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.: KR210013RO

HANCOCK 21 PP HOLDINGS LLC

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO.: JX210011AD

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On June 22, 2022, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on May 16, 2022 (the "order"), concerning the housing accommodation known as 227 Hancock Street, Apt. [redacted], Brooklyn, New York wherein the Rent Administrator granted, in part, the owner's request to amend the 2018 building registration summary and the apartment registration for the subject apartment.

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 owner, through its counsel, seeks a reversal of the order reiterating their argument for their amendment request, and asserts, in substance, that the order does not state why their request to add the rent amount was an "issue" or "explain what the 'different legal regulated rent amount' was, leaving it up to Petitioner to decipher and ascertain how the Rent Administrator arrived at its conclusion." The owner contends that the Administrator should have sought additional comments from the owner upon the "discovery of the alleged issue of a rent differential" and that the difference between the rent set forth on the [redacted] lease and the rent set forth in the vacancy lease calculation was due to a Major Capital Improvement order issued by the DHCR. The tenant, [redacted], submitted a response which stated, "permission to amend is granted."

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

The record shows the owner initiated the proceeding below on December 27, 2021 for the purpose of seeking permission to amend the 2018 DHCR Annual Apartment Registration for the subject apartment, claiming that upon review of the building's records by the new managing agent, it was discovered that an error had been made by the prior managing agent in registering

the subject apartment. In support of the request, the owner submitted their proposed amendments to the 2018 Annual Apartment Registration and Annual Registration Summary forms along with the DHCR's Apartment Registration Information for the subject apartment, and the prior tenant, [redacted] 2017 partial Renewal Lease and Riders. The owner, in pertinent part, requested that the 2018 apartment registration be amended as the subject apartment had been improperly registered as permanently exempt due to high rent vacancy. In addition, the owner sought to amend the 2018 apartment registration to reflect that the tenant was [redacted], a lease term of July 1, 2017 to June 30, 2019, and a rent of $980.66. The owner also submitted the affidavit of [redacted], the owner's managing agent, sworn to on December 2, 2021. [redacted], averred *inter alia*, that the prior owner did not provide the owner with the rent ledger records relating to apartment [redacted] for the 2018 lease period of July 1, 2017 – June 30, 2019, and that the apartment became vacant four to six months prior to the sale of the property to the owner.

According to the Rent Administrator's record below, the tenant was provided notice of the owner's application on February 15, 2022. Subsequently, the tenant, [redacted], submitted a reply dated March 17, 2022, wherein the tenant responded that he did not object to the owner's request.

Thereafter on March 15, 2022, the Rent Administrator sought additional information regarding the owner's claim that the apartment was vacant upon the purchase of the property in November 2018 and requested the complete copy of the first lease in effect after the owner purchased the building, including all riders, and vacancy lease worksheets, as well as a certified copy of the rent ledger.

Subsequently, the owner submitted a response to the Administrator's request dated April 29, 2022 which included a copy of a lease and riders made on March 1, 2021, listing the tenants as [redacted] and [redacted] and a rent ledger for the tenants [redacted] and [redacted] The lease provided for a monthly rent of $1,139.31.

Based upon a review of the documents and evidence presented, the Rent Administrator, on May 16, 2022, granted in part the owner's application by permitting amendments to the 2018 building registration summary as follows: changing Stabilized/ETPA: to "8" and Permanently Exempt: to "8", and permitted amendments to the 2018 apartment registration as follows: change the Tenant Name to add [redacted], Apartment Status to "Rent Stabilized," Lease Start to 7/1/2017 and Lease End to 6/30/2019. The Rent Administrator did not permit any other changes as requested by the owner, noting that, as to the request to amend the legal regulated rent, amendments to registrations may be accepted for processing when such amendments seek to correct ministerial issues such as a clerical error in the rent amount, misspelling of the tenant's name or an incorrect lease term. The Administrator further noted that amendments seeking to re-calculate the rental history of the apartment or other types of changes are not applicable for an application to amend the rent registration, and that owners are responsible for charging a legal rent and should keep all relevant rent records on file in case the tenant seeks a determination regarding the legal rent and/or status of the apartment. Moreover, the Rent Administrator found that the documents submitted by the owner did not support the legal regulated rent change requested in their application and that the vacancy lease rent calculation for the first lease in

effect subsequent to [redacted] vacating the subject apartment indicates a different legal regulated rent amount.

After a review of the record, the Commissioner finds that the Rent Administrator correctly did not allow the legal regulated rent amendment to the 2018 apartment registration as requested by the owner. Apartment rent registration amendments may be accepted for processing when such amendment is for ministerial issues, such as clerical or typographical errors, which is not the situation for the legal regulated rent amendment request, as such a claim would, in essence, be re-calculating the rent history and determining the legal regulated rent.

Section 2528.3(c) of the Rent Stabilization Code ("RSC" or "the Code"), which was added to the regulations by the Rent Code Amendments of 2014 provides that an "owner seeking to file an amended registration" for other than the present registration year must file an application pursuant to section 2522.6(b) and Part 2527 of this Title as applicable to establish the propriety of such amendment "unless the amendment has already been directed by DHCR or is directed by another governmental agency that supervises such housing accommodation."

The amendment application process, as envisioned by the Code amendments, does not confer unlimited, open-ended rights upon the owner. In reviewing an amendment application, the Rent Administrator is tasked with determining whether sufficient justification has been provided by the owner for amending a specific portion, or portions, of an existing registration to safeguard the integrity of the information currently contained in the registration system. In this case, the owner requested that the Rent Administrator amend the apartment's rent registration to reflect a change in the legal regulated rent. As the Rent Administrator noted in their determination, amendments seeking to re-calculate the rental history or other types of changes are not applicable for an amendment registration application. The owner's request to amend the legal regulated rent in this case was beyond the scope of an amendment application and is best left for other case types addressing overcharge complaints, lease violation complaints, or administrative determination proceedings involving the issue of status.

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly granted the owner's request to amend the 2018 Annual Registration Summary and the 2018 Annual Apartment Registration pertaining to the number of types of units in the building, as well as the former tenant's name, lease period, and status. The owner's PAR has not established any basis to modify or revoke the Rent Administrator's determination to not allow any other changes as requested by the owner.

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

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

ISSUED: OCT 6 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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	**ADMINISTRATIVE REVIEW DOCKET NO.: JT110003RP GX110002RO**
FRESH POND REALTY CORP.,	:	**RENT ADMINISTRATOR'S DOCKET NO.: CQ110016AD**
	:	**TENANT(S):** [redacted]
PETITIONER	:	

ORDER AND OPINION, ON REMAND, DENYING PETITION FOR ADMINISTRATIVE REVIEW

On December 6, 2018, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on November 1, 2018, under Docket No. CQ10016AD (the "Order"), concerning the housing accommodation known as 613 Grandview Ave., Apt. [redacted], Ridgewood, NY, wherein the Rent Administrator determined that the subject apartment was not properly deregulated and is subject to the Rent Stabilization Law and Code. The owner filed a timely Petition for Administrative Review. Upon review of the administrative record, the Commissioner affirmed the Rent Administrator's determination that the apartment is subject to rent stabilization and modified the legal rent from $1,738.51 to $1,095.00 per month.

The Commissioner's order of the aforementioned PAR, issued under Docket Number GX110002RO, was subsequently appealed in a proceeding commenced by the above-named petitioner-owner pursuant to Article 78 of the Civil Practice Law and Rules: *Fresh Pond Realty Corp. v. DHCR*, Supreme Court of the State of New York, Queens County, Index No. 710843/2021. During this Article 78 proceeding, the Agency and petitioner-owner entered into a Stipulation of Settlement dated July 8, 2021, agreeing to further review, process, and issue a new order, resulting in the Agency opening the instant remand proceeding under Docket No. JT110003RP, whereby the Commissioner finds that Commissioner's order under Docket No. GX110002RO and the finding therein modifying the Legal Regulated Rent is effectively revoked, and that the Rent Administrator's order under Docket No. CQ110016AD is herein affirmed

After the reopening of the PAR proceeding, and after careful consideration of the entire evidence of record, the Commissioner is of the opinion that the petition should be denied, on remand.

The Commissioner notes that the subject premise received J-51 benefits for the years 2001 through 2012. Pursuant to Section 2520.11(r) of the Rent Stabilization Code ("RSC") and as stated in *Roberts v. Tishman Speyer Props., L.P.*, 13 N.Y.3d 270 (2009), rental units in rental buildings such as the subject property, are generally subject to rent stabilization for as long as a J-51 benefit is in force, and therefore, are not subject to any luxury decontrol provisions.

Certain housing accommodations, such as the one in the instant matter, in receipt of tax benefits pursuant to Section 489 of the Real Property Tax Law (J-51 tax benefits) are subject to rent regulation for at least as long as those tax benefits remain in effect, regardless of whether the accommodations were previously deregulated. (*See* Rules of the City of New York Housing Preservation and Development [28 RCNY] § 5-03(f)). As such, the subject apartment could not be deregulated in 2009 as asserted by the owner.

Furthermore, the Commissioner finds that, pursuant to Section 2522.8(a)(1) and (2) of the RSC, the previous tenants, [redacted] and [redacted] ([redacted])[1], were not issued a vacancy lease, but rather a month-to-month rental agreement, which is not a substitution for a vacancy lease under the RSC, and therefore, the Rent Administrator properly determined that a vacancy increase was not warranted at that time.

