay" in processing the owner's application. While there may be variances in terms of processing, there is no question that DHCR was issuing these deregulation determinations on the merits almost to the exact date of the passage of the HSTPA. Indeed, the various and multiple litigations over the "explanatory addenda" cases where DHCR issued such deregulation orders (but the second prong of that deregulation, that the lease in effect had not expired), themselves demonstrate that DHCR was not withholding its issuance of determinations. See supra Matter of 160 E. 84th St. Assocs. LLC (DHCR's explanatory addenda explained the effect of HSTPA part D which prohibited the deregulation of units with leases expiring after June 14, 2019 and the statute "affected only the propriety of prospective relief . . . and had no potential problematic retroactive effect"). Any delay argument is further upended by the fact that in 2018 a total of 105 apartments of the close to one million units subject to rent regulation were issued deregulating orders and 52 apartments in 2019. It is noteworthy that these numbers were consistent between 2018 and half the year of 2019, further establishing that there was no delay in their issuance in anticipation of the 2019 legislative change.

The Commissioner further notes that, even where there had been delay, the Appellate Court in Matter of Partnership 92 LP and Bldg Mgt Co Inc v NY State Division of Housing and Community Renewal, 46 A.D.3d 425 (1st Dept. 2007) *aff'd* 13 N.Y.3d 859 (2008) has noted that the express and explicit command of the legislature shall control. Moreover, DHCR could not have predicted the express language of any potential modifications that could be encompassed by HSTPA and how they would impact this application for High-Rent/High-Income deregulation. Significantly, even where remedies based on delay have been made available, such delay must be deliberate or negligent in anticipation of a change of statute. See Matter of IG Second Generation Partners L.P. v N.Y. State Div. of Hous. & Community Renewal, 10 N.Y.3d 474 (2008) (Court of Appeals refused to award remedies for an alleged delay since it was not proven that the delay resulted from DHCR's negligent or deliberate conduct). See also Rudin E. 55th St. LLC v Div. of Hous. & Community Renewal, 2021 NY Slip Op 31576[U], *15 [Sup Ct, NY County 2021] (Supreme Court recently rejected an owner's assertion that "DHCR committed an unreasonable 16-month delay in

issuing a deregulation order . . .").[1]

The expiration of the time period prescribed by the applicable luxury deregulation Sections of the Code shall not divest the agency of its authority to process this Petition and to issue a determination. See Dworman v NYS Div of Housing and Community Renewal, 94 NY2d 359 (1999). As such, the expiration of the time periods asserted by the petitioner for processing this deregulation Petition did not divest the agency from issuing the November 13, 2019 Order which under the clear direction of the Legislature was now required to be dismissed and, absent evidence of negligence, did not constitute unreasonable delay. See Schutt v NYS Division of Housing and Community Renewal, 278 A.D.2d 58 (1st Dept. 2000).

Petitioner's claim that the unit was deregulated because the tenant failed to provide information is inapposite. The New York Supreme Court in 315 E. 72nd St. Owners, Inc. v. N.Y. State Div. of Hous. & Cmty. Renewal, 2012 NY Slip Op 30137(U), ¶ 9 (Sup. Ct.) rejected an owner's assertion that DHCR should have defaulted a tenant pursuant to § 2531.4(b)(3). The Court in 315 E. 72nd St. Owners, Inc., held that DHCR's determination not to issue an order of deregulation based upon the default provisions set forth under § 2531.4(b)(3) was rational, *citing* Dworman.

Contrary to petitioner's claims, the dismissal of its deregulation application pursuant to HSTPA does not constitute a retroactive application of the statute. On June 14, 2019, the law changed so that rent stabilized units could no longer be deregulated based on High-Rent/High-Income. This change precluded DHCR's granting such applications on or after June 14, 2019. As a result, the subject unit remained regulated. The owner's due process argument, which is premised on its claim of retroactivity, is not meritorious and must be denied.

The Commissioner notes that the rent agency does not and would not declare acts of state law unconstitutional but does enforce, implement, and administer the State laws consistent therewith. The application here is clearly consistent. The owner claims that HSTPA violates the owner's due process rights under the New York and Federal Constitutions. However, the Commissioner notes that there is a strong presumption of constitutionality of the rent

[1] In *Rudin E. 55th St. LLC*, the Court agreed that the Deputy Commissioner's findings were reasonable because: 1) the text of RSC § 2531.9 plainly states that the agency "shall not [be] divest[ed] . . . of its authority to process petitions," by "[t]he expiration of the time periods prescribed . . . for [agency] action"; and 2) appellate case law clearly provides that a party claiming unreasonable delay bears the burden of demonstrating that it was "the result of DHCR's negligent or deliberate conduct." The Court noted that the evidentiary record was devoid of evidence of negligent or deliberate conduct by DHCR.

laws as enacted by the New York State Legislature. In Community Hous. Improvement Program v City of NY et al, 2020 US Dist LEXIS 181189, at *34-35 (EDNY Sep. 30, 2020, No. 19-cv-4087)(EK)(RLM)(Appeal pending), the Court dismissed all claims against New York State and DHCR which sought to challenge the validity of HSTPA's repeal of the luxury and high-income decontrol provisions. District Court Judge, Eric Komitee, stated in his decision that "no precedent binding on this Court has ever found any provision of a rent-stabilization statute to violate the Constitution...rent regulations have now been the subject of almost a hundred years of case law." Supra Community Hous. Improvement Program v City of NY et al.

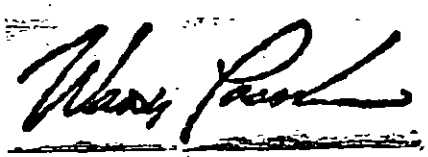
The Commissioner also notes that no party has a vested right to any remedy under the Rent Stabilization Laws and Regulations, thus diminishing the petitioner's claim that the application of HSTPA deprives the petitioner of due process. The petitioner had no vested right in the continuation of a particular provision of the law or of any policy or procedure followed by DHCR. The New York Court of Appeals in I. L. F. Y. Co. v Temporary State Hous. Rent Com., 10 NY2d 263 (1961), appeal dismissed 369 U.S. 795 (1962) held 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. In this matter, the owner cannot identify any vested property interest in the continued processing of its application because the owner did not have a vested right to deregulate the subject apartment before the enactment of HSTPA. See Pledge v DHCR, supra. Accordingly, DHCR finds that the owner has not identified a particular right that vested by virtue of changes in prior processing rules.

The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

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

ORDERED, that the petition be, and the same hereby is, denied.

ISSUED: SEP 26 2022



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

X

IN THE MATTER OF THE
ADMINISTRATIVE APPEALS OF

ADMINISTRATIVE REVIEW
DOCKET NOS.: HX410141RO
HX410136RO

BELNORD PARTNERS LLC.,

RENT ADMINISTRATOR'S
DOCKET NOS.: FR410223LD
GR410188LD

[redacted]

PETITIONER X

ORDER AND OPINION DENYING PETITIONS FOR ADMINISTRATIVE REVIEW

The owner filed respective petitions for administrative reviews (PARs) of two respective orders issued on November 13, 2019 by a Rent Administrator (RA) concerning apartment [redacted] in the premise located at 209 West 86th Street, New York, New York, 10024.

The Commissioner notes that these PARs involve common issues of law and fact and is therefore of the opinion that they should be consolidated for disposition. In addition, the Commissioner has reviewed the evidence in the respective records and has considered those portions of the records relevant to the issues raised by the PARs.

On June 13, 2017 (FR410223LD) and on June 12, 2018 (GR410188LD), the owner filed Petitions for High-Rent/High-Income deregulation, wherein the owner stated that "the owner requests verification of the household income because the tenant(s) failed to properly return the Income Certification Form (ICF) to the owner."

On November 13, 2019, the RA issued the respective orders herein under review. The RA stated the following in each order:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

In each of the PARs, the owner asserts, among other things, that the Petitions for High-Rent/High-Income deregulation were filed in 2017 and 2018; that, as of the respective filing dates, the subject apartment's monthly legal regulated rent exceeded the statutory minimum for a finding of luxury deregulation; that the rent agency was to determine whether the tenant(s) total annual income exceeded $200,000.00 for the 2015 through 2017 calendar years; that the above statutory requirements for a finding of luxury deregulation of the subject apartment relate to periods prior to the June 14, 2019 effective date of HSTPA; that the relevant Section of HSTPA relating to the repeal of luxury deregulation stated that "Sections 26-504.1, 26-504.2 and 26-504.3 of the administrative code of the city of New York are REPEALED"; that, unlike other sections of HSTPA, Part D, which repeals luxury deregulation, does not specify that it relates to pending proceedings; and that said Section does not state that it should be applied retroactively.

The owner further asserts that, as the Petitions for deregulation had been filed prior to the June 14, 2019 effective date of HSTPA, the RA's Orders should not have denied the Petitions for High-Rent/High-Income deregulation; that, contrary to the Rent Administrator's Orders, prospective repeals does not prevent DHCR from issuing orders relating to pending proceedings based on pre-existing facts; that the rent agency must process the Petitions for High-Rent/High-Income deregulation on the merits; that former Section 504.3(c)(3) of the RSL states that, "in the event the tenant or tenants fail to provide the information required pursuant to paragraph one of this subdivision, the division shall issue, on or before December first of such year [the year in which the Owner's Petition for Deregulation was filed], an order…" of deregulation; that, since the tenants failed to respond to the Income Certification Forms (ICFs), orders should have been issued pursuant to the above-mentioned statute; and that Courts have routinely held that, where an administrative agency deliberately or negligently delays processing an application, then there is a right to have the application processed under the previous law

(citation omitted).

After a careful consideration of the evidence of record, the Commissioner finds that the owner's petitions should be denied.

On June 14, 2019, the New York State Legislature enacted HSTPA (Chapter 36 of the Laws of 2019) which repealed the provisions of the Rent Stabilization Laws and Regulations which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulation shall take effect immediately. (*See* HSTPA, Part "D" §8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to these proceedings. If an apartment remains regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of High-Rent/High-Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes that, as of June 14, 2019, no deregulation order had been issued for the subject apartment and the subject apartment was under the jurisdiction of the Rent Stabilization Laws and Regulations.

The Commissioner notes that the owner seeks a revocation of the November 13, 2019 Orders and for determinations based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income deregulation for an apartment that was rent stabilized as of June 14, 2019 and creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income deregulated as there is no longer any standard under Rent Stabilization that permits the review that petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Cmty. Renewal, (Index No.: 158833/2020)(Hon. Carol R. Edmead)(Sup. Ct. New York Co. May 19, 2021)(wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019"). See also Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 2022 NY Slip Op 01229, ¶ 1, 202 A.D.3d 610, 611, 159 N.Y.S.3d 845, 845 (App. Div. 1st Dept.).

The application of HSTPA to these matters is not based upon

the independent judgment of DHCR but, rather, it is pursuant to the plain text in HSTPA, and DHCR is statutorily obliged to apply HSTPA to these cases. HSTPA specifically stated that the law is to "take effect immediately" and that "if an apartment remains rent regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of high rent/high income deregulation."

The Commissioner rejects petitioner's assertions that the RA's retroactive applications of HSTPA was improper. The Commissioner notes that the New York Court of Appeals decision in Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal, 35 NY3d 332 [2020] does not apply to High-Rent/High-Income deregulation cases. While the Court of Appeals disallowed the retroactive application of certain rent overcharge provisions which created additional liability for owners and eliminated a four-year safe harbor for that liability contained in Part F of HSTPA, it stated that:

> The question we address here is relatively narrow – we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation **only to determine whether certain Part F amendments**...must be applied retroactively....We conclude that the **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. See supra Matter of 160 E. 84th St. Assocs. LLC (wherein, the Appellate Division, First Department, stated that "the application of HSTPA Part "D" "affect[ed] only the propriety of prospective relief . . . [and] ha[d] no potentially problematic retroactive effect").

The fact that the 2017 and 2018 Petitions would have been determined based on tenants' income in 2015-2016 and 2016-2017, respectively, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify the nature and content of deregulation and the fact that such prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v DHCR, 257 A.D.2d 391 (1st Dept. 1999), *aff'd* 94 N.Y.2d 851 (1999).

There can also be no remedy based on any assertion of denial

of due process based on a "delay" in processing the owner's applications. While there may be variances in terms of processing, there is no question that DHCR was issuing these deregulation determinations on the merits almost to the exact date of the passage of the HSTPA. Indeed, the various and multiple litigations over the "explanatory addenda" cases where DHCR issued such deregulation orders (but the second prong of that deregulation, that the lease in effect had not expired), themselves demonstrate that DHCR was not withholding its issuance of determinations. See supra Matter of 160 E. 84th St. Assocs. LLC (DHCR's explanatory addenda explained the effect of HSTPA part D which prohibited the deregulation of units with leases expiring after June 14, 2019 and the statute "affected only the propriety of prospective relief . . . and had no potential problematic retroactive effect"). Any delay argument is further upended by the fact that in 2018 a total of 105 apartments of the close to one million units subject to rent regulation were issued deregulating orders and 52 apartments in 2019. It is noteworthy that these numbers were consistent between 2018 and half the year of 2019, further establishing that there was no delay in their issuance in anticipation of the 2019 legislative change.

The record reflects that the filing under Docket Number FR410223LD was actively being processed by the RA up to the passage date of HSTPA. Indeed, the tenants had retained an attorney and had claimed that they need not respond to the petition because the absence of J-51 riders in their leases precluded luxury deregulation. In April 2019, the RA served the tenant's attorney with a notice stating that such riders were not required, and that the attorney should serve an answer to the owner's petition on the merits. Thereafter, the tenant's attorney requested a 30-day adjournment to submit a merits-based answer. The Commissioner finds that it was reasonable for the RA to process the 2017 application first before turning to the 2018 application.

The Commissioner further notes that, even where there had been delay, the Appellate Court in Matter of Partnership 92 LP and Bldg Mgt Co Inc v NY State Division of Housing and Community Renewal, 46 A.D.3d 425 (1st Dept. 2007) *aff'd* 13 N.Y.3d 859 (2008) has noted that the express and explicit command of the legislature shall control. Moreover, DHCR could not have predicted the express language of any potential modifications that could be encompassed by HSTPA and how they would impact these applications for High-Rent/High-Income deregulation. Significantly, even where remedies based on delay have been made available, such delay must be deliberate or negligent in anticipation of a change of statute. See Matter of IG Second Generation Partners L.P. v N.Y. State Div.

of Hous. & Community Renewal, 10 N.Y.3d 474 (2008) (Court of Appeals refused to award remedies for an alleged delay since it was not proven that the delay resulted from DHCR's negligent or deliberate conduct). See also Rudin E. 55th St. LLC v Div. of Hous. & Community Renewal, 2021 NY Slip Op 31576[U], *15 [Sup Ct, NY County 2021](Supreme Court recently rejected an owner's assertion that "DHCR committed an unreasonable 16-month delay in issuing a deregulation order . . .").[1]

The expiration of the time period prescribed by the applicable luxury deregulation Sections of the Code shall not divest the agency of its authority to process these Petitions and to issue determinations. See Dworman v NYS Div of Housing and Community Renewal, 94 NY2d 359 (1999). As such, the expiration of the time periods asserted by the petitioner for processing these deregulation Petitions did not divest the agency from issuing the November 13, 2019 Orders which under the clear direction of the Legislature was now required to be dismissed and, absent evidence of negligence, did not constitute unreasonable delay. See Schutt v NYS Division of Housing and Community Renewal, 278 A.D.2d 58 (1st Dept. 2000).