Accordingly, the Commissioner finds that the Rent Administrator's order under Docket No. CQ110016AD setting the Legal Regulated Rent as $1,738.51 and a preferential rent of $1,095.00 per month is affirmed on remand. Additionally, the Commissioner finds the petitioner-owner's claim that the subject accommodation has been deregulated is without merit as the prior tenants did not receive a proper vacancy lease. Further, the Commissioner finds that the apartment could not be deregulated as administrative records support that the subject building was in receipt of J-51 tax benefits during the period (in 2009) that the owner asserts that the subject apartment was purportedly deregulated.

As the subject apartment remains subject to the RSC, the petitioner-owner is directed to provide the tenant a renewal lease and register the subject apartment including all corresponding rents with the Agency within 60 days of this order.

[1] [redacted] and [redacted] lived in the subject apartment immediately preceding the tenant in the instant matter and were issued a non-regulated month-to-month lease.

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

ORDERED, the petition is denied, and the Rent Administrator's order under Docket Number CQ110016AD is affirmed.

ISSUED: OCT 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
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There is no other method of appeal.

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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.: IQ610001RO
(IO610031RO)

Park Lane Mosholu, LLC :

RENT ADMINISTRATOR'S
: DOCKET NO.: GS610006AD

PETITIONER

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On May 28, 2020, the above-named petitioner-owner properly re-filed a Petition for Administrative Review (PAR) against the Rent Administrator's order issued on February 7, 2020, under Docket number GS610006AD, concerning the housing accommodations located at 45 Mosholu Parkway, Apartment [redacted] Bronx, NY.

In its PAR, the owner requests a reversal of the Rent Administrator's order, contending that the owner was not properly notified of the complaint[1] below, and that the owner thus did not have an opportunity to answer in the proceeding; that the Agency sent all communications meant for the owner to the subject building, not specifying any address[2]; that at the time of the instant PAR, the owner was in the process of obtaining the information[3] in the Rent Administrator's file prior to making a substantive response to the content/order below; and that the owner reserved the right to make further submission on receipt of the requested information.

The tenant responded on June 15, 2020, contending, foremost, that the DHCR Notice of Commencement of Administrative Proceeding of February 2, 2019, was sent to the owner's correct address for service in the Agency database ([redacted]

[1] As the first notification received by the owner in reference to the matter was a letter from the tenant, with a copy of the Rent Administrator's determination herein below attached.

[2] But the building was registered, by the owner, with the New York City Department of Housing Preservation and Development, the New York City Department of Finance and on the owner's website with their contact addresses; and that the subject building was registered with the Agency indicating its address to be [redacted]

[3] I.e., a Freedom of Information Law (FOIL) request.

[redacted]); that the tenant also sent correspondence to the owner, which was received on March 6, 2020[4], which included a copy of the Rent Administrator's order of February 7, 2020; that the tenant's parents executed an original lease signed by the owner, making the tenant the first successor, not second successor; and that the tenant had thus been overpaying by $182/month since August 1, 2018, as requested by the owner.

Subsequently in the instant proceeding, by a submission dated July 29, 2020, the owner responded in substance, thus: that on receipt of the requested file, it was noted that a mistake was made; that the Agency found, due to a September 1, 1968 Lease in the record, that the original tenants of record for the subject premises were [redacted] wherefore on their passing, the tenant herein became a successor to the subject unit; that on said lease, only the name of [redacted] was printed on the first page; that while it seems that a [redacted] signed the signature line on the second page, this would not make her a tenant; that [redacted]'s name was not on the printed portion of the lease and even if the signature could be proven to be her signature, it must be construed to be on behalf of her husband; and that it could not be construed that there was any relationship between the owner and [redacted] by the Agency, by virtue of the lease in question. The owner, cited the Matter of New York City Property Management v. Santos and Fermin[5], where the court allegedly did not agree to confer tenancy rights on an individual when said individual's name was hand written on a lease, signed by him and countersigned thereafter by the landlord, when the lease contained another individual's printed name and signature; that in the instant case, [redacted]'s name was not even handwritten on, and as such, there was less of a basis to assume her tenancy than in the cited matter; and that as such, at the bare minimum, when [redacted] passed, [redacted] succeeded into his interest, thus making [redacted] the second successor in interest and permitting the landlord increases associated with second succession.

At the outset, the Commissioner notes that in the instant case, succession right is not an issue as the tenant herein had submitted an abundance of documents supporting his rights to succeed to the subject apartment. However, the issue to be determined is whether or not the tenant is a first or a second successor to the subject apartment.

After a careful consideration of the entire record, the Commissioner is of the opinion that the owner's petition should be denied.

In the proceeding below, the tenant had initiated proceeding for a determination of the regulatory status of the subject apartment and ascertain his specific succession rights/status, indicating that he had been residing in the apartment since 1999. Based on the records, [redacted], tenant's father, passed on October 28, 1998, and [redacted], tenant's mother, passed on June 30, 2017. Although the Agency records indicates that the owner was served with a notice of the proceeding, there was no response from the owner prior to the issuance of the Rent Administrator's order which found that the tenant was the first successor in the subject apartment.

The Commissioner notes that the New Standard Apartment Lease from September 1, 1968 to August 31, 1970 indicated the tenant's father, [redacted], as the Tenant on the front page of the Lease, and that the Tenant's signature portion was signed by the mother, "[redacted]".

[4] Supported by a certified mail return receipt – copy attached.

[5] 18 Misc.3d 5, 853 N.Y.S.2d 446 (App. Term 1st Dept. 2007)

Foremost, the 1968 Lease which is in the record shows the names of both parents on the Lease as noted above, with the father's name was on the Tenant's name portion on the front page of said Lease and the mother's signature on the signature line on the second page of the Lease. Although the owner contends the signature may not belong to the mother, and that if it does, may not convey tenancy rights on the mother, the late [redacted], the Commissioner notes that this is just a mere speculation as that is the only signature indicating that the vacancy lease was executed. Thus, presenting an unrebutted presumption that the tenancy which was in effect during the lifetime of the parents was that of co-tenants. The Commissioner notes that the Matter of New York City Property Management v. Santos and Fermin, which the owner sought to rely upon herein is totally inapposite, as that was a case whereby the individual who signed alongside the tenant's name, and allegedly signed after altering the document by inserting his name first, a case bordering on illegal subletting. In the instant case, the tenant's succession rights were not even in dispute. The Commissioner notes that the matter to be decided is whether the tenant herein is the first or the second successor.

The Commissioner further notes as indicated in case addressing a similar issue; the Matter of Bernard Haggerty[6], relying on the Appellate Division's observation in the Matter of Klein v. DHCR[7], that unlike under the Rent Stabilization Law and Code, there is no provision in the Rent Control Laws setting forth any guidelines or mandates involving a successor tenant as to what action an owner, or a tenant, must take with respect to changing the identification information pertaining to the tenancy. A family member who qualifies merely succeeds to the decedent tenant's rights if that is his or her choice.

The Commissioner notes, however, that for proper direction regarding rent-controlled premises, the Rent Regulation Reform Act of 1997 (RRRA) is highly instructive. Said Act changed the definition of "succession" rights so that an apartment can be "passed down" for only a single generation without a vacancy increase.

In consonance with the RRRA above, and the 1968 Lease as analyzed above, the Commissioner notes that the first generation after [redacted] and [redacted], the deceased parents in the instant case, is the tenant herein. Accordingly, the Commissioner finds that there was no error in the Rent Administrator's finding below.

Based on the foregoing, the Commissioner finds that the owner's petition must be denied as the record indicates that the tenant herein is deemed as the first successor to the subject apartment.

The Agency records indicate that the tenant had commenced a rent overcharge proceeding before the Agency on April 27, 2020.

THEREFORE, based on the applicable provisions of the New York City Rent and Eviction Regulations, it is

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[6] Admin. Rev. Docket No. BO220054RT

[7] 17 A.D.3d 186 (First Dept. 2005).

ORDERED that this Petition for Administrative Review be, and the same hereby is, denied.

ISSUED: OCT 21 2022

WOODY PASCAL
Deputy Commissioner

State of New York
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Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
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Right to Court Appeal

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	
649-651 CLASSON LLC	ADMINISTRATIVE REVIEW DOCKET NO.: HV210007RO
PETITIONER	RENT ADMINISTRATOR'S DOCKET NO.: EW210018AD

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

On October 10, 2019, the above-named petitioner-owner filed a petition for administrative review (PAR) against an order issued on September 12, 2019, by the Rent Administrator concerning the housing accommodations known as 649 Classon Avenue, Apartment [redacted] Brooklyn, NY, wherein the Administrator determined that the subject apartment is subject to the Rent Stabilization Law and Code and set the legal rent of the subject apartment.

In the PAR, the owner requests a reversal of the Rent Administrator's order, alleging, based on Section 2527.8 of the Rent Stabilization Code (RSC or the Code), an illegality and irregularity in a vital matter[1]; and that the order herein below was issued contrary to law and established DHCR policy.