Petitioner's claim that the unit was deregulated because the tenants failed to provide information is inapposite. The New York Supreme Court in 315 E. 72nd St. Owners, Inc. v. N.Y. State Div. of Hous. & Cmty. Renewal, 2012 NY Slip Op 30137(U), ¶ 9 (Sup. Ct.) rejected an owner's assertion that DHCR should have defaulted a tenant pursuant to § 2531.4(b)(3). The Court in 315 E. 72nd St. Owners, Inc., held that DHCR's determination not to issue an order of deregulation based upon the default provisions set forth under § 2531.4(b)(3) was rational, *citing* Dworman.

Contrary to petitioner's claims, the dismissal of its deregulation applications pursuant to HSTPA does not constitute retroactive applications of the statute. On June 14, 2019, the law changed so that rent stabilized units could no longer be deregulated based on High-Rent/High-Income. This change precluded DHCR's granting such applications on or after June 14, 2019. As a result, the subject unit remained regulated. The owner's due process argument, which is premised on its claim of retroactivity, is not meritorious and must be denied.

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[1] In *Rudin E. 55th St. LLC*, the Court agreed that the Deputy Commissioner's findings were reasonable because: 1) the text of RSC § 2531.9 plainly states that the agency "shall not [be] divest[ed] . . . of its authority to process petitions," by "[t]he expiration of the time periods prescribed . . . for [agency] action"; and 2) appellate case law clearly provides that a party claiming unreasonable delay bears the burden of demonstrating that it was "the result of DHCR's negligent or deliberate conduct." The Court noted that the evidentiary record was devoid of evidence of negligent or deliberate conduct by DHCR.

Finally, the Commissioner notes that the owner registered the subject apartment as exempt from rent regulation as of April 1, 2020 and identified it as a "condo unit".

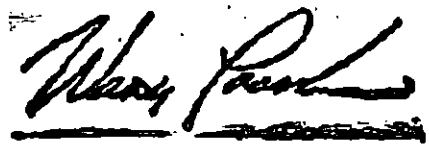
The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

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

ORDERED, that the petitions be, and the same hereby are, denied.

ISSUED:

SEP 26 2022



Woody Pascal
Deputy Commissioner

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There is no other method of appeal.

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OFFICE OF RENT ADMINISTRATION
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X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

BELNORD PARTNERS LLC.,

ADMINISTRATIVE REVIEW
DOCKET NO.: HV410142RO

RENT ADMINISTRATOR'S
DOCKET NO.: HR410356LD

[redacted]

PETITIONER X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a petition for administrative review (PAR) of an Order issued on August 29, 2019, by a Rent Administrator (RA) concerning apartment [redacted] located at 203 West 86th Street, New York, New York, 10024.

On June 13, 2019, the owner filed a Petition for High-Rent/High-Income deregulation, wherein the owner stated that "the owner requests verification of the household income because the tenant(s) failed to properly return the Income Certification Form (ICF) to the owner."

On August 29, 2019, the RA issued the Order herein under review. The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR and in the owner's supplement, the owner asserts, among other things, that the Petition for High-Rent/High-Income

deregulation was filed on June 13, 2019; that, as of that filing date, the subject apartment's monthly legal regulated rent exceeded the statutory minimum for a finding of luxury deregulation; that the rent agency was to determine whether the tenant(s) total annual income exceeded $200,000.00 for the 2017 and the 2018 calendar years; that the above statutory requirements for a finding of luxury deregulation of the subject apartment relate to periods prior to the June 14, 2019 effective date of HSTPA; that the relevant Section of HSTPA relating to the repeal of luxury deregulation stated that "Sections 26-504.1, 26-504.2 and 26-504.3 of the administrative code of the city of New York are REPEALED"; that, unlike other sections of HSTPA, Part D, which repeals luxury deregulation, does not specify that it relates to pending proceedings; and that said Section does not state that it should be applied retroactively.

The owner further asserts that, as the Petition for deregulation had been filed prior to the June 14, 2019 effective date of HSTPA, the RA's Order should not have denied the Petition for High-Rent/High-Income deregulation; that, contrary to the Rent Administrator's Order, prospective repeal does not prevent DHCR from issuing orders relating to pending proceedings based on pre-existing facts; that the rent agency must process the Petition for High-Rent/High-Income deregulation on the merits; and that Courts have routinely held that, where an administrative agency deliberately or negligently delays processing an application, there is a right to have the application processed under the previous law (citation omitted).

Finally, the owner asserts that, following the April 2, 2020 decision by the Court of Appeals in Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal, 35 NY3d 332 [2020], DHCR's denial Order must be rescinded; that the owner's Petition for deregulation should be reopened; that, in Regina, the Court of Appeals held that retroactive application of Part F of the HSTPA violates the owner's due process rights under the New York and Federal Constitutions; that, although the Court in Regina addressed only the retroactive application of the overcharge provisions, the Court's reasoning should also be applied to the instant luxury deregulation proceeding; that the application of Regina to one provision of HSTPA but not others defies reason; that, by denying the owner's Petition, DHCR applied HSTPA to conditions that occurred prior to the passage of HSTPA; and that this type of retroactive application unjustly penalizes the owner, in the same manner as the Court warned against in Regina.

After a careful consideration of the evidence of record, the

Commissioner finds that the owner's petition should be denied.

On June 14, 2019, the New York State Legislature enacted HSTPA (Chapter 36 of the Laws of 2019) which repealed the provisions of the Rent Stabilization Laws and Regulations which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulation shall take effect immediately. (*See* HSTPA, Part "D" §8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to this proceeding. If an apartment remains regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of High-Rent/High-Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes that, as of June 14, 2019, no final or effective deregulation order had been issued for this subject apartment and the subject apartment was under the jurisdiction of the Rent Stabilization Laws and Regulations.

The Commissioner notes that the owner seeks a revocation of the August 29, 2019 Order and for a determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income deregulation for an apartment that was rent stabilized as of June 14, 2019 and creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income deregulated as there is no longer any standard under Rent Stabilization that permits the review that petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Cmty. Renewal, (Index No.: 158833/2020)(Hon. Carol R. Edmead)(Sup. Ct. New York Co. May 19, 2021)(wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019"). See also Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 2022 NY Slip Op 01229, ¶ 1, 202 A.D.3d 610, 611, 159 N.Y.S.3d 845, 845 (App. Div. 1st Dept.).

The application of HSTPA to this matter is not based upon the independent judgment of DHCR but, rather, it is pursuant to the plain text in HSTPA, and DHCR is statutorily obliged to apply HSTPA to these cases. HSTPA specifically stated that the law is to "take

effect immediately" and that "if an apartment remains rent regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of high rent/high income deregulation."

The Commissioner rejects petitioner's assertions that the RA's retroactive application of HSTPA was improper. The Commissioner notes that the New York Court of Appeals decision in Matter of Regina, does not apply to High-Rent/High-Income deregulation cases. While the Court of Appeals disallowed the retroactive application of certain rent overcharge provisions which created additional liability for owners and eliminated a four-year safe harbor for that liability contained in Part F of HSTPA, it stated that:

> The question we address here is relatively narrow – we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation **only to determine whether certain Part F amendments**...must be applied retroactively....We conclude that the **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. See supra Matter of 160 E. 84th St. Assocs. LLC (wherein, the Appellate Division, First Department, stated that "the application of HSTPA Part "D" "affect[ed] only the propriety of prospective relief . . . [and] ha[d] no potentially problematic retroactive effect").

The fact that the 2019 Petition would have been determined based on tenant's income in 2017-2018, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify the nature and content of deregulation and the fact that such prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v DHCR, 257 A.D.2d 391 (1st Dept. 1999), *aff'd* 94 N.Y.2d 851 (1999).

There can also be no remedy based on any assertion of denial of due process based on a "delay" in processing the owner's applications for high income/high rent deregulation. The Commissioner notes that the owner filed this petition for high income/high rent deregulation on June 13, 2019, which was one day before HSTPA was enacted. As such, there was no inordinate delay.

Even where there had been delay, the Appellate Court in Matter of Partnership 92 LP and Bldg Mgt Co Inc v NY State Division of Housing and Community Renewal, 46 A.D.3d 425 (1st Dept. 2007) *aff'd* 13 N.Y.3d 859 (2008) has noted that the express and explicit command of the legislature shall control.

DHCR could not have predicted the express language of any potential modifications that could be encompassed by HSTPA and how they would impact this application for high rent/high income deregulation. Moreover, even where remedies based on delay have been made available, such delay must be deliberate or negligent in anticipation of a change of statute. See Matter of IG Second Generation Partners L.P. v N.Y. State Div. of Hous. & Community Renewal, 10 N.Y.3d 474 (2008) (New York Court of Appeals refused to award remedies for an alleged delay since it was not proven that the delay resulted from DHCR's negligent or deliberate conduct).

The Commissioner notes that DHCR continued to process luxury deregulation cases in the ordinary course of business at the RA's level in 2019. (See RA Docket No. HQ410001LD, wherein the RA issued an Order on June 12, 2019). Moreover, the expiration of the time periods prescribed by the applicable luxury deregulation sections of the Code, shall not divest the agency of its authority to process petitions and to issue determinations. See Dworman v NYS Div of Housing and Community Renewal, 94 NY2d 359 (1999). As such, the expiration of the time periods asserted by the petitioner for processing deregulation petitions did not divest the agency from issuing the August 29, 2019 Order, which under the clear direction of the legislature was now required to be dismissed and, absent evidence of negligence, did not constitute unreasonable delay. See Schutt v NYS Division of Housing and Community Renewal, 278 A.D.2d 58 (1st Dept. 2000).

Contrary to petitioner's claims, the dismissal of its deregulation application pursuant to HSTPA does not constitute a retroactive application of the statute. On June 14, 2019, the law changed so that rent stabilized units could no longer be deregulated based on High-Rent/High-Income. This change precluded DHCR's granting such applications on or after June 14, 2019. As a result, the subject unit remained regulated. The owner's due process argument, which is premised on its claim of retroactivity, is not meritorious and must be denied.

The Commissioner notes that the rent agency does not and would not declare acts of state law unconstitutional but does enforce, implement, and administer the State laws consistent therewith.

The application here is clearly consistent. The owner claims that HSTPA violates the owner's due process rights under the New York and Federal Constitutions. However, the Commissioner notes that there is a strong presumption of constitutionality of the rent laws as enacted by the New York State Legislature. In Community Hous. Improvement Program v City of NY et al, 2020 US Dist LEXIS 181189, at *34-35 (EDNY Sep. 30, 2020, No. 19-cv-4087)(EK)(RLM)(Appeal pending), the Court dismissed all claims against New York State and DHCR which sought to challenge the validity of HSTPA's repeal of the luxury and high-income decontrol provisions. District Court Judge, Eric Komitee, stated in his decision that "no precedent binding on this Court has ever found any provision of a rent-stabilization statute to violate the Constitution...rent regulations have now been the subject of almost a hundred years of case law." Supra Community Hous. Improvement Program v City of NY et al.

The Commissioner also notes that no party has a vested right to any remedy under the Rent Stabilization Laws and Regulations, thus diminishing the petitioner's claim that the application of HSTPA deprives the petitioner of due process. The petitioner had no vested right in the continuation of a particular provision of the law or of any policy or procedure followed by DHCR. The New York Court of Appeals in I. L. F. Y. Co. v Temporary State Hous. Rent Com., 10 NY2d 263 (1961), appeal dismissed 369 U.S. 795 (1962) held 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. In this matter, the owner cannot identify any vested property interest in the continued processing of its application because the owner did not have a vested right to deregulate the subject apartment before the enactment of HSTPA. See Pledge v DHCR, supra. Accordingly, DHCR finds that the owner has not identified a particular right that vested by virtue of changes in prior processing rules.

The Commissioner further points out that agency records indicate that the owner renewed the tenant's lease for the term of May 15, 2019 through May 14, 2020. Prior to HSTPA, RSL §26-504.3 conditioned High-Rent/High-Income deregulation on the expiration of an existing lease. The condition was something that existed when the owner filed its application and was something that the owner was, or should have been, well aware of. Given that the granting of the Petition for High-Income/High-Rent deregulation was contingent on the expiration of the lease, any deregulation order issued prior to June 14, 2019, would not have been effective because the current lease in effect expired after the passage of HSTPA. See Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State

Div. of Hous. & Cmty. Renewal, 2022 NY Slip Op 01229, ¶ 1, 202 A.D.3d 610, 611, 159 N.Y.S.3d 845, 846 (App. Div. 1st Dept.) (DHCR's explanatory addenda explained the effect of HSTPA part D which prohibited the deregulation of units with leases expiring after June 14, 2019 and the statute "affected only the propriety of prospective relief . . . and had no potential problematic retroactive effect").

The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

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

ORDERED, that the petition be, and the same hereby is, denied.

ISSUED: SEP 26 2022

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

X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

BELNORD PARTNERS LLC.,

PETITIONER X

ADMINISTRATIVE REVIEW
DOCKET NO.: HV410149RO

RENT ADMINISTRATOR'S
DOCKET NO.: HR410352LD

TENANTS: [redacted]

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a petition for administrative review (PAR) of an Order issued on August 29, 2019 by a Rent Administrator (RA) concerning apartment [redacted] located at 209 West 86th Street, New York, New York, 10024.

On June 13, 2019, the owner filed a Petition for High-Rent/High-Income deregulation, wherein "the owner petitions DHCR to issue an order deregulating the housing accommodation based on the tenant's admission in the attached Income Certification Form (ICF) that the total annual household income exceeded $200,000 in each of the two preceding calendar years."