The owner argues that an Administrative Determination (AD) proceeding was not the proper forum for the tenant's concern, in that the tenant requested to know the legal rent of the subject apartment, when an AD proceeding is for determining the regulatory status of an apartment/building; that it was thus an error for the Rent Administrator to process the AD proceeding as if it was an overcharge complaint; that on April 11, 2019, the owner submitted a letter from the tenant, requesting a withdrawal of the complaint, and that in response to the letter, on April 23, 2019, the Administrator requested from the owner a forwarding address for the tenant, which the owner provided on April 29, 2019; that during the proceeding, the Administrator requested the owner to submit any documentary evidence regarding the regulatory status of the subject apartment and any documentary evidence regarding the rental history of the subject apartment, and the owner submitted a complete rent history starting from

[1] The owner claiming that an illegality and irregularity in a vital matter as defined by the DHCR Policy Statement 91-5 is "failure by the Agency to comply with established rules of practice and procedure".

June 1, 2012; that on May 31, 2019, the Administrator subsequently requested a rent history from 1997 to present, and the Administrator then calculated the current legal rent based on a 1996 regulatory agreement.

The owner argues further that, contrary to DHCR normal processing procedures, the Agency did not send a Final Notice to the owner to request any missing information, even if the AD proceeding was going to calculate the rent as in overcharge cases; and that pursuant to Section 2526.1 of the Code, there was a four-year limit beyond which the Rent Administrator is not permitted to calculate an overcharge, but the Rent Administrator arbitrarily and capriciously calculated the rent based on a 1996 rent regulatory agreement. The owner also asserts that the Housing Stability and Tenant Protection Act of 2019 (HSTPA) made the look-back period 6 years, limiting the Agency to a maximum of a six-year look-back period; that it was therefore an error and contrary to law for the Rent Administrator to request rent information from 1997; that it was arbitrary and capricious for the Administrator to list "current occupant" on the order, because the Administrator did not, at any time during the proceeding, indicate that the Agency was processing the legal rent of the subject apartment as the owner would have provided the information and documentation to establish the extensive Individual Apartment Improvement (IAI) performed prior to the occupancy of the "current occupant"; that the Agency has that information by virtue of the 2019 annual rent registration filings, submitted to the agency on April 30, 2019, "evidencing a legal regulated rent of $2,815.99"; and that it was thus arbitrary and capricious for the Administrator to provide the current occupant with an order setting his rent at $1,890.03.

A review of the Rent Administrator's record reveals that the tenant, [redacted] commenced an Administrative Determination (AD) proceeding on November 10, 2016, requesting that the Agency make a determination that the subject apartment is subject to the rent stabilization laws and ascertain the "correct legal rent." The tenant claimed that the subject building was completed prior to 1974 and contained more than six (6) units; and that after the property was sold, the new owner offered him a renewal lease with an increase that was higher than the allowable increase set by the Rent Guidelines Board for the same period.

The record before the Rent Administrator indicates that the owner, on January 18, 2017, confirmed that the subject apartment is rent stabilized, and that the tenant moved in on June 1, 2012. Thereafter on April 22, 2019, the owner submitted a letter dated April 11, 2019, purporting to be signed by the subject tenant, [redacted] advising the Rent Administrator that the tenant vacated the subject apartment and requested that the subject complaint be dismissed and terminated. The Rent Administrator was provided with [redacted] forwarding address, and the Rent Administrator, on May 3, 2019, provided [redacted] with the withdrawal letter, requesting that the tenant confirm that they wish to withdraw their complaint. The Commissioner notes that no further response was received from [redacted]

Subsequent thereto, in response to the Agency's further Request for Additional Information/Evidence and/or Due Process, the owner claimed to have taken ownership of the property in 2014, and the owner submitted documentation and the requested information, which included the tenant's initial lease and subsequent leases renewals, and the rent ledger for the subject apartment from April 10, 2014 to April 30, 2018.

The record before the Agency indicates that the prior owners of the subject building entered into a regulatory agreement with the City of New York on April 22, 1996, wherein the initial legal regulated rent for the subject apartment was set at $975.00 per month. The Rent Administrator found that the subject apartment is subject to the Rent Stabilization Law and Code as the building contained six (6) or more housing accommodations on January 1, 1974. The Rent Administrator also calculated the rent using $975.00 per month as the base rent and assessing the corresponding Rent Stabilization Guidelines Board increases until February 1, 2019, when the current tenant's lease commenced; based on which the legal regulated rent for the subject apartment as of February 1, 2019 was found to be $1,890.03 per month.

After a complete review of the record, the Commissioner's finds that the Rent Administrator's order should be modified to include only the finding that the subject apartment is rent stabilized, while the portion of the Rent Administrator's order calculating and finding the legal rent for the subject apartment (pursuant to the tenant's complaint that the legal regulated rent for the subject apartment was inordinately raised by the new owner) be expunged.

At the outset, the Commissioner notes that rent stabilized status of the subject apartment is not in contention as the owner acknowledged same, and the subject apartment was and has been registered as a rent stabilized apartment in the Agency's database at the time of the proceeding below and prior to that time.

The Commissioner notes that the subject Rent Administrator's decision was decided on September 12, 2019, prior to the Court of Appeals decision on April 2, 2020 in the Matter of Regina Metro. Co., LLC v. DHCR, 35 N.Y.3D 332, 154 N.E.3d 972 (2020) (hereinafter referred to as Matter of Regina). The Rent Administrator in the subject underlying decision therefore could not have applied the principles from Matter of Regina in their findings. Notwithstanding this fact, the Commissioner finds that the Rent Administrator properly found that the subject apartment is subject to the Rent Stabilization Law and Code. As the Court of Appeals discussed in Matter of Regina, "[c]ritically, there is a distinction between an overcharge claim and a challenge to the deregulated status of an apartment..." (see footnote 4, page 352). Hence, an overcharge claim is distinct from that of a regulatory status claim, and as noted in Matter of Regina, "there has long been a statute of limitations restricting recovery of monetary damages in overcharge claims and this remains true under the HSTPA [Housing Stability and Tenant Protection Act of 2019]..."

With respect to the owner's contention that the tenant had requested a dismissal of the case, the Commissioner notes that generally, when a party seeks the withdrawal of a case before the DHCR, credence is given to such request as public policy favors the amicable settlement of disputes. However, where the issue concerns the regulatory status of a subject premises, given that the rent stabilized status attaches to the rent regulated apartment/building and not a specific tenant(s), the Commissioner finds that the Rent Administrator properly determined the rent regulated status of the subject apartment even though the tenant who filed the AD case had vacated the subject apartment. Additionally, such finding may be properly served on the current occupant of the apartment.

However, the Commissioner finds that this case is distinctive in that a new tenant of the subject apartment, [redacted] filed an overcharge proceeding on May 30, 2022 (which is

currently pending under Docket No. KQ210072R), as well as the fact that the subject tenant who filed the AD request, [redacted], withdrew their complaint, including their claim of overcharges stemming from when the new owner offered the tenant a renewal lease with an increase higher than allowed. Accordingly, the Commissioner finds that the claim of rent overcharges should be addressed in the pending overcharge case, Docket No. KQ210072R. Therefore, the Commissioner finds that the Rent Administrator's order under Docket No. EW210018AD is modified to strike out that portion of the order which calculated the legal regulated rent from April 22, 1996 and set the legal regulated rent as of February 1, 2019 at $1,890.03 per month.

Based on the foregoing, the Commissioner finds that the owner's PAR should be granted in part; and that the Rent Administrator's order, Docket No. EW210018AD, be modified to remove that portion of the order calculating the legal regulated rent based on the April 22, 1996 regulatory agreement between the prior owners and the City of New York.

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

ORDERED, that this petition be, and the same hereby is, granted in part, and that the Rent Administrator's order be, and the same hereby is, modified as delineated above.

ISSUED: NOV 4 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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	**ADMINISTRATIVE REVIEW DOCKET NO.: HR210001RO**
CROWN HEIGHTS ASSOC.,	:	**RENT ADMINISTRATOR'S DOCKET NO.: EW210020AD**
PETITIONER	:	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On June 3, 2019, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") of an order the Rent Administrator issued on April 30, 2019 (the "Order"), concerning the housing accommodation known as 1092 President Street, Apt. [redacted], Brooklyn, NY, wherein the Rent Administrator determined that the subject housing accommodation is subject to the Rent Stabilization Law and Code.

On November 3, 2016, the tenant initiated an Administrative Determination proceeding for the purpose of determining the status of the subject housing accommodation, asserting that in January 2016, the petitioner-owner brought a holdover proceeding against the tenant, wherein the petitioner-owner alleged that the tenant is rent-controlled when the tenant is actually rent stabilized; the tenant moved into the subject apartment in March 1980 following the vacancy of another tenant who he did not know; rent regulation is governed by statute despite how an owner registers an apartment; and the tenant has been overcharged by erroneous increases dedicated to rent controlled tenancies. In response, the owner asserted that the unit was filed as rent controlled since 1992; however, in 2010, the previous management company mistakenly filed the unit as rent stabilized, which was corrected for the years 2011-2016. The owner further asserted that the unit was approved for Maximum Base Rent increases on May 7, 2012, March 31, 2014, and March 17, 2016. Based on evidence contained in the record, the Rent Administrator issued an order on April 30, 2019, under Docket No. EW210020AD determining that the subject housing accommodation is rent stabilized as the status of the subject accommodation is determined by statute.