On August 29, 2019, the RA issued the Order herein under review. The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR and in the owner's supplement, the owner asserts, among other things, that the Petition for High-Rent/High-Income deregulation was filed on June 13, 2019; that, as of that filing date, the subject apartment's monthly legal regulated rent exceeded the statutory minimum for a finding of luxury deregulation; that the tenants admitted their total annual income exceeded $200,000.00 for the 2017 and the 2018 calendar years; that the above statutory requirements for a finding of luxury deregulation of the subject apartment relate to periods prior to the June 14, 2019 effective date of HSTPA; that the relevant Section of HSTPA relating to the repeal of luxury deregulation stated that "Sections 26-504.1, 26-504.2 and 26-504.3 of the administrative code of the city of New York are REPEALED"; that, unlike other sections of HSTPA, Part D, which repeals luxury deregulation, does not specify that it relates to pending proceedings; and that said Section does not state that it should be applied retroactively.

The owner further asserts that, as the Petition for deregulation had been filed prior to the June 14, 2019 effective date of HSTPA, the RA's Order should not have denied the Petition for High-Rent/High-Income deregulation; that, contrary to the Rent Administrator's Order, prospective repeal does not prevent DHCR from issuing orders relating to pending proceedings based on pre-existing facts; that the rent agency must process the Petition for High-Rent/High-Income deregulation on the merits; and that Courts have routinely held that, where an administrative agency deliberately or negligently delays processing an application, there is a right to have the application processed under the previous law (citation omitted).

Finally, the owner asserts that, following the April 2, 2020 decision by the Court of Appeals in Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal, (35 NY3d 332 [2020]), DHCR's denial Order must be rescinded; that the owner's Petition for deregulation should be reopened; that, in Regina, the Court of Appeals held that retroactive application of Part F of the HSTPA violates the owner's due process rights under the New York and Federal Constitutions; that, although the Court in Regina addressed only the retroactive application of the overcharge provisions, the Court's reasoning should also be applied to the instant luxury deregulation proceeding; that the application of Regina to one provision of HSTPA but not others defies reason; that, by denying the owner's Petition, DHCR applied HSTPA to conditions that occurred prior to the passage of HSTPA; and that this type of retroactive application unjustly penalizes the owner, in the same manner as the Court warned against in

Regina.

After a careful consideration of the evidence of record, the Commissioner finds that the owner's petition should be denied.

On June 14, 2019, the New York State Legislature enacted HSTPA (Chapter 36 of the Laws of 2019) which repealed the provisions of the Rent Stabilization Laws and Regulations which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulation shall take effect immediately. (*See* HSTPA, Part "D" §8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to this proceeding. If an apartment remains regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of High-Rent/High-Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes that, as of June 14, 2019, no deregulation order had been issued for this subject apartment and the subject apartment was under the jurisdiction of the Rent Stabilization Laws and Regulations.

The Commissioner notes that the owner seeks a revocation of the August 29, 2019 Order and for a determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income deregulation for an apartment that was rent stabilized as of June 14, 2019 and creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income deregulated as there is no longer any standard under Rent Stabilization that permits the review that petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Cmty. Renewal, (Index No.: 158833/2020)(Hon. Carol R. Edmead)(Sup. Ct. New York Co. May 19, 2021)(wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019"). See also Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 2022 NY Slip Op 01229, ¶ 1, 202 A.D.3d 610, 611, 159 N.Y.S.3d 845, 845 (App. Div. 1st Dept.).

The application of HSTPA to these matters is not based upon

the independent judgment of DHCR but, rather, it is pursuant to the plain text in HSTPA, and DHCR is statutorily obliged to apply HSTPA to these cases. HSTPA specifically stated that the law is to "take effect immediately" and that "if an apartment remains rent regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of high rent/high income deregulation."

The Commissioner rejects petitioner's assertions that the RA's retroactive application of HSTPA was improper. The Commissioner notes that the New York Court of Appeals decision in Matter of Regina, does not apply to High-Rent/High-Income deregulation cases. While the Court of Appeals disallowed the retroactive application of certain rent overcharge provisions which created additional liability for owners and eliminated a four-year safe harbor for that liability contained in Part F of HSTPA, it stated that:

> The question we address here is relatively narrow – we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation **only to determine whether certain Part F amendments**...must be applied retroactively....We conclude that the **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. See supra Matter of 160 E. 84th St. Assocs. LLC (wherein, the Appellate Division, First Department, stated that "the application of HSTPA Part "D" "affect[ed] only the propriety of prospective relief . . . [and] ha[d] no potentially problematic retroactive effect").

The fact that the 2019 Petition would have been determined based on tenant's income in 2017-2018, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify the nature and content of deregulation and the fact that such prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v DHCR, 257 A.D.2d 391 (1st Dept. 1999), *aff'd* 94 N.Y.2d 851 (1999).

There can also be no remedy based on any assertion of denial of due process based on a "delay" in processing the owner's applications for high income/high rent deregulation. The

Commissioner notes that the owner filed this petition for high income/high rent deregulation on June 13, 2019, which was one day before HSTPA was enacted. Even given the tenant's admission as to the income, the agency could not have reasonably been expected to open the matter and issue an order in one day. Moreover, even where there had been delay, the Appellate Court in Matter of Partnership 92 LP and Bldg Mgt Co Inc v NY State Division of Housing and Community Renewal, 46 A.D.3d 425 (1st Dept. 2007) *aff'd* 13 N.Y.3d 859 (2008) has noted that the express and explicit command of the legislature shall control.

DHCR could not have predicted the express language of any potential modifications that could be encompassed by HSTPA and how they would impact this application for high rent/high income deregulation. Moreover, even where remedies based on delay have been made available, such delay must be deliberate or negligent in anticipation of a change of statute. See Matter of IG Second Generation Partners L.P. v N.Y. State Div. of Hous. & Community Renewal, 10 N.Y.3d 474 (2008) (New York Court of Appeals refused to award remedies for an alleged delay since it was not proven that the delay resulted from DHCR's negligent or deliberate conduct).

The Commissioner notes that DHCR continued to process luxury deregulation cases in the ordinary course of business at the RA's level in 2019. (See RA Docket No. HQ410001LD, wherein the RA issued an Order on June 12, 2019). Moreover, the expiration of the time periods prescribed by the applicable luxury deregulation sections of the Code, shall not divest the agency of its authority to process petitions and to issue determinations. See Dworman v NYS Div of Housing and Community Renewal, 94 NY2d 359 (1999). As such, the expiration of the time periods asserted by the petitioner for processing deregulation petitions did not divest the agency from issuing the August 29, 2019 Order, which under the clear direction of the legislature was now required to be dismissed and, absent evidence of negligence, did not constitute unreasonable delay. See Schutt v NYS Division of Housing and Community Renewal, 278 A.D.2d 58 (1st Dept. 2000).

Contrary to petitioner's claims, the dismissal of its deregulation application pursuant to HSTPA does not constitute a retroactive application of the statute. On June 14, 2019, the law changed so that rent stabilized units could no longer be deregulated based on High-Rent/High-Income. This change precluded DHCR's granting such applications on or after June 14, 2019. As a result, the subject unit remained regulated. The owner's due process argument, which is premised on its claim of retroactivity,

is not meritorious and must be denied.

The Commissioner notes that the rent agency does not and would not declare acts of state law unconstitutional but does enforce, implement, and administer the State laws consistent therewith. The application here is clearly consistent. The owner claims that HSTPA violates the owner's due process rights under the New York and Federal Constitutions. However, the Commissioner notes that there is a strong presumption of constitutionality of the rent laws as enacted by the New York State Legislature. In Community Hous. Improvement Program v City of NY et al, 2020 US Dist LEXIS 181189, at *34-35 (EDNY Sep. 30, 2020, No. 19-cv-4087)(EK)(RLM)(Appeal pending), the Court dismissed all claims against New York State and DHCR which sought to challenge the validity of HSTPA's repeal of the luxury and high-income decontrol provisions. District Court Judge, Eric Komitee, stated in his decision that "no precedent binding on this Court has ever found any provision of a rent-stabilization statute to violate the Constitution...rent regulations have now been the subject of almost a hundred years of case law." Supra Community Hous. Improvement Program v City of NY et al.

The Commissioner also notes that no party has a vested right to any remedy under the Rent Stabilization Laws and Regulations, thus diminishing the petitioner's claim that the application of HSTPA deprives the petitioner of due process. The petitioner had no vested right in the continuation of a particular provision of the law or of any policy or procedure followed by DHCR. The New York Court of Appeals in I. L. F. Y. Co. v Temporary State Hous. Rent Com., 10 NY2d 263 (1961), appeal dismissed 369 U.S. 795 (1962) held 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. In this matter, the owner cannot identify any vested property interest in the continued processing of its application because the owner did not have a vested right to deregulate the subject apartment before the enactment of HSTPA. See Pledge v DHCR, supra. Accordingly, DHCR finds that the owner has not identified a particular right that vested by virtue of changes in prior processing rules.

The Commissioner notes that the owner registered the subject apartment as exempt from rent regulation as of April 1, 2020 and identified it as a "condo unit".

The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

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

ORDERED, that the petition be, and the same hereby is, denied.

ISSUED:

SEP 26 2022

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

_____X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ASPENLY CO. LLC.,

ADMINISTRATIVE REVIEW
DOCKET NO.: HX410082RO

RENT ADMINISTRATOR'S
DOCKET NO.: GQ410585LD

TENANT: [redacted]

PETITIONER _____X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a petition for administrative review (PAR) of an Order issued on November 13, 2019, by the Rent Administrator (RA) concerning the housing accommodation known as Apartment [redacted], located at 45 E 89th Street, New York, New York, 10128.

On May 31, 2018, the owner filed a Petition for High-Rent/High-Income deregulation, wherein the owner stated that "the owner contests the household income stated by the tenant(s) in the attached Income Certification Form (ICF) and requests verification."

On November 13, 2019, the RA issued the Order herein under review. The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR and in the owner's supplement, the owner asserts, among other things, that the RA's Order must be reversed as arbitrary, capricious and unlawful; that DHCR's delay in processing the petition was negligent or willful; that the law at the time the High-Rent/High-Income deregulation Petition was filed should be applied; that the RA was required to have processed the petition on the merits because, if the apartment met the requirements for High-Rent/High-Income deregulation, the apartment, pursuant to the Rent Stabilization Law (RSL), would have become deregulated prior to the effective date of HSTPA; that the RA's retroactive application of HSTPA violated the owner's constitutional rights and was contrary to the intent of the Legislature; and that the RA's retroactive application of HSTPA was improper based upon DHCR's delay in processing the deregulation Petition.

After a careful consideration of the evidence of record, the Commissioner finds that the owner's petition should be denied.

On June 14, 2019, the New York State Legislature enacted HSTPA (Chapter 36 of the Laws of 2019) which repealed the provisions of the Rent Stabilization Laws and Regulations which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulation shall take effect immediately. (See HSTPA, Part "D" §8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to this proceeding. If an apartment remains regulated on or after June 14, 2019, that apartment is no longer subject to the statutory provisions of High-Rent/High-Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes, as of June 14, 2019, no deregulation order had been issued for the subject apartment and the subject apartment was under the jurisdiction of the Rent Stabilization Laws and Regulations.

The Commissioner notes the owner seeks a revocation of the November 13, 2019, Order and for a determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income rent deregulation for an apartment that was rent stabilized as of June 14, 2019. HSTPA creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income deregulated as there is no longer any standard under Rent Stabilization that permits the review that petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Cmty. Renewal, (Index No.: 158833/2020)(Hon. Carol R. Edmead)(Sup. Ct. New York Co. May 19, 2021)(wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019"). See also Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 202 A.D.3d 610 (App. Div. 1st Dept. 2022).

The application of HSTPA to this matter is not based upon the independent judgment of DHCR but, rather, it is pursuant to the plain text in HSTPA, and DHCR is statutorily obliged to apply HSTPA to this case. HSTPA specifically stated that the law is to "take effect immediately" and that "if an apartment remains rent regulated on or after June 14, 2019, that apartment is no longer subject to the statutory provisions of high rent/high income deregulation." Supra Matter of 160 E. 84th St. Assocs. LLC.

The Commissioner rejects petitioner's assertions that the RA's retroactive application of HSTPA was improper. The Commissioner notes the New York Court of Appeals decision in Matter of Regina Metro. Co., LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 35 N.Y.3d 332 (2020) does not apply to High-Rent/High-Income deregulation cases. While the Court of Appeals in Matter of Regina Metro. Co., LLC disallowed the retroactive application of certain rent overcharge provisions, which created additional liability for owners, and eliminated a four-year safe harbor for that liability contained in Part F of the HSTPA, it stated that:

> The question we address here is relatively narrow – we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation **only to determine whether certain Part F amendments**...must be applied retroactively....We conclude that the **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. See supra Matter of 160 E. 84th St. Assocs. LLC, wherein, the Appellate Division, First Department, stated that "the application of HSTPA Part "D" "affect[ed] only the propriety of prospective relief . . . [and] ha[d] no potentially problematic retroactive effect".

The fact that the 2018 Petition would have been determined based on tenant(s) income in 2016-2017, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify the nature and content of deregulation and the fact that such prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v. N.Y. State Div. of Hous. & Cmty. Renewal, 257 A.D.2d 391, 683 N.Y.S.2d 76 (App. Div. 1st Dept. 1999).

Contrary to petitioner's claims, the dismissal of its deregulation application pursuant to HSTPA does not constitute a retroactive application of the statute. On June 14, 2019, the law changed so that rent stabilized units could no longer be deregulated based on High-Rent/High-Income. This change precluded DHCR's granting such applications on or after June 14, 2019. As a result, the subject unit remained regulated. The owner's due process argument, which is premised on its claim of retroactivity, is not meritorious and must be denied.

There can also be no remedy based on any assertion of denial of Due Process and based on a "delay" in processing the owner's applications. While there may be variances in terms of processing, there is no question that DHCR was issuing these deregulation

determinations on the merits almost to the exact date of the passage of the HSTPA. Indeed, the various and multiple litigations over the "explanatory addenda" cases where DHCR issued such deregulation orders (but the second prong of that deregulation, that the lease in effect had not expired), themselves demonstrate that DHCR was not withholding its issuance of determinations. See Matter of 160 E. 84th St. Assocs. LLC, which held that DHCR's explanatory addenda explained the effect of HSTPA part D which prohibited the deregulation of units with leases expiring after June 14, 2019, and the statute "affected only the propriety of prospective relief . . . [and] ha[d] no potential problematic retroactive effect"). Any delay argument is further upended by the fact that in 2018 a total of 105 apartments of the close to one million units subject to rent regulation were issued deregulating orders and 52 apartments in 2019. It is noteworthy that these numbers were consistent between 2018 and half the year of 2019, further establishing that there was no delay in their issuance in anticipation of the 2019 legislative change.