On June 3, 2019, the petitioner-owner filed the instant PAR, asserting that: (1) the subject apartment should be rent controlled as the building and its apartments are excluded from the Rent Stabilization Law ("RSL") by section 2520.11(c) of the Rent Stabilization Code ("RSC"),

as the mortgage agreement between Marcot Realty, Inc. and Grosfeld and the City of New York, dated June 30, 1969, stated that the mortgage is in effect for 30 years during which time rent control regulations remained in effect regardless of the change in occupancy; and (2) the same mortgage agreement references Article VIII of the Private Housing Finance Law (sections 404 and 405), which requires that all renters including new renters be subject to the Rent Control laws.

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

It is well settled that rent stabilization coverage is a matter of statutory right and cannot be created by waiver or estoppel. (*Ernesto Ruiz v. Chwatt Associates et al.*, 247 A.D.2d 308 (N.Y. App. Div. 1998)). The record supports that the mortgage agreement dated June 30, 1969, states:

> "The mortgagor agrees that so long as any part of this mortgage debt remains unpaid or any tax exemption or tax abatement granted as a result of the installations or improvements made pursuant to Article 8 of the Private Housing Finance Law of the State of New York remains in effect, or for a period of at least 10 years from the date of issuance of the Certificate of Occupancy to be issued, whichever of the foregoing is the later date, that:
>
> ....
>
> (c) No charge or rental for housing accommodations in such multiple dwelling shall be made or charged in excess of the maximum rentals prescribed by the New York City Rent and Rehabilitation Administration and the housing accommodations shall be subject to the provisions of the New York City Rent Control Law *and the regulations promulgated thereunder* during such period." (emphasis added).

The language put forth in the mortgage agreement encompasses what is required for an apartment to remain rent controlled. For an apartment to be under rent control, the tenant or the tenant's lawful successor must have been living in the apartment continuously before July 1, 1971. Generally, when a rent-controlled apartment is vacated, it becomes rent stabilized, particularly in buildings built before February 1, 1947, with tenants who moved in after June 30, 1971.

Here, evidence in the record supports that the subject building was built in or around 1915, contains 21 units and is connected to 3 other buildings (1082, 1086, and 1096); however, a mortgage pursuant to Article 8 of the Private Housing Finance Law was secured on June 30, 1969, with the City of New York for the purpose of rehabilitating the subject building. While New York City Department of Buildings ("DOB") records reflect that a Certificate of Occupancy was issued for 1086 President Street in or around November 1971, DOB records do not reflect a Certificate of Occupancy listed for the subject building following the issuance of the June 30, 1969 loan.

Regarding the petitioner-owner's assertion that the building and its apartments are to remain under rent control, as same is excluded from the RSL by RSC section 2520.11(c) via the

June 30, 1969 mortgage agreement regardless of the change in occupancy, the petitioner-owner's argument is contradicted by RSC section 2520.11(c), which outlines exemptions to the Code. RSC section 2520.11(c) states as an exemption, "housing accommodations for which rentals are fixed by the DHCR or HPD, *unless*, after the establishment of initial rents, the housing accommodations are made subject to the RSL pursuant to applicable law..." (emphasis added).

In this matter, Agency records indicate that the petitioner-owner filed for decontrol of a rent-controlled apartment under Docket No. CO220043SD, whereby the Rent Administrator determined that "Housing accommodations which become vacant on or after June 30, 1971 either by voluntary surrender of possession or eviction pursuant to Part 2204 of the CRER are not subject to rent control." Agency records further support that a tenant named [redacted] resided in the subject apartment in 1972, and it is undisputed that the tenant moved into the subject apartment in or around 1980 following a vacancy to which the tenant in this matter had no relation. As the subject building was built prior to January 1, 1974 and contains more than six units, the subject apartment became rent stabilized upon the vacancy of the previous tenant.

Based on the foregoing, the Commissioner finds that the evidence contained in the record supports that the Rent Administrator properly relied on the evidence in the record and further, that the subject apartment is subject to the Rent Stabilization Law and Code.

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

ORDERED, the petition is denied, and the Rent Administrator's order under Docket Number EW210020AD is affirmed.

ISSUED: NOV 7 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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	**SJR: 17,429**
	:	**ADMINISTRATIVE REVIEW**
	:	**DOCKET NO.: JX630001RP**
	:	**HU630008RO**
5400 COMPANY,	:	
	:	**RENT ADMINISTRATOR'S**
	:	**DOCKET NO.: GT630002RK**
	:	**(FT630003AD)**
PETITIONER	:	
	:	**TENANT(S): VARIOUS**

ORDER AND OPINION, ON REMAND, DENYING PETITION FOR ADMINISTRATIVE REVIEW

This Order and Opinion is being issued pursuant to the remit directed by the Decision and Order of Honorable Ruben Franco, JSC, issued on July 27, 2021 in 5400 Fieldston Road Association v. DHCR, Supreme Court of the State of New York, Bronx County, Index No. 801519/2021E, This Article 78 proceeding was brought to review the Deputy Commissioner's Order and Opinion issued on December 4, 2020, under Docket No. HU630008RO, concerning the housing accommodation known as 5400 Fieldston Road, Bronx, NY, wherein the Commissioner revoked the order issued on August 12, 2019, under Docket No. GT630002RK which superseded the underlying proceeding under order Docket No. FT630003AD.

On August 17, 2017, the Rent Administrator initiated an Administrative Proceeding for the purpose of determining whether parking is a required service in the subject building. After reviewing agency records, the Rent Administrator issued an order on April 6, 2018, under Docket Number FT630003AD, indicating that: parking was not included in the rent; that the registration on file with the agency does not list parking as a service being provided; that the tenants pay for parking separately from their apartment rent; and there is no common ownership between the operator of the garage space and the owner of the subject premises.

The Rent Administrator subsequently reopened the proceeding under Docket Number GT630002RK based on fraud, illegality, or irregularity in a vital matter, allotting both parties to comment and provide information to be considered when making a final decision to affirm, modify, or revoke the order under FT630003AD. Upon review of the record, the Rent Administrator issued an order on August 12, 2019, revoking the April 6, 2018 order, finding that an indirect ownership existed between the owner of the parking garage and the owner of the

building as the prior superintendent of the building was also the operator of the subject garage, HS Parking, thereby limiting any increases in parking rates to the percentage authorized by the NYC Rent Guidelines Board for rent-stabilized tenants. In the same order, the Rent Administrator clarified that garage services were not a base-date service, and as such, parking is not an ancillary service for rent-controlled tenants.

The petitioner-owner subsequently filed a PAR, which was granted on December 4, 2020, under Docket Number HU630008RO. The allegations raised in the PAR were fully set forth in the Deputy Commissioner's December 4, 2020, Order and Opinion and need not be repeated herein. The tenants then filed an Article 78 proceeding which resulted in the reopening of the PAR and thereby, the instant proceeding. Upon remand, the petitioner-owner reiterated its arguments.

After the reopening of the PAR proceeding, and after careful consideration of the entire evidence of record, the Commissioner is of the opinion that the petition should be denied, on remand.

Pursuant to Section 2520.6(i) of the Rent Stabilization Code ("the Code"), an "owner" is defined as:

> "A fee owner, lessor, sublessor, assignee, net lessee, or a proprietary lessee of a housing accommodation in a structure or premises owned by a cooperative corporation or association, or an owner of a condominium unit of the sponsor of such cooperative corporation or association or condominium development, or any other person or entity receiving or entitled to receive rent for the use or occupation of any housing accommodation, *or an agent of any of the foregoing*, but such agent shall only commence a proceeding pursuant to section 2524.5 of this Title, in the name of such foregoing principals. Any separate entity that is owned, in whole or in part, by an entity that is considered an owner pursuant to this subdivision, and which provides only utility services shall itself not be considered an owner pursuant to this subdivision..." (emphasis added).

With respect to ancillary services, section 2520.6(r)(4)(xi) of the Rent Stabilization Code ("the Code") provides:

> "A service as defined in paragraph (3) of this subdivision for which there is or was a separate charge, shall not be subject to the provisions of this Code where no common ownership between the operator of such service and the owner exists or existed on the applicable base date, or at any time subsequent thereto, and such service is or was provided on the applicable base date and at all times thereafter by an independent contractor pursuant to a contract or agreement with the owner. *Where, however, on the applicable base date or at any time subsequent thereto, there is or was a separate charge, and there is or was common ownership, directly or indirectly, between the operator of such service and the owner*, or the service was provided by the owner, any increase, other than the charge provided in the initial agreement with a tenant to lease, rent or pay for such service, shall conform to the applicable rent guidelines rate. However, notwithstanding such common ownership, where such service was not provided primarily for the use of tenants in the building or building complex on the applicable base date or at any time

subsequent thereto, such increases shall not be subject to any guidelines limitations." (emphasis added).

Here, it appears that the superintendent of the subject building, [redacted] met the regulatory definition of "owner" as it is undisputed that at one point, [redacted] was simultaneously the owner of the parking garage, HS Parking, and employed as superintendent of the subject building, thereby creating the relationship as an agent of the owner. Further, there is no evidence to indicate that the parking garage was not primarily intended for use of the tenants.

In sum, the record supports that there was common ownership, between the parking garage and the subject building, and therefore, that the parking garage is currently subject to the Rent Stabilization Law and Code.

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

ORDERED, the petition is denied, on remand, and the Rent Administrator's order under Docket Number GT63002RK is affirmed.