The Commissioner further notes, even where there had been delay, the Appellate Court in Matter of P'ship 92 LP & Bldg. Mgmt. Co., Inc. v. State of N.Y. Div. of Hous. & Cmty. Renewal, 46 A.D.3d 425 (App. Div. 1st Dept. 2007) has noted the express and explicit command of the Legislature shall control. Moreover, DHCR could not have predicted the express language of any potential modifications that could be encompassed by HSTPA and how they would impact this application for High-Rent/High-Income deregulation. Significantly, even where remedies based on delay have been made available, such delay must be deliberate or negligent in anticipation of a change of statute. See Matter of IG Second Generation Partners L.P. v N.Y. State Div. of Hous. & Community Renewal, 10 N.Y.3d 474 (2008) (Court of Appeals refused to award remedies for an alleged delay since it was not proven that the delay resulted from DHCR's negligent or deliberate conduct). See also Rudin E. 55th St. LLC v Div. of Hous. & Community Renewal, 2021 NY Slip Op 31576[U], *15 [Sup Ct, NY County 2021)(Supreme Court recently rejected an owner's assertion that "DHCR committed an unreasonable 16-month delay in issuing a deregulation order . . .").[1]

1 In Rudin E. 55th St. LLC, the Court agreed that the Deputy Commissioner's findings were reasonable because: 1) the text of RSC § 2531.9 plainly states that the agency "shall not [be] divest[ed] . .

The expiration of the time periods prescribed by the applicable luxury deregulation sections of the Code, shall not divest DHCR of its authority to process these petitions and to issue determinations. See Dworman v NYS Div of Housing and Community Renewal, 94 NY2d 359 (1999). As such, the expiration of the time periods asserted by the petitioner for processing this deregulation Petition did not divest the agency from issuing the November 13, 2019 Order, which under the clear direction of the Legislature was now required to be dismissed and, absent evidence of negligence, did not constitute unreasonable delay. See Schutt v NYS Division of Housing and Community Renewal, 278 A.D.2d 58 (1st Dept. 2000).

The Commissioner notes that the rent agency does not and would not declare acts of state law unconstitutional but does enforce, implement, and administer the State laws consistent therewith. The application here is clearly consistent. The owner claims that HSTPA violates the owners' due process rights under the New York [and Federal] Constitutions. However, the Commissioner notes that there is a strong presumption of constitutionality of the rent laws as enacted by the New York State Legislature. In Community Hous. Improvement Program v City of NY et al, 2020 US Dist LEXIS 181189, at *34-35 (EDNY Sep. 30, 2020, No. 19-cv-4087)(EK)(RLM)(Appeal pending), the Court dismissed all claims against New York State and DHCR which sought to challenge the validity of HSTPA's repeal of the luxury and high-income decontrol provisions. District Court Judge, Eric Komitee, stated in his decision that "no precedent binding on this Court has ever found any provision of a rent-stabilization statute to violate the Constitution...rent regulations have now been the subject of almost a hundred years of case law."

The Commissioner also notes that no party has a vested right to any remedy under the Rent Stabilization Laws and Regulations, thus diminishing the petitioner's claim that the application of HSTPA deprives the petitioner of due process. The petitioner had no vested right in the continuation of a particular provision of

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. of its authority to process petitions," by "[t]he expiration of the time periods prescribed . . . for [agency] action"; and 2) appellate case law clearly provides that a party claiming unreasonable delay bears the burden of demonstrating that it was "the result of DHCR's negligent or deliberate conduct." The Court noted that the evidentiary record was devoid of evidence of negligent or deliberate conduct by DHCR.

the law or of any policy or procedure followed by DHCR. The New York Court of Appeals in I. L. F. Y. Co. v Temporary State Hous. Rent Com., 10 NY2d 263 (1961), appeal dismissed 369 U.S. 795 (1962) held 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. In this matter, the owner cannot identify any vested property interest in the continued processing of its application because the owner did not have a vested right to deregulate the subject apartment before the enactment of HSTPA. See Pledge v DHCR, supra. Accordingly, DHCR finds that the owner has not identified a particular right that vested by virtue of changes in prior processing rules.

The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

THEREFORE, in accordance with the relevant provisions of the Rent Stabilization Law and Regulations, it is

ORDERED, that the petition be, and the same hereby is, denied.

ISSUED:

SEP 28 2022

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

X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ASPENLY CO. LLC.,

ADMINISTRATIVE REVIEW
DOCKET NO.: HX410083RO

RENT ADMINISTRATOR'S
DOCKET NO.: GQ410592LD

TENANT: [redacted]

PETITIONER X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a petition for administrative review (PAR) of an Order issued on November 13, 2019, by the Rent Administrator (RA) concerning the housing accommodation known as Apartment [redacted], located at 45 E 89th Street, New York, New York, 10128.

On May 31, 2018, the owner filed a Petition for High-Rent/High-Income deregulation, wherein the owner stated that "the owner contests the household income stated by the tenant(s) in the attached Income Certification Form (ICF) and requests verification."

On November 13, 2019, the RA issued the Order herein under review. The RA stated the following:

> Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA), as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High-Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed.

On PAR and in the owner's supplement, the owner asserts, among other things, that the RA's Order must be reversed as arbitrary, capricious and unlawful; that DHCR's delay in processing the petition was negligent or willful; that the law at the time the High-Rent/High-Income deregulation Petition was filed should be applied; that the RA was required to have processed the petition on the merits because, if the apartment met the requirements for High-Rent/High-Income deregulation, the apartment, pursuant to the Rent Stabilization Law (RSL), would have become deregulated prior to the effective date of HSTPA; that the RA's retroactive application of HSTPA violated the owner's constitutional rights and was contrary to the intent of the Legislature; and that the RA's retroactive application of HSTPA was improper based upon DHCR's delay in processing the deregulation Petition.

After a careful consideration of the evidence of record, the Commissioner finds that the owner's petition should be denied.

On June 14, 2019, the New York State Legislature enacted HSTPA (Chapter 36 of the Laws of 2019) which repealed the provisions of the Rent Stabilization Laws and Regulations which allowed for deregulation of apartments based upon high rent and high income. The statute further provides that the provisions for the repeal of deregulation shall take effect immediately. (See HSTPA, Part "D" §8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation (Chapter 38 of the Laws of 2019) for units which had been lawfully deregulated prior to the effective date of HSTPA. Pursuant to HSTPA, a lawfully deregulated unit on the effective date of HSTPA remains deregulated. The Commissioner rejects the owner's assertion that HSTPA should not apply to this proceeding. If an apartment remains regulated on or after June 14, 2019, that apartment is no longer subject to the statutory provisions of High-Rent/High-Income deregulation, as those statutes have been repealed by the legislature in passing HSTPA. The Commissioner notes, as of June 14, 2019, no deregulation order had been issued for the subject apartment and the subject apartment was under the jurisdiction of the Rent Stabilization Laws and Regulations.

The Commissioner notes the owner seeks a revocation of the November 13, 2019, Order and for a determination based upon the merits. The Commissioner finds that HSTPA does not provide any exception to the repeal of High-Rent/High-Income rent deregulation for an apartment that was rent stabilized as of June 14, 2019. HSTPA creates a bright line test for which apartments were deregulated and those that could no longer be deregulated. This determination is on the merits as the rent agency is precluded from determining that the subject apartment is High-Rent/High-Income deregulated as there is no longer any standard under Rent Stabilization that permits the review that petitioner is seeking. See West 79th LLC v. New York State Div. of Housing & Cmty. Renewal, (Index No.: 158833/2020)(Hon. Carol R. Edmead)(Sup. Ct. New York Co. May 19, 2021)(wherein the Court found that "DHCR does not have the statutory authority to process deregulation petitions after June 14, 2019"). See also Matter of 160 E. 84th St. Assocs. LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 202 A.D.3d 610 (App. Div. 1st Dept. 2022).

The application of HSTPA to this matter is not based upon the independent judgment of DHCR but, rather, it is pursuant to the plain text in HSTPA, and DHCR is statutorily obliged to apply HSTPA to this case. HSTPA specifically stated that the law is to "take effect immediately" and that "if an apartment remains rent regulated on or after June 14, 2019, that apartment is no longer subject to the statutory provisions of high rent/high income deregulation." Supra Matter of 160 E. 84th St. Assocs. LLC.

The Commissioner rejects petitioner's assertions that the RA's retroactive application of HSTPA was improper. The Commissioner notes the New York Court of Appeals decision in Matter of Regina Metro. Co., LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 35 N.Y.3d 332 (2020) does not apply to High-Rent/High-Income deregulation cases. While the Court of Appeals in Matter of Regina Metro. Co., LLC disallowed the retroactive application of certain rent overcharge provisions, which created additional liability for owners, and eliminated a four-year safe harbor for that liability contained in Part F of the HSTPA, it stated that:

> The question we address here is relatively narrow – we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address

> the new legislation **only to determine whether certain Part F amendments**...must be applied retroactively....We conclude that the **overcharge calculation amendments** cannot be applied...to **overcharges** that occurred prior to their enactment..."

There is no such liability created here and no retroactive liability. See supra Matter of 160 E. 84th St. Assocs. LLC, wherein, the Appellate Division, First Department, stated that "the application of HSTPA Part "D" "affect[ed] only the propriety of prospective relief . . . [and] ha[d] no potentially problematic retroactive effect".

The fact that the 2018 Petition would have been determined based on tenant(s) income in 2016-2017, events that occurred before the passage of HSTPA, is of no matter given that the apartment could not have been deregulated after June 14, 2019, which is a prospective determination. The Legislature had the right to modify the nature and content of deregulation and the fact that such prospective changes may involve review of antecedent events does not make it retroactive. See Pledge v. N.Y. State Div. of Hous. & Cmty. Renewal, 257 A.D.2d 391, 683 N.Y.S.2d 76 (App. Div. 1st Dept. 1999).

Contrary to petitioner's claims, the dismissal of its deregulation application pursuant to HSTPA does not constitute a retroactive application of the statute. On June 14, 2019, the law changed so that rent stabilized units could no longer be deregulated based on High-Rent/High-Income. This change precluded DHCR's granting such applications on or after June 14, 2019. As a result, the subject unit remained regulated. The owner's due process argument, which is premised on its claim of retroactivity, is not meritorious and must be denied.

There can also be no remedy based on any assertion of denial of Due Process and based on a "delay" in processing the owner's applications. While there may be variances in terms of processing, there is no question that DHCR was issuing these deregulation determinations on the merits almost to the exact date of the passage of the HSTPA. Indeed, the various and multiple litigations over the "explanatory addenda" cases where DHCR issued such deregulation orders (but the second prong of that deregulation,

that the lease in effect had not expired), themselves demonstrate that DHCR was not withholding its issuance of determinations. See Matter of 160 E. 84th St. Assocs. LLC, which held that DHCR's explanatory addenda explained the effect of HSTPA part D which prohibited the deregulation of units with leases expiring after June 14, 2019, and the statute "affected only the propriety of prospective relief . . . [and] ha[d] no potential problematic retroactive effect"). Any delay argument is further upended by the fact that in 2018 a total of 105 apartments of the close to one million units subject to rent regulation were issued deregulating orders and 52 apartments in 2019. It is noteworthy that these numbers were consistent between 2018 and half the year of 2019, further establishing that there was no delay in their issuance in anticipation of the 2019 legislative change.

The Commissioner further notes, even where there had been delay, the Appellate Court in Matter of P'ship 92 LP & Bldg. Mgmt. Co., Inc. v. State of N.Y. Div. of Hous. & Cmty. Renewal, 46 A.D.3d 425 (App. Div. 1st Dept. 2007) has noted the express and explicit command of the Legislature shall control. Moreover, DHCR could not have predicted the express language of any potential modifications that could be encompassed by HSTPA and how they would impact this application for High-Rent/High-Income deregulation. Significantly, even where remedies based on delay have been made available, such delay must be deliberate or negligent in anticipation of a change of statute. See Matter of IG Second Generation Partners L.P. v N.Y. State Div. of Hous. & Community Renewal, 10 N.Y.3d 474 (2008) (Court of Appeals refused to award remedies for an alleged delay since it was not proven that the delay resulted from DHCR's negligent or deliberate conduct). See also Rudin E. 55th St. LLC v Div. of Hous. & Community Renewal, 2021 NY Slip Op 31576[U], *15 [Sup Ct, NY County 2021)(Supreme Court recently rejected an owner's assertion that "DHCR committed an unreasonable 16-month delay in issuing a deregulation order . . .").[1]

The expiration of the time periods prescribed by the

1 In Rudin E. 55th St. LLC, the Court agreed that the Deputy Commissioner's findings were reasonable because: 1) the text of RSC § 2531.9 plainly states that the agency "shall not [be] divest[ed] . . . of its authority to process petitions," by "[t]he expiration of the time periods prescribed . . . for [agency] action"; and 2) appellate case law clearly provides that a party claiming unreasonable delay bears the burden of demonstrating that it was "the result of DHCR's negligent or deliberate conduct." The Court noted that the evidentiary record was devoid of evidence of negligent or deliberate conduct by DHCR.

applicable luxury deregulation sections of the Code, shall not divest DHCR of its authority to process these petitions and to issue determinations. See Dworman v NYS Div of Housing and Community Renewal, 94 NY2d 359 (1999). As such, the expiration of the time periods asserted by the petitioner for processing this deregulation Petition did not divest the agency from issuing the November 13, 2019 Order, which under the clear direction of the Legislature was now required to be dismissed and, absent evidence of negligence, did not constitute unreasonable delay. See Schutt v NYS Division of Housing and Community Renewal, 278 A.D.2d 58 (1st Dept. 2000).

The Commissioner notes that the rent agency does not and would not declare acts of state law unconstitutional but does enforce, implement, and administer the State laws consistent therewith. The application here is clearly consistent. The owner claims that HSTPA violates the owners' due process rights under the New York [and Federal] Constitutions. However, the Commissioner notes that there is a strong presumption of constitutionality of the rent laws as enacted by the New York State Legislature. In Community Hous. Improvement Program v City of NY et al, 2020 US Dist LEXIS 181189, at *34-35 (EDNY Sep. 30, 2020, No. 19-cv-4087)(EK)(RLM)(Appeal pending), the Court dismissed all claims against New York State and DHCR which sought to challenge the validity of HSTPA's repeal of the luxury and high-income decontrol provisions. District Court Judge, Eric Komitee, stated in his decision that "no precedent binding on this Court has ever found any provision of a rent-stabilization statute to violate the Constitution...rent regulations have now been the subject of almost a hundred years of case law."

The Commissioner also notes that no party has a vested right to any remedy under the Rent Stabilization Laws and Regulations, thus diminishing the petitioner's claim that the application of HSTPA deprives the petitioner of due process. The petitioner had no vested right in the continuation of a particular provision of the law or of any policy or procedure followed by DHCR. The New York Court of Appeals in I. L. F. Y. Co. v Temporary State Hous. Rent Com., 10 NY2d 263 (1961), appeal dismissed 369 U.S. 795 (1962) held 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. In this matter, the owner

cannot identify any vested property interest in the continued processing of its application because the owner did not have a vested right to deregulate the subject apartment before the enactment of HSTPA. See Pledge v DHCR, supra. Accordingly, DHCR finds that the owner has not identified a particular right that vested by virtue of changes in prior processing rules.