ISSUED: NOV 7 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
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

536 E. 5TH ST. EQUITIES

PETITIONER

----------x

SJR 17,277

ADMINISTRATIVE REVIEW
DOCKET NO.: JO410002RP
(HR410018RO)

RENT ADMINISTRATOR'S
DOCKET NO.: EP410043AD

AMENDED ORDER AND OPINION GRANTING IN PART PETITION FOR ADMINISTRATIVE REVIEW ON REMAND

This Order and Opinion is amended solely to provide notice to the Owner's Counsel at their updated mailing address. All other aspects of the prior Order and Opinion issued on June 16, 2022 remain in full force and effect.

By Order and Opinion under Administrative Review Docket Number HR410018RO, issued July 9, 2020, the Deputy Commissioner denied the above-named Owner's Petition for Administrative Review (PAR) concerning the regulatory status of the housing accommodation known as Apartment [redacted] at the premises 536 East 5th Street, New York, New York. The underlying Rent Administrator's Order, issued on May 24, 2019, declared the apartment subject to rent stabilization. The Rent Administrator also calculated the legal regulated rent for various time periods, including the Tenant's lease period, starting on August 1, 2017 and ending on July 31, 2018, and directed the Owner to refund to the Tenant all monies collected in excess of the calculated legal regulated rent from April 4, 2012, four years prior to the Tenant's filing of the subject request for an administrative determination.

The Owner thereafter filed an Article 78 Proceeding, *536 E. 5th St. Equities Inc. v. DHCR*, Index No. 159153/2019, Supreme Court, New York County, arguing that the Commissioner's decision to affirm the Rent Administrator's Order was improper. The Honorable Judge Carol R. Edmead issued a decision on November 16, 2020, granting DHCR's cross-motion thereby remitting the matter to DHCR for further consideration and review.

In the Rent Administrator's proceeding, the Tenant requested an administrative determination on the regulated status of the subject unit and to fix the legal rent. The Tenant alleged to have been a Lessee of the subject premises since August 2008 and that the Owner, through fraudulent documentation and improper rent increases, illegally deregulated the unit. In response, the Owner claimed that the subject unit was not regulated as the unit was previously deregulated through individual apartment improvements (IAI) and vacancy allowances which brought the rent level above the then existing threshold for high rent vacancy deregulation.

The Rent Administrator found that the Owner failed to substantiate their IAI claims and further, calculated the rent from the last registered rent stabilized tenant, and continued forward with each succeeding lease. Based on this calculation, the Rent Administrator determined that the legal regulated rent on the last lease on file, starting on August 1, 2017 and ending on July 31, 2018 was set at $989.98 per month, and that future rents would be calculated based on this amount. In addition to this calculation, the Rent Administrator directed the Owner to refund to the Tenant "all monies collected in excess of the calculated legal regulated rent from April 4, 2012, 4 years back from the filing of [the] complaint." The Rent Administrator advised the Tenant to file a "Tenant's Complaint of Rent and/or Other Specific Overcharges in a Rent Stabilized Apartment" if the Owner failed to refund the overpayment.

Thereafter, the Owner filed the subject PAR, Docket Number HR410018RO, requesting a reversal of the Rent Administrator's Order and alleged, in pertinent part, that the Rent Administrator looked back more than the four-year statute of limitations without offering a basis for such look-back; that the subject unit was deregulated in 2001; that the Rent Stabilization Law bars the examination of an apartment's rental history beyond the four years from the date that an overcharge claim is asserted; and that an overcharge claim cannot be calculated beyond four years.[1] During the pendency of the Owner's PAR on April 2, 2020, the New York Court of Appeals issued a decision in *Matter of Regina Metro. Co., LLC v. DHCR*, 35 N.Y.3D 332, 154 N.E.3d 972 (2020) (hereinafter referred to as *Matter of Regina*), which discussed overcharge matters before DHCR. The Owner in the subject underlying PAR on May 22, 2020 requested that DHCR grant the Owner's PAR and dismiss the overcharge complaint as *Matter of Regina* resolved the issues.

After a complete review of the record, the Commissioner under Docket Number HR410018RO denied the Owner's PAR, affirming the Rent Administrator's conclusion that the subject unit is subject to rent stabilization, and found that the Owner did not establish any error with that conclusion.

Pursuant to the remit of Docket Number HR410018RO, and after a further review and consideration of the proceedings below, the Commissioner finds that Owner's PAR should be granted in part. The Rent Administrator's Order, Docket Number EP410043AD, should be modified to remove that portion of the Order directing the Owner to refund the tenant all monies collected in excess of the calculated legal regulated rent four years prior to the filing of the

[1] The underlying Commissioner's Order, Docket Number HR410018RO, contains a detailed discussion and determination on the rent stabilized status of the subject unit, which is affirmed in this remand proceeding.

complaint, April 4, 2012 as well as using any calculation of the rent utilized to assess jurisdiction here as part of the actual rent setting.

At the outset, the Commissioner notes that the subject Rent Administrator's decision was decided on May 24, 2019, prior to the Court of Appeals decision on April 2, 2020 in *Matter of Regina*. The Rent Administrator in the subject underlying decision therefore could not have applied the principles from *Matter of Regina* in their findings. Notwithstanding this fact, the Commissioner finds that the Rent Administrator properly found the subject unit subject to rent stabilization as the unit was not properly deregulated. However, the Commissioner finds that the Rent Administrator inappropriately used that calculation to set a present rent and to direct the Owner to refund the Tenant excess rent collected in light of the Rent Administrator's calculation of the legal regulated rent. As discussed in the underlying Commissioner's decision, Docket Number HR410018RO, the issue before the Rent Administrator was the regulatory status of the subject unit, not an overcharge proceeding.[2] Courts have upheld the DHCR's consideration of events beyond the overcharge look-back period when the DHCR is determining whether an apartment is regulated or whether an apartment was improperly removed from rent stabilization. As the Court of Appeals mentioned in *Matter of Regina*, "[c]ritically, there is a distinction between an overcharge claim and a challenge to the deregulated status of an apartment..." (*see* footnote 4, page 352). Hence, an overcharge claim is distinct from that of a regulatory status claim, and as noted in *Matter of Regina*, "there has long been a statute of limitations restricting recovery of monetary damages in overcharge claims and this remains true under the HSTPA [Housing Stability and Tenant Protection Act of 2019]..."

The setting of a rent based on the use of that longer look back period, plus attendant rent refunds would be contrary to *Matter of Regina*. In *Matter of Regina*, the quotation in the context of that litigation concerned the sole jurisdictional issue of regulatory status due to the receipt of J-51 benefits and not a recalculation of rents and rent refunds.

Accordingly, the Commissioner finds that the Rent Administrator improperly addressed an overcharge issue in the subject case when the relevant claim was one of the regulatory status of the subject unit. Therefore, the Rent Administrator's Order under Docket Number EP410043AD is modified to strike that portion of the Order which directed the Owner to refund the Tenant all monies collected in excess of the calculated legal regulated rent from April 4, 2012, four years back from the tenant's filing of the complaint, and that portion of the Order which sets the legal regulated rent for the last lease on file, starting on August 1, 2017, ending on July 31, 2018 at $989.89 per month, that all future rents should be based upon.

The Commissioner notes that the attendant calculations of any rent overcharges are the subject of a "Tenant's Complaint of Rent and/or Other Specific Overcharges in a Rent Stabilized Apartment" filed by the Tenant which is currently pending under Docket No. IS410085R.

[2] The Commissioner notes that the Tenant has filed a "Tenant's Complaint of Rent and/or Other Specific Overcharges in a Rent Stabilized Apartment" with this Agency to pursue an overcharge complaint. In fact, a review of the Agency's records show that the Tenant subsequently filed an overcharge complaint on July 30, 2020, which is currently pending.

The Rent Administrator's Order is otherwise affirmed as it relates to the regulatory status of the subject unit. Thus, as stated in the underlying PAR Order issued under Docket Number HR410018RO, the Rent Administrator properly found that the Owner failed to provide adequate documentation to substantiate the claimed IAIs. The Rent Administrator, while not making a finding that the lack of substantiation was tantamount to a fraudulent scheme to deregulate, correctly found no basis for high rent vacancy deregulation as claimed by the Owner. While the Owner submitted two short statements from the same individual, claiming their company received payment in full and that the job was completed in 2001, the two statements, among other things, did not give any further details as to when payment was received, how much was paid or what work was completed. Although the Owner supplied an invoice for the work in the subject apartment, the invoice only contained a lump sum for all the claimed work, without any breakdown for any of the specific items contained in the invoice. The underlying PAR Order, among other things, did not retroactively apply the standards of Operational Bulletin 2016-1, but correctly noted that DHCR Policy Statement 90-10, in addition to providing that IAIs be supported by adequate documentation, consisting of at least one of four types set forth therein also provides "[w]hen ever it is found that a claimed cost warrants further inquiry, the processor may request that the owner provide additional documentation." The Owner herein did fail to provide further proof which was requested by the Rent Administrator. Also, as set forth in the underlying PAR Order, the Owner claimed that the subject unit was registered with DHCR as deregulated. However, in support of this claim, the Owner only supplied a copy the first page of what it claimed was an "Owner's Report of Vacancy Decontrol" and did not provide any proof that the report was ever filed with DHCR.