The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

THEREFORE, in accordance with the relevant provisions of the Rent Stabilization Law and Regulations, it is

ORDERED, that the petition be, and the same hereby is, denied.

ISSUED:

SEP 28 2022

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 APPEALS OF

ADMINISTRATIVE REVIEW
DOCKET NO.: FT410010RT

Various tenants of
88 Lexington Avenue, New York, NY

PETITIONERS

RENT ADMINISTRATOR'S
DOCKET NO.: ES410003OD

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ORDER AND OPINION GRANTING, IN PART, PETITIONS FOR ADMINISTRATIVE REVIEW

The petitioner-tenants properly filed Petitions for Administrative Review (PARs) against an order issued by the Rent Administrator on July 7, 2017, concerning the housing accommodations known as 88 Lexington Avenue, New York, NY, wherein the Administrator granted the owner's application for permission to modify laundry room services by eliminating the small laundry rooms on each floor, containing one washing machine and one dryer, and substituting same with a central laundry room in the basement of the subject building.

The Commissioner deems it appropriate to consolidate the tenants' petitions for a uniform disposition since they involve common issues of law and fact.

Various tenants, requesting either a reversal or a modification of the Rent Administrator's order, contended that there were insufficient laundry facilities in the subject premises, as there were only four (4) washers and dryers for nineteen (19) tenants; that the tenants moved into the premises having one dryer and washer on each floor; that prior to the owner's modification of services, each floor had a laundry room with a washing machine and a dryer, and that the thirty-three (33) washers and dryers had been reduced to four (4) washers and dryers; that the Administrator's order did not consider the tenants' filings, Docket Nos. EU410034B and FR410017B; that although DHCR had, in the past, in 2016, granted a rent reduction[1] for the same services, to some tenants, DHCR refused to grant the tenants a rent reduction in this instance; and that the owner removed the service in December of 2014, prior to receiving the Agency's service modification approval.

[1] Under Docket No. DU410011B (based on the Agency's records showing no modification of service application filed, and the Rent Administrator advised filing same.

The tenants listed various inconveniences occasioned by the reduction in number of the washers and dryers in the subject premises and the new location of the laundry facilities in the basement, including that there was no longer quick access to the laundry services as the tenants now have to walk through the community spaces by taking elevators and crossing down a ramp into the lobby and then around to another set of elevators that goes to the basement; that the tenants were unable to maneuver multiple loads all at once; that private laundry is now done in full public view or having to wait until late evening for greater privacy; that the tenants could not do laundry at any time of the day without having to dress formally to enter the public community; that there are no restrictions on who can use the laundry services; that the allotted four (4) washers and dryers were inadequate to service the rent stabilized tenants of the subject premises; and that there were poor ventilation and construction-related inconveniences.

The tenants also requested the elimination of a monthly "Guard Fee" charged to, and paid by the rent stabilized tenants, a service which the tenants explained was added to the tenants' rent in the 1980s after there had been break-ins in the building, which was meant to be a temporary precaution that was "grandfathered" in by the original owner.

On October 16, 2017, the owner, through its attorneys, submitted a response, claiming that the modification of the laundry room services herein was a *de minimis* change for which a modification of service application (OD) was not necessary; that the owner only filed an OD when the owner started receiving orders from the DHCR directing the owner to file an OD; that the prior DHCR orders granting the tenants a rent reduction was based on the owner's failure to obtain DHCR's permission to change the laundry service by filing an OD application, not that a rent reduction was in itself warranted; that the inconveniences listed by the tenants do not rise to the level of a decrease in service; that regarding the fact that the condominium units owners were not restricted from using the commercial machines in the common laundry room, each condominium unit has its own washer and dryer and the owners, who are already paying for such washers and dryers, are unlikely to utilize the common laundry room; and that if in the infrequent event that any condo owner uses one or two of the machines, as speculated by the tenants' representative, the tenants will still have access to the remaining unused machines; that although the tenants allege "undue discomfort and hardship" for the tenants to have to do their laundry in public space due to lack of personal privacy, and that the installation of security cameras highlights this lack of personal privacy, is inconsistent with the tenants allegations in the underlying proceeding wherein several tenants alleged that the basement laundry room had little traffic, posing a security risk to the tenants, based upon which the owner advised the DHCR that it would install security cameras in the basement laundry room to be monitored by the doormen; i.e., an accommodation made to address the tenants' concerns, and that the tenants cannot have it both ways; and that the basement laundry room is both safe and an adequate substitution of services.

The owner's answer was served on the tenants on October 20, 2017, and various tenants responded, alleging that having the laundry room in the basement has added extra work for the tenants, and is time-consuming, and will lower living standard that tenant were accustomed to; that there was no hot water for laundry for 3 weeks; that only one elevator works on week days; that the tenants now have to wait to use machines; that separate machines are better as most seniors do not like to be on the floor to fill up the bottom machines, below the dryer; and that the old laundry rooms are empty, and the laundry room machines could thus be re-installed therein.

The tenants argued further that there was a decrease from 31 separate washer and dryer machines to 4 significantly smaller stacked washer and dryer units that are now located in a small, cramped, unventilated space whereas before they were on each floor of the building; that the reduction in the number of machines, and the elevator travel to reach the laundry room clearly constitute a decrease in service; that the owner provided, at substantial expense, a washer and a dryer in each condo unit because it is an inconvenience to do the laundry in the basement; that although the owner cited the Matter of Various Tenants of [redacted][2], wherein an OD was granted where an owner reduced the number of machines from 16 to 5 and relocated the laundry room from the basement to the 12th floor, and that going up the elevator may not warrant a reduction as opposed to going down; that herein, the machines were removed from each floor; that condo owners and their maids were using the laundry room as they claimed that the machines in their units were small and slow; that the tenants of [redacted] who also use the laundry room, have to take two sets of elevators as their elevators do not go to the basement; that the basement laundry room is a room shared with doormen and other workers lunching in the small room, and is also the storage for the handyman's mop buckets, and serves as a space for boxes and package deliveries overwhelming the package room which is often blocked due to construction or tenants' package deliveries; and that at the time of the tenants' representative's submission, there had been no hot water in washers for about one month.

The tenants contend that in the event that there is no re-installation, a 15% permanent rent reduction should be granted to the tenants and that certain things should be put in place, thus: that guard fee be permanently waived and removed; that 12 separate machines, i.e. six (6) washers and six (6) dryers be installed; that there should be a sink for tenants' use and to maintain the laundry room; that there should be a scheduled cleaning of the inside of the laundry machines; and that there should be a worktable, and waste baskets.

The owner responded to the tenants' additional claims and reiterated the owner's claim that the Rent Administrator properly granted an approval for the modification of the laundry room.

After careful consideration of the evidence of record, the Commissioner is of the opinion that this petition should be granted, in part.

Pursuant to Sections 2522.4(d) and (e) of the Rent Stabilization Code (RSC or the Code), an owner is permitted to file an application to the DHCR to modify or substitute required services.

On July 27, 2016, the owner commenced the underlying proceeding by the filing of an application to modify laundry room service, requesting permission to modify laundry services by taking away the laundry rooms on each floor, housing a washing machine and a dryer, and centralizing the laundry room in the basement with a total of four washers and dryers, remaining open 24/7, and that the four rent stabilized tenants of [redacted] (connected to the subject building through the lobbies and sharing the same basement, and can take the elevator to the laundry room) would also be using the laundry room.

[2] Administrative Review Docket No. AN410022RT.

The owner contended that the new laundry room is an adequate substitute of service, affording the tenants the convenience of taking the elevator to one location, without the need to search for an unused washing machine or dryer on another floor; that the number of apartments in the subject building and [redacted] have decreased since some apartments were combined in connection with the condominium conversion plans for both buildings; that prior to the condo conversion, the subject building had 177 apartments while [redacted] had 105 apartments, for a total of 282 apartments, however, the subject building now has 90 apartments with only 18 occupied by rent stabilized tenants, and [redacted] has 53 apartments with only 4 of them being rent stabilized tenant; that out of the total of 22 rent stabilized tenants from both buildings, four rent stabilized apartments have washers/dryers in the apartments, thus, the new laundry room will be serving a total of 18 tenants.

The owner contended that the DHCR had held that reduction in the number of washers/dryers and the relocation of laundry facilities within a building does not constitute a decrease in service in the Matter of Various Tenants of [redacted] (Administrative Review Docket No. **AN410022RT**); and that in the Rent Administrator's Docket Nos. **DW410009B** and **DW410037B**, rent reductions were granted merely because the owner did not file an OD application prior to modifying the laundry room service and the Agency's permission had not been obtained for such modification of the laundry room service.

The tenants responded to the owner's modification application, contending that there is no proof offered that the condo owners and their representatives do not use the laundry room even though they have laundry machines in their apartments; that the tenants were "sold and paid for the convenience" to have laundry facilities provided on each floor where they could do smaller loads more frequently and conveniently; and that privacy is a concern as the laundry room is now relocated in the basement.

Pursuant to Section 2522.4(e) of the RSC, a modification or substitution of required or essential services is permitted at no change in the legal regulated rent, on the grounds that such modification or substitution is not inconsistent with the Rent Stabilization Law or Code. Section 2522.4(d) permits the owner to file an application to decrease required or essential services for a reduction in rent, provided that such decrease in services is not inconsistent with the Rent Stabilization Law or Code. Required services are defined as that space and those services which the owner was maintaining or was required to maintain on the applicable base dates, and any additional space or services provided or required to be provided thereafter by applicable law, including ancillary services which are those services that are not contained within the individual housing accommodation, including, in pertinent part, laundry facilities. *See* Section 2520.6(r) of the RSC.

The determination to grant or deny an application requesting permission to modify or decrease required services is made on a case-by-case basis, taking into consideration all relevant factors, including the required service the owner seeks to remove and the effects of the loss of such service on the tenants' use of the housing accommodations.

In light of the above, the Commissioner finds that in this case, the Rent Administrator properly granted the owner's application to modify the laundry room service, considering the

tenants were still provided with access to laundry services in the subject building. However, the Commissioner finds that this change in laundry room service in the subject building, from having laundry access on each floor to now only providing laundry services in a central location in the basement, rises to a decrease in service, as detailed below, and the Rent Administrator's order is thus herein modified to grant the tenants a permanent rent reduction for the decrease pursuant to Section 2522.4(d) of the RSC.

As to the issue of accessing the new laundry room wherein the laundry services were previously provided on each floor, but now are being provided in the basement of the subject building, the Commissioner finds that this change in laundry room service may not be deemed a minor inconvenience in this case and is instead a reduction in service warranting a permanent rent reduction. As outlined by the tenants and owner, access to the new laundry room is now through the use of elevators as opposed to the less time-consuming and more convenient route of walking down the hallway of each floor, resulting in the tenants now shuttling from various floors down to the basement and back up to their apartments while carrying their laundry thereto.

Additionally, the Commissioner notes that the case cited by the parties is inapplicable herein, given the unique set of facts in the instant case, in that the owner modified the laundry room services, from floor-by-floor laundry room to a centralized laundry room in the basement. In the Matter of Various Tenants of [redacted], the Commissioner notes that the laundry room was relocated from one location, the basement, to the 12th floor of the same premises. The Commissioner notes that even though the owner described the situation as adequate and it was indicated below that the modification was a minor inconvenience, a second look at the totality of the facts shows that the laundry room modification performed by the owner herein cannot be said to be an adequate substitute of the previous laundry room service in the instant premises. As noted, laundry services were previously provided on each floor, but now there are only four (4) washing and drying machines located in the basement, which requires elevator access to get there. Thus, the Commissioner finds that a permanent rent reduction is warranted. Accordingly, the Commissioner finds that a concomitant rent reduction of $30.00 per apartment per month is warranted for the decrease to the laundry room service in the subject premises.

Regarding the contention that there was a substantial reduction in the number of machines, and the owner's response that there was a reduction in the number of apartments in the subject premises, and that only 18 rent stabilized tenants may use the new laundry room, the Commissioner finds that the owner's analysis falters, given that the condo owners, as well as all tenants, are not precluded from using the new laundry room, and therefore the number of tenants who would be using the new laundry room is left to speculation. The Commissioner therefore finds the owner's contention regarding the reduction in the number of apartments to be without merit and merely self-serving in this case.

Concerning the tenant's allegations regarding the lack of hot water in the laundry room, reduced elevator service and guard fee, the Commissioner notes that the tenants may file complaints with this Agency regarding any concerns that they may have with respect to any of the item(s) as the instant proceeding is not the proper forum to address the tenants' service reduction concerns and any overcharge related matter, which are not relevant to the laundry room modification.

Based on the foregoing, the Commissioner finds that the tenants' PAR should be granted, in part, and that a permanent concomitant rent reduction of $30.00, per apartment per month, is granted for the decrease in laundry room service in the subject premises, effective the date of the subject Rent Administrator's order, Docket No. **ES410003OD** (July 7, 2017).

Any arrears due as a result on this Commissioner's order may be paid in monthly installments, within twelve (12) months of the issue date of this Commissioner's order.

THEREFORE, in accordance with the applicable sections of the Rent Stabilization Law and Code, it is

ORDERED, that the tenants' petition is granted, in part, and the Rent Administrator's order is modified in accordance with this Commissioner's order, and the Rent Administrator's order is so otherwise herein affirmed.

ISSUED: JUL 1 2022

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

[redacted] APT. [redacted]

PETITIONER

ADMINISTRATIVE REVIEW
DOCKET NO.: JX210003RT

RENT ADMINISTRATOR'S
DOCKET NO.: IW210021OD

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal against an order issued on October 4, 2021, by the Rent Administrator concerning the housing accommodations known as 120 East 19th Street, Brooklyn, NY 11226 which granted the owner's application for authorization to modify services by replacing the metal key system used to access the subject building's entry door with an electronic key fob system. The Administrator's order contains a list of thirteen provisions required by DHCR that the owner must comply with regarding the electronic key fob system.

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 tenant's petition requests a reversal of the Rent Administrator's order and alleges, in substance, that the owner failed to comply with the conditions of the Rent Administrator's order, including the condition requiring the new key fob system to have a backup battery or generator in case of a power outage or other power shutout; that there were two long blackouts last spring and summer for over 24 hours and in both blackouts the owner failed to provide backup battery or generator for the key fob system and the building's entry lock lost power and the door had to be propped open. The tenant attached with the petition copies of email exchange between the petitioner and the building's assistant property manager during the blackouts.