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

ORDERED, that the PAR originally filed under Administrative Review Docket Number HR410018RO is granted in part on court remand, modifying the Rent Administrator's Docket Number EP410043AD to remove that language directing the Owner to refund the Tenant all monies collected in excess of the calculated legal regulated rent calculated from April 4, 2012 or to set a legal regulated rent that all future rents should be based upon as such matters are properly the subject of the overcharge complaint. The Rent Administrator's order is so otherwise affirmed.

ISSUED: NOV 9 2022

Woody Pascal
Deputy Commissioner

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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: 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@hcr.ny.gov. 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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	**ADMINISTRATIVE REVIEW DOCKET NO.: JS410002RO**
157 BROADWAY ASSOCIATES LLC	:	
PETITIONER	:	**RENT ADMINISTRATOR'S DOCKET NO.:HW410008AD**

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On July 1, 2021, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on May 27, 2021 (the "order"), concerning the housing accommodation known as 550 West 157th Street, Apt [redacted] New York, New York wherein the Rent Administrator terminated the proceeding as the subject apartment was found to be vacant.

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 owner, through its counsel, seeks a reversal of the order contending that the order violates the owner's due process and property rights, with the owner seeking to re-open the matter for a final determination concerning the regulatory status of the subject apartment. The owner asserts DHCR is required to adjudicate the owner's Administrative Determination (AD) proceeding, citing caselaw[1] and Operational Bulletin 95-2 to support their assertion. The owner reasserts the facts set forth below, which include, that the prior tenants of the subject apartment had been granted a rent reduction after they filed a decreased service application assigned under Docket No. FT410023S; that the owner filed a PAR against the rent reduction

[1] Matter of 81 Warren Street Realty Corp. v. New York State Division of Housing and Community Renewal, 2008 N.Y. Misc. LEXIS 8358; Matter of 1234 Broadway LLC v. Division of Hous. & Community Renewal, 40 Misc. 3d 1234(A), 980 N.Y.S.2d 277 (Sup. Ct. NY Co. 2013; Hunter, J.); Stone v. DHCR, N.Y.L.J., 4/26/95, p. 26, col.3 (Sup. Ct. N.Y. Co. Gammerman, J.); Gianelli v. New York State Div. of Housing and Community Renewal, 142 Misc.2d 285, 536 N.Y.S.2d 675 (Sup. Ct, Qns. Co. 1989); & Ista Management v. State Div. of Housing and Community Renewal, 139 Misc. 2d 1, 526 N.Y.S.2d 375 (Sup. Ct. N.Y. Co. 1988, Rubin, J.).

order assigned under Docket No. GQ410029RO[2] which was denied; that the PAR order directed the owner to file an AD proceeding; and that the termination order at issue, which was based on the fact the apartment was vacant, prejudices the owner by placing the owner in a vulnerable position by forcing the owner to risk choosing to either treat the apartment as a fair market unit or as a rent regulated apartment.

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

The record reveals that the owner, by counsel, commenced an AD proceeding by filing a written request dated November 21, 2019, that sought a determination regarding the regulatory status of the subject apartment. The owner claimed the apartment was lawfully deregulated on June 1, 2011 as the legal regulated rent exceeded the $2,000.00 threshold. The owner submitted documentary evidence to support its position and further alleged that the tenants, [redacted] and [redacted], who purportedly took possession of the subject apartment on June 1, 2014, had filed a service complaint on August 3, 2017 assigned Docket No. FT410023S which was granted on April 5, 2018; that the owner filed a PAR against the service complaint, requesting the reversal of the service's order based on the owner's claim that DHCR did not have jurisdiction over the subject apartment; and that when the PAR was denied on August 29, 2019 under Docket No. GQ410029RO, the Commissioner therein advised the owner to commence an AD proceeding to determine the status of the subject apartment.

According to the record, the Rent Administrator, on January 16, 2019, mailed a Request for Additional Information/Evidence ("RFAI") to the owner, advising the owner that to continue with the proceeding for the subject apartment, the owner was required to provide the current tenant's name along with a legible, fully executed copy of their current lease in effect and the rent ledger for the current lease term. Thereafter, the owner filed a response dated March 12, 2020 wherein the owner stated the apartment was vacant, that there was no lease or rent ledger to provide and reiterated the assertions provided in their filed November 21, 2019 request for a determination establishing that the apartment was lawfully deregulated and exempt from rent stabilization.

A further review of the record shows that on September 21, 2020, the Administrator mailed to the owner and the tenants, [redacted] and [redacted], an additional RFAI which restated the owner's allegation that the apartment was vacant and simultaneously sought from the owner all legible, fully executed leases from May 1, 2006 (registered tenant [redacted]) up to the current vacancy; legible rent ledgers from May 1, 2006 up to the current vacancy and requested the owner provide an explanation for the increase in rent from the tenants "[redacted]" to "[redacted]" (the registered tenant in 2009). After providing the owner with time in which to reply, the owner filed a response dated December 28, 2020 in which the owner reiterated the statements made in their earlier responses and claimed the "RFAI is

[2] In the services related PAR, Docket No. GQ410029RO, the owner alleged for the first time that the subject apartment was not subject to rent regulations and that the Agency had no jurisdiction over the apartment.

unsupported in law." The Commissioner notes that the owner's submission did not provide the documentation requested by the Administrator.

Subsequently, the Rent Administrator, on March 15, 2021, mailed to the tenants, [redacted] and [redacted], and the owner a final "Notice of Commencement of Administrative Proceeding," pursuant to Sections 2202.22 of the New York City Rent and Eviction Regulations ("NYCRR" or "the Regulations") and/or Section 2522.6 of the Rent Stabilization Code ("RSC or the Code"), to determine the rental status of the subject apartment. Therein the Administrator requested that the tenants submit the history of rents paid and proof of the initial date of occupancy, with the Administrator attaching a copy of the owner's request to commence the AD proceeding. The record shows that the notice to the tenants was returned by the United States Post Office and marked "RETURN TO SENDER VACANT UNABLE TO FORWARD". The Administrator requested from the owner any documentary evidence regarding the regulatory status of the subject apartment and to submit any documentary evidence regarding the rental history of the subject apartment.

On April 26, 2021, the owner responded to the March 15, 2021 notice, asserting that they already submitted documentary evidence, including the last rent stabilized lease and the first deregulated lease purporting to demonstrate that the apartment became exempt on June 1, 2011 due to the rent exceeding the deregulation threshold of $2,000.00. The owner did not submit any documentation as requested.

On May 27, 2021, the Rent Administrator, based on the evidence which indicated the tenants had vacated the subject apartment, terminated the proceeding as there was no tenant in the proceeding and the apartment was vacant.

Based on the review of the record, the Commissioner finds that the Rent Administrator properly terminated the AD proceeding as the subject apartment was vacant and the tenants were no longer residing in the subject apartment. The owner's assertions that the termination order violates the owner's due process and property rights lack merit as the deregulation of an apartment, if deregulated based upon high-rent vacancy, occurs by operation of law, if the facts so warrant, and no application to the Agency is provided for or required to effectuate the deregulation. An owner is advised to retain the rental history for the subject apartment sufficient to show the owner's entitlement to deregulation, and such rental history would be submitted to the Rent Administrator in the event the rent charged is challenged by a tenant of the apartment. Unless the amount of the rent charged is challenged, DHCR is not required to issue an order concerning the legality of the rent charged. *See* the Matter of City 5 Consulting.[3] Moreover, as the Court in the Matter of 3569 Associates LLC v. DHCR[4] held, RSC Section 2522.6 provides DHCR with the discretion to determine the legal rent of an apartment where there is "a dispute between the owner and the tenant, or is in doubt, or is not known," and that DHCR "may issue an order in accordance with the applicable provisions of this Code" (RSC section 2522.6 [a] [emphasis added]). The Commissioner notes that without a tenant in possession of the subject

[3] DHCR Docket No. FQ210009RO.
[4] 2020 N.Y. Misc. LEXIS 9916; 2020 NY Slip Op 33795(U).

apartment, the matter before the Administrator was not ripe for a determination as there lacked a justiciable controversy. As the Court in Matter of 3569 Associates LLC held, in the absence of an actual controversy with a tenant, any potential injury to the owner is speculative.

The Commissioner also finds that in regard to the owner's contention regarding the PAR relating to the service's complaint, Docket No. GQ410029RO, the Commissioner finds that such PAR order was not a directive or a requirement that the owner file an AD application, but merely advised the owner that they "may" file for an AD proceeding to determine the regulatory status.

While the owner relies on Matter of 1234 Broadway LLC[5], Gianelli v. DHCR[6], and Ista Management v.DHCR[7] to support their contentions, the Commissioner finds this reliance to be misplaced as the cases cited involve overcharge disputes between owners and tenants in situations where a determination by the Agency was required within the 90-day period under the Rent Stabilization Law, which is not the case herein. In the subject case, the Rent Administrator issued a decision, finding that the AD proceeding regarding the status of the subject apartment was terminated as the apartment was vacant. As for Matter of 81 Warrant Street Realty Corp.[8], the case pertains to an application to terminate a tenancy, which is also not the case herein. Furthermore, Operational Bulletin 95-2 is also inapplicable as the owner herein did not claim a substantial rehabilitation exemption, but asserted the subject apartment was deregulated in June 2011 based on high rent vacancy.