The owner answered by counsel and opposed the PAR stating that the issues raised in the PAR were raised and addressed at the proceeding below, and that since the order was granted, the owner has set up the proper procedures and equipment that would comply with the requirements of the Rent Administrator's order.

Section 2522.4 (e) of the Rent Stabilization Code permits a modification or substitution of services at no change in the legal regulated rent, on the grounds that such modification or substitution is not inconsistent with the Rent Stabilization Law (RSL) or Code. It is the established position of the Division that the modification of services by replacing a traditional key lock system for the purposes of building entry with an electronic keycard/key fob entry system with certain conditions, as in the instant case, constitutes an adequate substitution of service consistent with the Code. Accordingly, the Commissioner finds that the Rent Administrator properly granted the

owner's application to modify services by replacing the metal keys with electronic keycard/key fob entry system subject to conditions 1-13 stated in the modification order.

The tenant's claim that the owner failed to provide backup battery power or generator for the key fob system during the two power outages at the subject premises is not a basis to revoke the Rent Administrator's order. As stated above the Rent Administrator granted the owner's application for modification of services subject to 13 conditions, including condition number 5 on page 2 of the order which requires that in the event of a power outage, the owner must provide a backup power, and ensure that sufficient staff is always provided at all entrances until power is restored. The Commissioner finds that the owner's alleged failure to provide a backup power in compliance with condition number 5 of the modification order is not an error in the order, but rather constitutes a failure by the owner to maintain the key fob services. The penultimate paragraph on page 2 of the modification order provides tenants the right to file applications for rent reductions in the event the owner fails to meet the requirements/conditions stated in the order. Therefore, the tenants can file an application for a rent reduction based on the owner's failure to maintain required services, including the key fob services, if the facts so warrant.

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

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:

JUL 29 2022

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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	**ADMINISTRATIVE REVIEW DOCKET NO.: CQ210018RO**
150 FOURTH AVENUE LLC,	:	**RENT ADMINISTRATOR'S DOCKET NO.: BT210002OD**
PETITIONER	:	

ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

On May 20, 2014, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on April 15, 2014 (the "Order"), concerning the housing accommodation known as 150 4th Avenue, Brooklyn, NY, wherein the Rent Administrator denied the owner's application to modify services with respect to the 24-hour lobby attendant(s).

The Commissioner has reviewed the entire evidence of the record and has carefully considered that portion of the record relevant to the issues raised by the PAR.

On August 3, 2013, the petitioner-owner filed an application to modify its 24-hour lobby attendant services wherein the owner sought to replace an in-person lobby attendant with an electronic door and lobby monitoring system between the hours of 8 p.m. and 8 a.m., as most of the lobby attendant's duties are performed between the hours of 8 a.m. and 8 p.m. The owner asserted that during 8 p.m. and 8 a.m., the building would have an audio-video connection to a command center staffed 24 hours a day, 7 days a week, by the service provider's operators, and further, tenants are able to view and allow entry for visitors via an existing video intercom system. Multiple tenants opposed the application citing safety concerns and the inability to receive packages between 8p.m. and 8 a.m.

On April 15, 2014, the Rent Administrator denied the owner's application to modify services under Docket No. BT210002OD, determining that the modification is inconsistent with the Rent Stabilization Laws, and further, that the services which the owner seeks to modify within the three years that the building has existed, was offered as an inducement for tenants to rent apartments in the subject building. The owner then filed the instant PAR.

In the PAR, the petitioner-owner asserts that: (1) it relied on a previous Agency determination concerning a building known as Hillside Place in Jamaica, Queens, whereby the Agency found that mechanical and electronic devices were found to be a sufficient substitute for the entire lobby staff with no reduction in rent; (2) that while its application was pending, another application to modify services by eliminating 80 hours of lobby attendant services in exchange for 12 security cameras in Rego Park, Queens, was granted by the Rent Administrator: and (3) there is no time constraint or inducement clause under the Rent Stabilization Law that prevents an owner from obtaining a modification of services.

Various tenants submitted objections to the petitioner-owner's appeal, claiming safety and package delivery concerns. In response to the tenants' concerns, on August 1, 2014, the petitioner-owner asserted that if the owner's PAR is granted, the owner will maintain lobby attendants for 16 hours a day instead of the previously requested 12 hours, specifying that there would be a lobby attendant on duty from 7 a.m. to 11 p.m. instead of 8 a.m. to 8 p.m.

After careful consideration of the entire evidence of record, the Commissioner is of the opinion the petition should be granted.

Rent Stabilization Code 2522.4(e) provides in pertinent part:

"(e) An owner may file an application to modify or substitute required services, at no change in the legal regulated rent, on forms prescribed by the DHCR on the grounds that...

(3) such modification or substitution is not inconsistent with the RSL or this Code."

In the instant matter, evidence reveals that Agency determinations and Court decisions, including *Younas Shadid v. NYS DHCR and Hillside Place LLC*, 84 A.D.3d 822 [2nd Dept. 2011] and *Bazile v. Rubin*, 165 A.D.3d 793 [2nd Dept. 2018], determined that a video surveillance system was an adequate substitution for lobby attendants.

Under the facts of this case, wherein the owner already has a security system in place and will maintain an in-person lobby attendant from 7 a.m. to 11 p.m., the Commissioner finds that the owner's application to modify services with an additional security system connected to a command center staffed 24 hours, 7 days a week, to replace an in-person lobby attendant from the hours of 11 p.m. to 7 a.m. is not inconsistent with the Rent Stabilization Law and Code.

As such, the Commissioner finds that the Rent Administrator's is revoked, thereby granting the owner's application for a modification of services.

THEREFORE, in accordance with the applicable provisions of the Rent Stabilization Law and Code, it is

ORDERED, the petition is granted, and the Rent Administrator's order is revoked.

ISSUED: **AUG 3 2022**

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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GERTZ PLAZA
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JAMAICA, NEW YORK 11433

X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: JX410038RO

RENT ADMINISTRATOR'S
DOCKET NO.: GP410001OE

EAST 45TH DEVELOPMENT, LLC.

TENANT: [redacted]

PETITIONER X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner-owner timely filed an administrative appeal ("PAR") against an Order issued on November 23, 2021, by the Rent Administrator (RA) concerning the housing accommodation known as Apt. [redacted] located at 251 East 45th Street A/K/A 842 2nd Avenue New York, NY, which denied the owner's application seeking an order to refuse renewal of lease and to proceed for eviction of the subject tenant pursuant to Rent Stabilization Code (RSC) §2524.5(a)(2) and DHCR Operation Bulletin 2009-1 (OB 2009-1).

The Rent Administrator determined that the petitioner failed to meet the criteria set forth in OB 2009-1; that the petitioner failed to submit a firm commitment letter from a financial institution or a bank statement showing a segregated account with sufficient funds to complete the project; that the owner's proof of funds was inadequate; and that the owner's proof of ability to complete the project was inadequate under RSC §2524.5(a)(2).

On PAR, the petitioner contends that the RA erred because acceptance of the application shows that sufficient proof of financial ability has been submitted; because DHCR's three (3) year delay in finding the owner's financial ability inadequate prejudiced the petitioner; because the RA's Order arbitrarily states that the commitment of funds had to be "firm", which is not required by OB 2009-1; because the RA should have specifically requested a "firm" commitment letter, or defined it, which he did not do; and because the RA erred in finding that the owner did not have the financial ability to complete the project.

In opposition to the PAR, the tenant asserts that, regarding acceptance of the application, OB 2009-1 cannot be construed as petitioner contends on PAR, since it contemplates an adversary proceeding in which both sides are heard on all issues, including the issue of financial ability; that, although the application was pending for 43 months, 26 of those 43 months, or roughly 60% of

this time, was taken up by the petitioner's own delay in responding to tenant's correspondence and to the RA's requests for information; that, for example, it took the petitioner one year, two weeks, and five days to respond to the tenant's August 30, 2019 correspondence; and that, on September 21, 2018, the RA mailed a Request for Additional Information (RFAI) specifically requesting a "firm commitment letter" from the petitioner. The tenant cited the relevant portion of the RFAI, which stated that the owner should:

"5. Submit proof of financial ability in any one of the following forms:

a. A firm commitment letter from a financial institution (Bank). Or

b. A bank statement showing a segregated account with sufficient funds to complete the project. Or

c. A sworn statement from a principal of S3 Capital certifying that S3 Capital is a financial institution along with a firm commitment letter from S3 Capital showing that all conditions for the loan have been satisfied; the exact loan amount; where the loan monies are coming from; confirmation that the loan monies are unconditionally and irrevocably committed to finance this demolition project.

d. Also, a current and officially certified financial statement showing S3 Capital's ability to fund and guarantee the project;"

The tenant also alleged that the RA found that allegations regarding the petitioner's personal wealth and his promise to complete the project is not an actual binding commitment to implement the alleged project in a manner that is "unconditional and irrevocable."

In response, the petitioner stated that a letter it submitted from Investors Bank was a firm commitment letter; that the commitment from E & M Realty Corporation (E & M), an affiliate of the petitioner, does not render the funds held by said Corporation insufficient; and that there was no need to show a segregated account of petitioner's own money to satisfy the relevant funding requirements.

The Commissioner, having reviewed the entire evidentiary record, finds that the PAR should be denied, and the Rent Administrator's Order should be affirmed.

The fact that an OE application, such as the one at issue, was accepted and docketed does not constitute proof of financial ability to complete a proposed project. All OE applications are accepted and docketed. It is in the processing of these applications that evidence supporting the requirements for the granting of such applications, including proper proof of funding, is submitted and/or requested, and considered. In the instant case, therefore, regarding financing, the owner was required to submit evidence to DHCR for the Agency to analyze whether sufficient proof of financial ability to complete the proposed project had been submitted. The acceptance and docketing of the application initiating this proceeding did not, in and of itself, have any bearing on whether sufficient proof of financial ability was submitted.

The Commissioner finds that there was nothing irregular in the fact that it took the RA approximately three and a half years to render a decision. The RA's processing of this matter was properly thorough, and the RA, in his appropriate investigation, sent many RFAIs to the parties which were necessary for him to do a comprehensive and full analysis and to render a correct and fair determination. It is noted that, of the 43 months that it took for the RA to process this matter, 24 of these months were spent waiting for the petitioner's responses. It is further noted that the petitioner asked the RA for eight (8) extensions of time, and that one of the petitioner's submissions took more than a year to be received by this Agency. Given that the petitioner itself created a majority of the delay in this matter (roughly 57% of the time spent in processing was spent waiting for the petitioner's responses), it cannot now complain that said delay caused it prejudice. Furthermore, undue delay may only be grounds for a remedy if said delay was negligent or deliberate. See Matter of IG Second Generation Partners L.P. v N.Y. State Div. of Hous. & Community Renewal, 10 N.Y.3d 474 (2008) (Court of Appeals refused to award remedies for an alleged delay since it was not proven that the delay resulted from DHCR's negligent or deliberate conduct). Therefore, the time it took for the RA to issue his determination is not grounds for the reversal or modification of his Order.

The Letter of Intent from S3 Capital (S3) is not sufficient proof of financial ability to carry out the proposed project. Said letter, submitted by the owner, is not signed by (any representative of) S3. Further, the petitioner itself acknowledged that said Letter is not sufficient, stating in its May 2, 2019, submission that, "[b]ecause S3 Capital is not a publicly traded company, Owner has opted to procure a firm commitment letter the ("Commitment"). for ten million ($10,000,000) dollars from Investors Bank, a publicly traded financial institution [sic]." The petitioner itself, therefore, acknowledges that the S3 Capital Letter is not sufficient, because, presumably, the ability of S3 to fund the project is not established. Further, the petitioner herein acknowledged that a "firm" commitment is reasonable, given that the RA asked the petitioner, after submission of this admittedly deficient S3 document, for a "firm commitment letter". The petitioner's argument on PAR that the RA's request for a firm commitment was unreasonable, is, therefore, unpersuasive.

In response to the RA's September 21, 2018, RFAI, the petitioner submitted an Investors Bank commitment letter dated March 6, 2019. Said letter specifically states that, "[t]his Commitment shall not be binding on the Lender unless it is properly signed and accepted in the form submitted and returned to the Lender not later than the close of business on March 13, 2019." However, the petitioner signed said document on March 26, 2019. Because the petitioner did not sign and return such document to the lender by March 13, 2019, as explained above, the letter from Investors Bank, by its own terms ("shall not be binding...unless properly signed and...retuned to the Lender not later than...March13, 2019"), is not proof of Investors Bank's commitment to fund the project at issue. Further, the Investors Bank commitment letter states that, "[I]n the event that the closing of the Credit Facility does not occur on or before June 13, 2019, then this Commitment Letter and Commitment of the Lender shall automatically terminate unless the Lender shall, in its sole discretion, agree to an extension." At no time has the owner offered any evidence that the Credit Facility referenced by the Investors Bank letter did in fact close, or that any extension was in fact agreed to by the lender. Given that the Investors Bank letter is not evidence of a binding

commitment, and that there is no evidence showing that the Credit Facility was timely closed or extended, the RA properly found that said letter was not sufficient to show financial ability to complete the project.

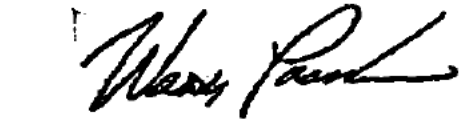
As to the petitioner's Morgan Stanley brokerage account, the petitioner submitted a brokerage statement dated March 1, 2018, showing a total value of the account in the amount of $2,663,300.59, and then later submitted another brokerage statement on August 31, 2018, showing a total value of the account in the amount of $3,438,518.00. In a subsequent affidavit included with a submission from the petitioner dated September 17, 2020, [redacted] (spouse of Eduard Slinin, who is the petitioner) affirmed that "[t]he account now has a value of over fifteen million dollars...We are in the process of segregating ten million dollars to be used for the project." The Commissioner notes that there was no brokerage statement attached to support the affirmation that the account had fifteen million dollars. Further, at no time has the owner shown that there was any amount that was segregated and unconditionally and irrevocably earmarked to fund the project. Therefore, because the owner did not prove that it had the necessary funds to finance the project (estimated at between 9.8 million dollars and 15-17 million dollars), and that such funds were properly segregated and committed to finance the project, as correctly requested by the RA, the petitioner has failed to show that its private and/or personal funds were sufficient to finance the project.

Because the owner did not submit the properly requested and required documentation showing that it had sufficient funds properly committed to the financing of the project, the RA was correct to deny the application based on a finding that the owner did not submit sufficient proof of funding for the project.

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

ORDERED, that the owner's petition be, and the same hereby is, denied; and that the Rent Administrator's order be, and the same hereby is, affirmed.

ISSUED:
JUL 22 2022



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

X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: KP210022RO

RENT ADMINISTRATOR'S
DOCKET NO.: IM210011UC

333 18th STREET LLC.,

PETITIONER X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner-owner timely re-filed an administrative appeal (PAR) against an order issued on January 27, 2022, by the Rent Administrator (RA) concerning all building-wide housing accommodations in the premises located at 333 18th Street, Brooklyn, NY 11215 which denied the owner's application for exemption from rent regulation by virtue of substantial rehabilitation.[1]

Procedural History

The owner commenced this proceeding on January 31, 2020, by filing an application to determine whether the premises were exempt from rent regulation due to substantial rehabilitation pursuant to Rent Stabilization Code (RSC) §2520.11(e) and DHCR Operational Bulletin (OB) 95-2.

In its application, the owner asserted, amongst other things, that the subject building was in a substantially deteriorated condition due to a 2013 fire, which required the vacatur of the subject building by all the tenants; that thereafter, the subject building was substantially rehabilitated; that more than 75% of the building systems were replaced in accordance with RSC Section

[1] On or about March 10, 2022, this agency dismissed the petitioner's PAR application under Docket No. KO210006RO for the failure to submit sufficient copies of the PAR application and attachments for each affected tenant.

§2520.11(e) and OB 95-2; that the owner acquired the subject building on October 5, 2018; that the rehabilitation was completed on or about February 2018; that fifteen of the seventeen building systems set forth in OB 95-2 were replaced; that the subject building does not have elevators, incinerators or waste compactors, and therefore, these system should be excluded from consideration; that the following thirteen out of fifteen systems were replaced: new roof, pointing and exterior surface repairs, new electrical wiring throughout the building, new heating, new plumbing throughout the building, new gas supply, new kitchens, new bathrooms, new walls and ceilings, new floors, new intercoms; new interior staircases, new windows, new doors and framing and new fire escapes; that the cost of the rehabilitation was in excess of $800,000.00, which is evidenced by annexed copies of invoices; and that the details of the renovations are more fully set forth in the attached architect affidavit and architect plans.

On March 19, 2021 and July 14, 2021, the agency requested that petitioner provide proof of payment such as cancelled checks.

On August 6, 2021, owner's counsel responded to the agency's request for proof of payment by asserting the following:

> The work was completed and paid for by the previous owner of the building who is now deceased. Before filing the instant application, the owner attempted to obtain copies of the cancelled checks from the estate of the deceased previous owner. The spouse of the deceased prior owner advised that the records had been destroyed in a flood resulting from Hurricane Sandy. The owner also tried to obtain payment documents and/or an affidavit from the contractor. Unfortunately, its attempts have not been successful. The fact that the owner cannot obtain copies of the cancelled checks should not be an impediment to the granting of the instant application.

RA's Determination

On January 27, 2022, the RA terminated the proceeding. The RA found that a review of the file reveals that the petitioner has not submitted the necessary information and evidence for proper examination and a DHCR determination, such as, proper proof of payment and/or canceled checks; and that the owner may re-file its application when the information and evidence becomes available.

Contentions on PAR

On PAR, the petitioner-owner contends, amongst other things, that, the RA improperly denied the application; that it was improper for the RA to terminate the proceeding because the owner did not submit proof of payment; and that proof of payment is not required.

Commissioner's Decision

The Commissioner, having reviewed the record herein, finds that the petition should be denied.

The Commissioner notes that the petitioner asserted in the proceeding before the RA that "between 2015 and 2018, the building underwent a substantial rehabilitation." (*Emphasis added*). DOB records reflect intermittent DOB work applications from March 24, 2014 through December 18, 2018, under DOB Job Nos: 320704270, 320704298, 321391980, 322065368.

The Commissioner takes Judicial Notice that Hurricane Sandy hit New York City on October 29, 2012.[2] The Southern District of New York in *LaForgia v. Vergano*, No. 15-CV-8589 (KMK), 2017 U.S. Dist. LEXIS 109691, at *18 (S.D.N.Y. July 12, 2017), found that judicial notice was appropriately taken of the fact that Hurricane Sandy struck on or about October 29, 2012, *citing to Martin v. Beight*, No. 13-CV-855A, 2015 U.S. Dist. LEXIS 56413, 2015 WL 1956506, at *2 (W.D.N.Y. Apr. 29, 2015) (report and recommendation) (taking judicial notice of weather conditions). Given the above timeline, petitioner's contentions that the former owner told him that proof of payment was "destroyed in a flood resulting from Hurricane Sandy", lacks merit.

The statutory language that controls herein is set forth under OB 95-2 Section III, Documentation, which states that:

> **Proof of payment by the owner for the rehabilitation work may be required; owners are advised to maintain records related to the rehabilitation.**

The RA correctly applied OB 95-2(III) and determined that proof of payment was required. *See Pavia v. N.Y. State Div. of Hous. & Cmty. Renewal*, 2005 NY Slip Op 7839, ¶¶ 1-2, 22 A.D.3d 393, 394, 802 N.Y.S.2d 361, 361 (App. Div. 1st Dept)(upholding the

[2] See www1.nyc.gov/site/cdbgdr/about/About%20Hurricane%20Sandy.page

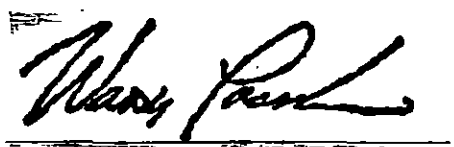
denial of an owner's substantial rehabilitation application for failure to provide adequate documentation pursuant to Operational Bulletin 95-2). See also *Ansonia Residents Ass'n v. N.Y. State Div. of Hous. & Cmty. Renewal*, 75 N.Y.2d 206, 213, 551 N.Y.S.2d 871, 873, 551 N.E.2d 72, 74 (1989)(New York Court of Appeals held that when as here, the interpretation of a statute or its application involves knowledge and understanding of underlying operational practices or entails an evaluation of factual data and inferences to be drawn therefrom, the courts regularly defer to the governmental agency charged with the responsibility for administration of the statute and if its interpretation is not irrational or unreasonable, it will be upheld). The Commissioner finds that it was reasonable for the RA to require the owner to provide proof of payment for the substantial rehabilitation work before issuing an order which would have deregulated all of the current tenants of the premises.

The Commissioner has considered any remaining claims raised by the petitioner and finds them to be without merit.

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

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

ISSUED:
JUL 08 2022



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

----------x

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

Union Housing LLC

PETITIONER

ADMINISTRATIVE REVIEW
DOCKET NO. KP210032RO

RENT ADMINISTRATOR'S
DOCKET NO. HW210001UC

VARIOUS TENANTS

----------x

ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW AND REMANDING PROCEEDING TO THE RENT ADMINISTRATOR

The above-named owner filed a timely petition for administrative review (PAR) of an order issued on March 25, 2022 by a Rent Administrator (RA) concerning the housing accommodations known as 108 Cooper Street, Brooklyn, NY 11207.

The RA found that the regulatory status of the subject building had been previously determined under Agency Order XA230003RP, issued on September 15, 2011; that there is no indication that the owner challenged said Order; and that the owner may therefore only apply for an exemption from rent regulation based on substantial rehabilitation done after the issuance date of said previous Order, i.e. September 15, 2011.

On PAR, the owner alleges, amongst other things, that the RA closed the proceeding without action based on Order XA230003RP, which was issued pursuant to a building-wide services proceeding and determined only that the building was rent stabilized because it contained six units; that said Order did not address substantial rehabilitation and is unrelated to the instant proceeding; that the RA's Order is in error because the owner's application to exempt the building based on substantial rehabilitation of the premises under Section 2520.11(e) of the Rent Stabilization Code (RSC) was closed without action on the grounds that the building was previously determined to be rent stabilized under Rent Stabilization

Law (RSL) Section 26-504(a)(1) based on a finding that the premises contains six or more units; that the RA's Order arbitrarily and capriciously deviates from DHCR policy and precedent as it improperly sets a time limit on when an exemption application can be filed; and that the owner submitted evidence under RSC Section 2520.11(e) and Operational Bulletin 95-2 (OB 95-2) to prove the substantial rehabilitation.

The PAR is granted, and the matter is remanded to the Rent Administrator.

Agency order XA230003RP found that the premises are subject to rent stabilization based solely on an examination of the number of units in the premises, specifically finding that "the subject apartments are located in a building containing six (6) or more apartments, which was built prior to January 1974. As such, the apartments in the subject building are subject to the Rent Stabilization Code." Agency order XA230003RP made no investigation into, or any finding regarding, any possible substantial rehabilitations that might affect the regulatory status of the building and that might have at the time of issuance of said Order already been performed.

The RA order on appeal was therefore in error, as consideration of an alleged substantial rehabilitation may not be precluded by an Order that made a finding of jurisdiction based upon a totally different issue, namely the number of units in the building. While the question of the number of units in the premises, as of September 15, 2011, was settled by Order XA230003RP, the substantial rehabilitation at issue has not been raised or addressed until the present proceeding. The owner has the right to have its application of substantial rehabilitation determined on the merits by the RA. The matter must be remanded to the RA for substantive consideration of the owner's application to determine whether the building is exempt from rent regulation due to substantial rehabilitation.

THEREFORE, pursuant to the provisions of the applicable statutes and regulations, it is

ORDERED, that this petition for administrative review is granted and that the matter is remanded to the Rent Administrator for substantive consideration of the owner's application at issue.

ISSUED:

JUL 08 2022

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

X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

1012 WILLOUGHBY LLC,

PETITIONER X

ADMINISTRATIVE REVIEW
DOCKET NO.: KN210018RO

RENT ADMINISTRATOR'S
DOCKET NO.: HT210004UC

TENANT: [redacted]

ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

Petitioner timely filed an administrative appeal (PAR) against an order issued on January 25, 2022, by the Rent Administrator (RA) concerning all building-wide housing accommodations in the premises located at 1012 Willoughby Avenue, Brooklyn, New York 11221 which granted in part the petitioner's application for exemption from rent regulation by virtue of substantial rehabilitation.

Procedural History

Petitioner commenced this proceeding on August 20, 2019, by filing an application to determine whether the building located at 1012 Willoughby Avenue, Brooklyn, New York was exempt from rent regulation due to substantial rehabilitation in accordance with Rent Stabilization Code (RSC) §2520.11(e) and DHCR Operational Bulletin 95-2 (OB 95-2).

The petitioner stated that it acquired the subject building in October 2008; that the renovations commenced in December 2008 and were completed in May 2009 under Department of Buildings (DOB) Job No. 310219260; that it spent approximately $352,000.00 to gut-renovate the subject premises; and that at least 75% of the building-wide and apartment systems listed in Operational Bulletin 95-2 were replaced.

In support of the application, the petitioner submitted, amongst other things: a deed; DOB application details;

architectural plans; architect's affidavit; DOB PW3 cost affidavit; letter of completion; invoices; and DOB letter of completion.

RA's Determination

On January 25, 2022, the RA issued an order granting the owner's application for substantial rehabilitation in part.

The RA reviewed all the information and evidence finding that DOB approved the owner's application and plans for renovation under DOB Job No. 310219260 on October 22, 2008; that the DOB Letter of Completion on file states that the work related to the application has been completed and signed off on September 14, 2010; that the scope of work described in the Architect's Affidavit indicates that at least 75% of all building-wide and individual apartment systems, including common areas, were replaced; that there is no indication that the owner received any government financing or tax abatement for the project; that the subject building is therefore exempt from regulation pursuant to Section 2520.11 (e) of the Rent Stabilization Code, however, information in the file indicates that apartment [redacted] is subject to the Rent Stabilization Law and Code under PAR Order under Docket No. HR210020RO; that, therefore, the owner is required to file annual registration with the DHCR and the owner is required to offer renewal leases for the said apartment in accordance with the Rent Stabilization Law and Code for the duration of the tenancy.

Contentions on PAR

On PAR, the petitioner-owner alleges, amongst other things, that, the RA's determination is arbitrary and capricious; that the Commissioner's order under Docket No. HR210020RO did not determine that apartment [redacted] is rent stabilized; that the Commissioner simply ruled that - absent evidence to the contrary - there is no reason to assume that the apartment is not rent stabilized; that now that such "evidence" has been established and confirmed, the fact remains that apartment [redacted] has not been rent stabilized since the date the substantial rehabilitation was completed, which was prior to the issuance of the Commissioner's Order under Docket No. HR210020RO; that the Commissioner's intent was not to put the apartment back into stabilization; that it was erroneous for the RA under Docket No. HT210004UC to find that Apartment [redacted] is subject to the Rent Stabilization Law and Code pursuant to PAR Order HR210020RO; that the RA's order under Docket No. HT210004UC should be modified to include Apartment [redacted] in the determination and to issue a revised order including Apartment [redacted] as being exempt from

coverage under the RSL, as the Rent Administrator's order, as issued, is contrary to law and established DHCR policy.

On May 5, 2022, tenant's counsel submitted an answer to the owner's PAR, asserting, amongst other things, that the PAR must be denied based on *res judicata;* that the parties litigated a prior case at DHCR through the PAR level, which resulted in a determination that the subject unit was rent-stabilized; that the grounds for the Commissioner's Order under Docket No. HR210020RO was that the landlord did not carry its burden to prove the alleged substantial rehabilitation had taken place; that the RA in that underlying proceeding under Docket No. FO210006AD directed the landlord in April of 2017 to file an RS-3 application to establish substantial rehabilitation, but the landlord failed to do so by the time of the RA issued the June 3, 2019 decision wherein it determined that the subject apartment is subject to rent stabilization; that the owner waited more than two years later to file the RS-3 application; that the owner has never explained why it did not file the RS-3 application for more than two years, or why it did not ask the RA for any extension of time to do so; that this silence creates an unrebutted presumption that the owner did not have any valid excuse; that by failing to file an Article 78 action in Court, the landlord accepted the PAR Order under Docket No. HR210020RO and cannot collaterally attack that decision in the current proceeding; that any challenge to the PAR Order under Docket No. HR210020RO is barred by the doctrine of *res judicata;* that the owner is now disingenuously arguing that DHCR did not make a determination of the rent-regulatory status in the prior case because it was based on the owner's failure to submit evidence, however, it is a fundamental principal of fact-finding that many or most decisions are based on the failure of a party to submit evidence, especially when that party has the burden of proof as in this case; that even defaults can result in binding decisions if the defaulted party had proper notice and opportunity to be heard; and that therefore the owner's PAR should be denied.

Commissioner's Decision

The Commissioner, having reviewed the record herein, finds that the petition should be granted.