Based upon the foregoing, the Commissioner affirms the Rent Administrator's determination to terminate the proceeding and that the owner has not offered a basis to revoke or modify the Rent Administrator's order.

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

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

ISSUED: NOV 10 2022

Woody Pascal
Deputy Commissioner

[5] 40 Misc. 3d 1234(A), 980 N.Y.S.2d 277 (Sup. Ct. NY Co. 2013; Hunter, J.).
[6] 142 Misc. 2d 285, 536 NYS 2d 675 (Sup. Ct, Queens Co. 1989).
[7] 139 Misc. 2d 1, 526 NYS 2d 375 (Sup. Ct. N.Y. Co. 1988, Rubin, J.).
[8] 2008 N.Y. Misc. LEXIS 8358.

State of New York
Division of Housing and Community Renewal
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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.: IO210044RO**
178 FREEMAN LLC,	:	**RENT ADMINISTRATOR'S DOCKET NO.: FO210008AD**
PETITIONER	:	**TENANT:** [redacted]

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On March 20, 2020, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on February 28, 2020 (the "Order"), concerning the housing accommodation known as 178 Freeman Street, Apt. [redacted] Brooklyn, NY, wherein the Rent Administrator determined that the subject apartment is subject to the Rent Stabilization Law.

The Commissioner has reviewed the entire evidence of the record including that portion of the record that is relevant to the issue raised by the PAR.

On March 1, 2017, the petitioner-owner initiated the underlying proceeding to determine the rent regulation status and monthly legal rent for the subject apartment. The owner claimed that the owner purchased the subject building on July 30, 2010 (pursuant to a "March 2010 Contract of Sale") from the tenant, who resided in the subject apartment prior to and following the sale. The owner further claimed that the Agency's registration history for the subject apartment does not indicate that the subject apartment was registered from 1984 to 1989; however, the apartment was listed as "temporarily exempt" based upon owner/employee use from 1990 to 2010. The owner asserted that the apartment should not be rent stabilized as the occupancy of the subject apartment is governed solely by the terms of the Rider to the Contract of Sale which sets forth the agreement of the parties, who did not intend to create a rent stabilized tenancy. The owner argued that the rent should be $2,900.00 per month using another apartment with a similar layout as a basis for the increase.

In response, the tenant asserted that the tenant sold the building to the current owner and contracted to remain in the subject apartment with a rent of $1,000.00 per month for the first (5) years without any increase and remain rent stabilized thereafter. The tenant further asserted that

pursuant to the agreement, the tenant was to act as the superintendent of the building for the time the tenant remained in occupancy of the subject apartment. The tenant also alleged that the language of the agreement indicated that the tenancy would be subject to DHCR regulations, which apply to rent stabilized accommodations and that the $2,800.00[1] per month increase in rent requested by the owner is unwarranted.

It is undisputed that the tenant resided in the subject apartment before and after the sale of the building; that the owner and tenant agreed that the tenant was to pay rent in the amount of $1,000.00 per month for five (5) years following the sale of the building; and that the tenant was to act as superintendent of the building, although there is a question raised as to how long. Both parties submitted the Rider to Contract of Sale which indicates that the owner agreed that:

1. Sellers have a right to stay in apartment [redacted] for up to five years post closing with a monthly rent of $1,000.00 without any increase during that time. And an additional tenancy which shall comply with DHCR regulations at legal rent.
....

5. Seller shall act as superintendent of the building during the time that it remains in possession of apartment [redacted] and will be liable for all sanitation violations but will not be responsible for any other violations or repairs of any kind.

Based on evidence contained in the record, the Rent Administrator issued an order on February 28, 2020, under Docket No. FO210008AD, determining that: (1) the building was built prior to 1974 and has six (6) or more housing accommodations; (2) the subject apartment is subject to the Rent Stabilization Law; and (3) following the five-year period post-closing, the tenant was entitled to a rent stabilization lease with a legal regulated rent of $1,000.00 per month plus applicable guideline increases. The petitioner-owner then filed the instant PAR.

In the PAR, the petitioner-owner seeks a reversal of the Rent Administrator's order, reiterating its arguments submitted in the underlying proceeding and asserting that the Rent Administrator failed to specify a basis for determining that the subject apartment is rent stabilized in the underlying order.

Pursuant to Section 2520.11(m) of the Rent Stabilization Code ("the Code"), exempt accommodations include "housing accommodations occupied by domestic servants, superintendents, caretakers, managers or other employees to whom the space is provided as part or all of their compensation *without payment of rent* and who are employed for the purpose of rendering services in connection with the premises of which the housing accommodation is a part..." (emphasis added).

In the instant matter, the record revealed that the subject apartment was registered as "temporarily exempt" from 1990 to 2010. The record further supports that in 2011, the subject

[1] The tenant erroneously indicated $2800.00 in the tenant's response to the owner's administrative determination proceeding instead of $2900.00 as put forth by the petitioner-owner.

apartment was registered as "rent stabilized"[2] until 2016 when it was again registered as "temporarily exempt." However, while the record supports that the tenant is the superintendent, it is undisputed that the tenant was being charged rent from the time of sale, and as such, the subject apartment maintained rent stabilized status and was no longer exempt. Therefore, the rent the owner can charge is the rent agreed to by the petitioner-owner and tenant in the amount of $1,000.00 per month beginning in 2010, with applicable guideline increases beginning in 2015. In addition, the petitioner-owner's assertion that the parties did not intend to create a rent stabilized tenancy is belied by the express language in the Rider to Contract of Sale which states that an additional tenancy (presumably following the five-year period of no increases), "shall comply with DHCR regulations at legal rent."

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly determined that the subject apartment is subject to the Rent Stabilization Law as the subject building was built prior to 1974 and has six (6) or more housing accommodations, and further, that in 2015 when the period provided for in the Rider to Contract of Sale was up, the rent was set at $1,000.00 per month with applicable guideline increases going forward. As such, the owner's PAR has not established any basis to revoke the Rent Administrator's determination.

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

ORDERED, the petition is denied, and the Rent Administrator's order is affirmed.

ISSUED: NOV 18 2022

Woody Pascal
Deputy Commissioner

[2] DHCR's records reveal that the owner registered the subject apartment's "preferential" rent from 2011 to 2015 as $1,000.00.

State of New York
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Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
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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 APPEALS OF:	:	
[redacted] (Tenant)	:	ADMINISTRATIVE REVIEW DOCKET NO.: JV110037RO & JV110021RT
DAVID NISIM (Owner)	:	RENT ADMINISTRATOR'S DOCKET NO.:GT110004AD
PETITIONERS	:	

ORDER AND OPINION DENYING PETITIONS FOR ADMINISTRATIVE REVIEW

On October 15, 2021, and October 21, 2021, the above-named Petitioner-tenant and Petitioner-owner, respectively filed Petitions for Administrative Review ("PARs") of an order the Rent Administrator issued on September 16, 2021 ("the order"), concerning the housing accommodation known as 137-72 70th Avenue, Apt. [redacted] Flushing New York, wherein the Rent Administrator denied the subject tenant, [redacted] request for succession rights finding [redacted] was the first rent stabilized tenant of the subject apartment and terminated the proceeding.

The above referenced administrative appeals have been consolidated as they both contain common issues of law and fact and appeal the same Rent Administrator's order.

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

In the owner's PAR, the owner, through counsel, seeks a reversal of the Rent Administrator's order as it relates to the Administrator's finding that [redacted] is the first rent stabilized tenant, contending, in substance, that the order is arbitrary and capricious as: (1) the Administrator failed to dismiss or stay the DHCR proceeding as there was a prior housing court proceeding pending in the Civil Court of the City of New York, Queens County, Housing Part Index No. 61567/17 ("Housing Court") between the parties, and (2) [redacted]

was not entitled to any succession rights, and that he never signed a lease agreement with the owner nor paid the owner rent. The owner further asserts that as the owner brought a holdover proceeding in Housing Court, which was the owner's chosen forum, that by permitting the tenant to proceed with the proceeding below, DHCR precluded the owner from completing formal discovery in Housing Court.

The tenant, by counsel, submits a response to the owner's PAR dated November 26, 2021 asserting in essence that since the owner's PAR "clearly demonstrates" the order's due process errors as it relates to the tenant's purported lack of succession rights, the Commissioner must find that a factual hearing on the issue of succession is warranted.

The owner submitted a follow up response dated January 7, 2022 wherein the owner denied it agreed with the tenant that the tenant had been denied due process or that a factual hearing was required, asserting DHCR appropriately denied the tenant's succession rights "after allowing both sides to offer documentary proof" in the proceeding.

Thereafter, the owner filed additional correspondence, which included, *inter alia*, copies of depositions of both the subject tenant, [redacted] and [redacted] the mother to [redacted] children, taken in the Housing Court matter, Index No. 61567/2017, to further support the owner's PAR request that [redacted] is not a tenant and is not entitled to succession rights.

Subsequently, the owner requested DHCR to hold this proceeding open in abeyance in their letter dated June 16, 2022. In response, DHCR granted the owner until July 18, 2022 in which to submit a further response. On July 22, 2022, in response to the owner's July 18, 2022 letter which sought additional time to respond, DHCR: (1) granted the owner's request and provided the owner until August 11, 2022 in which to submit their response, and (2) noted that no further extensions would be granted. On August 15, 2022, August 23, 2022, and September 12, 2022, the owner again requested that the PAR be held open in abeyance until such time they received [redacted] tax documents which were sought for in the Housing Court matter.