The doctrine of collateral estoppel does not bind this agency to the findings set forth in the Administrative Determination decision issued under Docket No. FO210006AD (affirmed on PAR Under Docket No. HR210020RO). Tenant's contentions that the owner is attempting to collaterally attack the above-mentioned administrative determination in this proceeding is misplaced. "The

doctrine of collateral estoppel, a narrow species of *res judicata*, precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same". *Citing to Ryan v New York Telephone Co.*, 62 NY2d 494, 500, 467 N.E.2d 487, 478 NYS2d 823 [1984]). The doctrine of collateral estoppel does not apply here. Unlike in the current matter, the RA's decision under Docket No. FO210006AD (affirmed on PAR Under Docket No. HR210020RO), did not determine whether the subject building was exempt from rent regulation due to substantial rehabilitation in accordance with RSC §2520.11(e) and OB 95-2. This is further evidenced by the agency's Final Request for Additional Information/Evidence dated April 11, 2017, wherein the RA stated: "please be advised if you are claiming exempt based on substantial rehabilitation, you must file Form RS-3 with this Agency." While the tenant in the Administrative Determination requested a determination on the subject apartment's regulatory status, such determination was made based on the rent level as reported in DHCR registration statements and the owner's failure to prove vacancy rent increases.

The issue of whether the building was substantially rehabilitated was not determined in the Administrative Determination case. Moreover, an owner is under no legal time constraints to file an application for exemption based on substantial rehabilitation and to suggest the Administrative Determination imposed a deadline is incorrect. Indeed, the PAR order under HR210020RO acknowledged that the owner had filed such application and it was pending.

This matter is analogous to the New York Supreme Court's decision In the *Matter of Golden Horse Realty, Inc. v. NYS Div. of Hous. & Cmty. Renewal*, 2018 NY Slip Op 30636(U), ¶ 3 (Sup. Ct), wherein the Court rejected a tenant's contentions that the doctrine of collateral estoppel applied. The Court in *Matter of Golden Horse Realty, Inc.* reasoned that the prior decision did not clearly address the issue of whether the tenant's apartment was subject to rent stabilization and instead, it considered an overcharge complaint, wherein the tenant alleged that the landlord engaged in a fraudulent scheme to deregulate the subject apartment. *Id.* The Court in *Matter of Golden Horse Realty, Inc.* reasoned that it was not satisfied that petitioner had a full and fair opportunity in that matter to litigate the issue raised here— whether the apartment is subject to rent stabilization based on the claim that the apartment can only be used for commercial purposes. *Id.*

This matter is distinguishable from *Matter of Trump Vill. Apartments One Owner v. N.Y. State Div. of Hous. & Cmty. Renewal*, 2016 NY Slip Op 07032, ¶ 2, 143 A.D.3d 996, 999, 40 N.Y.S.3d 157, 160 (App. Div. 2nd Dept.), wherein the Second Department found that the "Supreme Court properly determined that the petitioner was collaterally estopped from attempting to relitigate, in the instant CPLR article 78 proceeding, the issue of whether the rent reduction schedules in Operational Bulletin 2003-1 must be used to calculate the tenants' rent reduction", because this exact issue was raised in the prior CPLR article 78 proceeding and decided against the petitioner.

The Commissioner finds that the RA's determination (in this matter) that the subject premise was substantially rehabilitated is retroactive to the date when the work was completed, which in this case was September of 2010. *See DOB Job No. 310219260 DOB Letter of Completion.*

In the Matter of the Administrative Appeal of SS4E Capital Ventures LLC, issued under Docket No. EV410065RT, the Commissioner held that:

> Petitioner's [tenant's] contention that the substantial rehabilitation is not retroactive and should only affect leases commencing after the September 13, 2016 Rent Administrator's order is without merit. A Rent Administrator's determination that a premises was substantially rehabilitated is retroactive to the date when the work was completed, which in this case was July 2011.
>
> Such retroactive application is reasonable because the premises actually becomes exempt when the work is completed even if an owner files an application years later or the agency otherwise does not render a decision until months or years after the work finished.

This matter is distinguishable from the New York Supreme Court's decision in Matter of 475 W. 145th St., LLC v. N.Y. State Div. of Hous. & Cmty. Renewal, 2019 NY Slip Op 31306(U), ¶ 11 (Sup. Ct.), wherein the Court found that the tenant remained rent stabilized because he continued to occupy his apartment during the renovation period and the landlord performed no work to the unit notwithstanding that the remainder of the building was substantially rehabilitated. To the contrary, the subject tenant

moved into the subject premise on June 1, 2014, years after the building was substantially rehabilitated.

THEREFORE, in accordance with the relevant provisions of the Rent Stabilization Law and Code, it is

ORDERED, that this petition be, and the same hereby is, granted and the RA's Order is amended accordingly to include the subject apartment as exempt from rent stabilization.

ISSUED:

JUL 15 2022

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	**ADMINISTRATIVE REVIEW DOCKET NO.: JT610014RO**
COMMUNITY REALTY GROUP LLC	
PETITIONER	**RENT ADMINISTRATOR'S DOCKET NO.: JN610032X**

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ORDER AND OPINION GRANTING IN PART PETITION FOR ADMINISTRATIVE REVIEW

On August 12, 2021, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") of an order the Rent Administrator issued on July 8, 2021 (the "order"), concerning the housing accommodation known as 2461 Davidson Avenue, Bronx, New York, wherein the Rent Administrator modified a previously issued Major Capital Improvement (MCI) order, Docket Number BT630017OM, based on the fact that the owner had been granted a J-51 Tax Abatement for the same items relating to the MCI increase.

The Commissioner has reviewed the entire evidence of the record including that portion of the record that is relevant to the issues raised by the PAR.

After careful consideration of the entire evidence of record, the Commissioner is of the opinion the petition should be granted in part.

In the PAR, the owner, through its attorney, seeks a reversal of the Rent Administrator's order and contends the order is arbitrary and capricious. The owner claims, in substance, that the owner was denied due process in that the subject modification order was issued seven years after the issuance of the J-51 Tax Abatement, substantially prejudicing the owner; that DHCR on its own initiative and without notice and hearing from the owner, issued the July 8, 2021 order in violation of the State Administrative Procedure Act ("SAPA") and the Rent Stabilization Code ("RSC"); and that the order cites to Local Law 41 of 1998, however, that section of law relates to newsstand licensing in the City of New York and is not relevant to the order issued. The owner further asserts that the order is arbitrary as the only "substantial change" relied upon by the Rent Administrator to modify the order was the receipt of a notice of the J-51 Tax Abatement. The Commissioner notes that the owner's petition does not point to any specific error in the temporary rent offset as calculated by the Rent Administrator.

Several tenants filed answers with three tenants opposing the petition and one tenant stating, "we do not object."

A review of the Agency records reveals that on January 10, 2014, the Rent Administrator issued an order granting the owner's MCI application for a rent increase as a result of completing Pointing/Exterior Restoration to the building, assigned under Docket No. BT630017OM. The Rent Administrator granted the owner an increase of $9.45 per room, per month, effective as of October 1, 2013 for rent stabilized apartments, and effective and collectible as of February 1, 2014 for rent controlled apartments.

Turning to the case at bar, the record indicates that New York City Department of Housing Preservation and Development ("HPD") approved the owner's tax abatement application and issued a Certificate of Eligibility (Application No. 13/0206) on August 10, 2014.

Thereafter, the Rent Administrator, on July 8, 2021, ordered the modification of the MCI order, Docket No. BT630017OM, based on the fact the owner had been granted a J-51 Tax Abatement for the same items under which the MCI rent increase was previously granted. The Administrator ordered the temporary offset of the previously granted MCI increase by $0.81 per room per month for rent stabilized apartments and determined the effective date to be July 1, 2014. The Rent Administrator noted that this rent offset would be in effect for the life of the J-51 Tax Abatement benefits, that the owner shall be entitled to collect the full amount of the MCI increase upon expiration of the tax abatement, and that the owner may collect the full amount of the MCI increase for the rent stabilized accommodations upon notification to DHCR, Property Management Bureau. The Rent Administrator further directed the owner to refund or credit to the tenants currently in occupancy the excess rent collected as a consequence of this modification to cover the period between the effective date of the order and the issue date of the order. With respect to any tenants who have vacated, the Administrator directed the owner to refund the excess rent collected to cover the period between the effective date of the order and the date the tenants vacated.

The Commissioner finds that the Rent Administrator correctly modified the previously issued rent increase order to reflect an offset of the tax abatement received by the owner for the MCI installations. A tax abatement granted by the City of New York is intended to be shared by the owner and its tenants. In order to achieve this goal, it has historically been the established and recognized position of predecessor agencies, that two-thirds of the tax abatement is to be used to offset any rent increase to a rent-controlled apartment otherwise allowable for an MCI. Such determination is made pursuant to Section 2202.3(a)(2) of the New York City Rent and Eviction Regulations, which provides that "[t]he Administrator shall have the power to revoke or modify any adjustment granted hereunder if there has been a substantial change in the basis upon which such adjustment was granted." This determination is in accordance with the statutory mandate to "prevent the exaction of unjust, unreasonable oppressive rents" in order to "prevent uncertainty, hardship, and dislocation."

Tenants of stabilized apartments may share in such benefits, as provided by Local Law 41 of 1988. Section 5-03(f)(6)(i) of the New York City Department of Housing Preservation and

Development's J-51 Rules and Regulations incorporates the strictures enumerated in Local Law 41 of 1988.

With regard to the owner's contentions raised in the PAR regarding due process and the Rent Administrator's authority to modify the MCI rent increase, DHCR has the legal authority and was statutorily mandated to modify the subject MCI increase once the owner receives a J-51 tax abatement. The quid pro quo for the tax abatement, which the owner is fully enjoying, is to partially waive the MCI increase. The Commissioner notes that the owner voluntarily applied for and received a tax abatement and cannot renege on the agreement to temporary offset said MCI increase. In this case, there was no finding of illegality, irregularity in vital matters or fraud, but merely a temporary offset of the MCI rent increase based on the owner's reception of tax abatement benefits as required by the grant of the MCI increase itself. Accordingly, the Commissioner rejects the owner's PAR contentions.

It is noted by the Commissioner that the subject Rent Administrator's order, Docket No. JN610032X, purely requires the owner to repay to the tenant(s) monies collected that should not have been collected due to the temporary offset ordered by the subject modification order herein issued on July 8, 2021, and which was ordered effective for rent stabilization apartments July 1, 2014.

In the owner's petition, the owner identifies a typographical error in the Rent Administrator's modification order, Docket No. JN610032X, as it relates to the Local Law cited therein. The Commissioner notes that the applicable law is Local Law 41 of 1988 and not Local Law 41 of 1998. Thus, the Rent Administrator's order is herein modified to read Local Law 41 of 1988 on page one of the order, Docket No. JN610032X.

Accordingly, based on the foregoing, the Commissioner finds that the Rent Administrator, in accordance with Local Law 41 of 1988 and/or Section 2202.3(a)(2) of the New York City Rent and Eviction Regulations, correctly modified the MCI order issued on January 10, 2014 under Docket No. BT630017OM, based upon the fact that the owner has been granted a tax abatement for such MCI installation (pointing/exterior restoration) in a J-51 Tax Abatement Certificate of Eligibility (Application No. 13/0206).

THEREFORE, it is

ORDERED, that the petition is granted in part, and that the Rent Administrator's order be, and the same hereby is, modified in accordance with the terms of this order; and, as so modified, the Rent Administrator's order is hereby affirmed.

ISSUED: JUL 8 2022

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
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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.: GV130008RO
RUTH MAZUREK	
PETITIONER	RENT ADMINISTRATOR'S DOCKET NO.: GU130016X

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ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

On October 19, 2018, the above-named Petitioner-owner filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on September 20, 2018 (the "Order"), concerning the housing accommodation known as 98-11 Queens Boulevard, Rego Park, New York, wherein the Rent Administrator modified the Rent Administrator's order under Docket No. VK130063OM by temporarily reducing the Major Capital Improvement ("MCI") rent increase for "waste compactor" by $0.28 per room per month for rent controlled tenants and $0.21 per room per month for rent stabilized tenants pursuant to a J-51 Tax Abatement offset.

The Commissioner has reviewed the entire evidence of the record including that portion of the record that is relevant to the issues raised by the PAR.

In the PAR, the Petitioner-owner requests reversal of the Rent Administrator's order and claims that a modification order was already issued under Docket No. DS130024X on October 22, 2015.

After careful consideration of the entire evidence of record, the Commissioner is of the opinion that the petition should be granted.

A review of the Agency records reveals that a prior modification order was issued for the same MCI rent increase issued under Docket No. VK130063OM for "waste compactor" under Docket

No. DS130024X on October 22, 2015. The Rent Administrator's modification order under Docket No. DS130024X was not appealed and is therefore final and binding upon the parties.

Accordingly, based on the foregoing, the Commissioner finds that the Rent Administrator's order, Docket No. GU130016X is hereby revoked.

Any arrears due as a result of this Commissioner's order may be paid in equally monthly installments over twenty-four (24) months.

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

ORDERED, that this petition is granted and that the Rent Administrator's order under Docket Number GU130016X is hereby revoked.

ISSUED: AUG 31 2022

Woody Pascal
Deputy Commissioner

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Jamaica, NY 11433
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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.: GV130009RO
RUTH MAZUREK	
PETITIONER	RENT ADMINISTRATOR'S DOCKET NO.: AV130048X

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ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

On October 19, 2018, the above-named Petitioner-owner filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on September 20, 2018 (the "Order"), concerning the housing accommodation known as 98-11 Queens Boulevard, Rego Park, New York, wherein the Rent Administrator modified the Rent Administrator's order under Docket No. WE130061OM by temporarily reducing the Major Capital Improvement ("MCI") rent increase for "parapets" by $1.34 per room per month for rent controlled tenants and $1.00 per room per month for rent stabilized tenants pursuant to a J-51 Tax Abatement offset.

The Commissioner has reviewed the entire evidence of the record including that portion of the record that is relevant to the issues raised by the PAR.

In the PAR, the Petitioner-owner requests reversal of the Rent Administrator's order and claims that a modification order was already issued under Docket No. DS130019X on October 19, 2015.

After careful consideration of the entire evidence of record, the Commissioner is of the opinion that the petition should be granted.

A review of the Agency records reveals that a prior modification order was issued for the same MCI rent increase issued under Docket No. WE130061OM for "parapets" under Docket No.

DS130019X on October 19, 2015. The Rent Administrator's modification order under Docket No. DS130019X was not appealed and is therefore final and binding upon the parties.

Accordingly, based on the foregoing, the Commissioner finds that the Rent Administrator's order, Docket No. AV130048X is hereby revoked.

Any arrears due as a result of this Commissioner's order may be paid in equally monthly installments over twenty-four (24) months.

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

ORDERED, that this petition is granted and that the Rent Administrator's order is revoked.

ISSUED: AUG 31 2022

Woody Pascal
Deputy Commissioner

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