In the tenant's PAR, the tenant, through counsel, seeks a modification of the Rent Administrator's order with regard to the status determination of the subject tenant, [redacted] and claims the Rent Administrator's order is contrary to the Conciliation and Appeals Board ("CAB") Expulsion Order No. 326 ("Expulsion Order"). The tenant asserts, in substance, that DHCR did not examine the documents submitted for its consideration and review and resubmits the tenant's August 6, 2018 Administrative Determination request to support its claims. The tenant further asserts that as long as the Expulsion Order, which was based on the prior owner's harassment, "remained viable," rent increases or other charges should not have been awarded with the rent remaining frozen.

In answer to the tenant's PAR, the owner, through counsel, opposes the tenant's PAR and asserts, *inter alia*, that any new claim raised by the tenant herein is not reviewable by the Commissioner and reasserts the owner's PAR contentions.

The tenant submitted a reply dated December 31, 2021 and claimed in essence, that the owner's opposition to their PAR is devoid of merit.

A review of the Rent Administrator's proceeding below reveals that this Administrative Determination matter was initiated with DHCR on August 13, 2018 upon the tenant's counsel filing a letter dated August 6, 2018 requesting an Administrative Determination to settle the succession rights of the subject apartment, asserting that "the best candidate for succession relative to the documents that [the tenant's counsel] could produce is an infant approximately six years of age, a great grandchild of the late [redacted][1] The subject tenant's counsel also claimed that the subject tenant, [redacted] also lives in the subject apartment and is the grandson of the late [redacted] (the tenant of record), and the father of [redacted] two great-grandchildren, [redacted] and [redacted] (one of the great grandchildren being the "best candidate for succession"). The tenant's counsel requested that DHCR determine the rent regulated status of the subject apartment as the Housing Court was set to make a ruling regarding the rent for the subject apartment. The tenant submitted the following documents to support the claim of succession rights:

1. [redacted] notarized statement dated May 9, 2016 certifying [redacted] and [redacted] has lived with him for the past five years.
2. Acknowledgment of Paternity executed on January 29, 2012 by [redacted] for [redacted]
3. Undated Gouverneur Hospital medical records for [redacted] beginning on January 28, 2012.
4. DeWitt Reformed Church Head Start pre-registration form dated July 21, 2014 for [redacted]
5. New York City ("NYC") Department of Education letter dated May 2016 addressed to [redacted] parent/guardian of [redacted] at 137-72 70th Avenue, Queens, NY 11367.
6. NYC Verification of Pupil Registration dated September 25, 2017 for [redacted]
7. Acknowledgment of Paternity executed by [redacted] for [redacted] dated November 25, 2012.
8. Undated Gouverneur Hospital Medical records for [redacted] beginning on January 29, 2013.
9. DeWitt Reformed Church Head Start pre-registration form for [redacted] dated August 17, 2014.
10. NYC Department of Education letter dated May 2016 addressed to [redacted] parent/guardian of [redacted] at 137-72 70th Avenue, Queens, NY 11367.
11. Undated Gouverneur Hospital medical records for [redacted] beginning on March 27, 2002 through December 29, 2016.

[1] Pursuant to the CAB Expulsion Order 326, [redacted] was the rent-controlled tenant of the subject premises until his death in February of 2017.

12. NYC Human Resources Administration SNAP Notice addressed to [redacted] dated October 26, 2016; undated New York State letter regarding Medicaid, SNAP and Temporary Assistance benefits and related documentation addressed to [redacted]
13. NYC Verification of Pupil Registration form for [redacted] dated September 25, 2017.
14. Earning statement for [redacted] dated November 2016 from [redacted]
15. 2016 W-2 and Earnings Statement for [redacted]
16. Earning statement of [redacted] for March 2013 from [redacted]
17. Earning statement of [redacted] for July 2014 from [redacted]
18. NYC Human Resources Administration statement filed by [redacted] dated October 25, 2015, declaring [redacted] a secondary tenant of the subject apartment.
19. NYC Human Resources Administration SNAP Program documents dated September 20, 2016 and October 4, 2016 addressed to [redacted]
20. [redacted] of Job Interview dated July 27, 2015, addressed to [redacted]
21. Letter from [redacted] of Gouverneur Health Care asserting that the only location on file for [redacted] is 137-72 70th Avenue, Flushing, NY 11367.
22. A copy of the Matter of Padel, DHCR Docket No. FR110010AD; and
23. Letter from DeWitt Reformed Church Head Start program's Family Service Coordinator [redacted] asserting [redacted] were enrolled in their program from June 2014 to May 2016 and the initial address provided for them was 137-72 70th Avenue, Queens, NY 11367.

On September 7, 2018, the Administrator mailed to the parties a "Notice of Commencement of Administrative Proceeding," pursuant to Sections 2202.22 of the New York City Rent and Eviction Regulations ("NYCRR" or "the Regulations") and/or Section 2522.6 of the Rent Stabilization Code ("RSC" or the "Code"), to determine the rental status of the subject apartment. The notice afforded the parties twenty days from the mailing date of the notice within which to submit a response. The Rent Administrator requested the tenant submit the following:

1. History of rents paid;
2. If you are claiming succession rights to the subject apartment, you must submit proof of your relationship to the tenant of record and proof that you have occupied the apartment for at least two years prior to the date that the tenant of record either expired or vacated the subject apartment (one year if you are a senior citizen or handicapped); and
3. Please advise as to the status of any court proceeding that involves this issue.

Simultaneously, the Rent Administrator requested the owner submit the following:

1. Any documentary evidence regarding the regulatory status of the subject apartment.
2. Any documentary evidence regarding the rental history of the subject apartment; and
3. Please advise as to the status of any court proceeding that involves this issue.

In an October 25, 2018 response to the Rent Administrator's above mentioned request, the owner, by counsel, stated in essence, that the proceeding must be dismissed or stayed pending a determination of the holdover proceeding brought in Housing Court by the owner in 2017, notwithstanding DHCR's concurrent jurisdiction; the apartment is not rent stabilized as argued by the tenant but is rent controlled as the Expulsion Order submitted by the tenant expelled the apartment from Rent Stabilization coverage; the rent for the rent controlled tenants are not frozen; none of the occupants, including the great-grandsons are entitled to succession as they did not reside in the subject premises with the tenant of record for at least two years before the death of the tenant of record in 2017; the occupants came to live with the tenant of record in June of 2016; the documents submitted do not establish succession rights as the tenants do not include such governmental records such as tax returns, government identification, credit card statements and bills, DMV records, or voting records; it is impossible that a five-year old child would have more documentation to support occupancy of the subject apartment than an adult parent as claimed by tenant's counsel; and the occupants have failed to demonstrate that the great-grandsons meet the requirements of a non-traditional family member.

The tenant submitted an October 5, 2018 response to the Rent Administrator's Request For Additional Information which stated, *inter alia*, that the tenant had already provided DHCR with "all information, except for one matter as to the rent" and attached a copy of the tenant's Post-Hearing Memorandum of Law submitted to the Housing Court concerning the payment of use and occupancy.

According to the record, the owner submitted additional responses as requested by the Rent Administrator reasserting the claims that the matter must be either stayed or dismissed due to the pending Housing Court matter and that the evidence submitted by the tenants in this proceeding fail to establish the tenants' succession rights. The owner argued that the tenants failed to prove either they were family members of the tenant of record or even non-traditional family members, and that they had not establish that any of the tenants lived with the tenant of record two years prior to February 27, 2017, the date the tenant of record passed away as required by law, and an infant cannot enter into a lease or be a tenant.

Before the Administrator below, the tenant's counsel asserted that the tenant had submitted sufficient evidence in their application to establish their succession rights notwithstanding the owner's claim that their evidence was deficient and insufficient. In addition, the record indicates that the tenant's counsel requested a DHCR hearing on the issue of succession in response to the owner's submitted opposition.

On May 3, 2019, the tenant's counsel submitted a fax advising DHCR that use and occupancy had been set by the Housing Court at approximately $1,400.00 and that a stay of the housing order was necessary otherwise the matter would be moot.

Subsequently, in the tenant's May 24, 2019 letter asserting succession rights, the tenant submitted the affidavits of [redacted] the mother of [redacted] and daughter of the tenant of record, [redacted], notarized on February 13, 2019, [redacted] mother, notarized in March 2019, and [redacted] and [redacted] maternal grandmother, notarized on May 24, 2019 which had also been submitted to the Housing Court.

A further review of the record reveals that the tenant supplemented his responses with additional submissions which included, *inter alia*, copies of motion papers submitted in the Housing Court proceeding. The owner submitted the May 28, 2021 Decision and Order issued by the Appellate Term of the Supreme Court (Appellate Term Docket No. 2019-492 O-C) affirming the Housing Court order setting a monthly rate for use and occupancy pendente lite in the amount of $1,413.05, noting that following the Expulsion Order, and until the tenant's death ([redacted], the unit was regulated as rent controlled.

In the order herein under review, the Rent Administrator determined on September 16, 2021, that based on a review of the evidence presented, the tenant of record, [redacted] became subject to Rent Control Law pursuant to the Expulsion Order No. 326, however upon his permanent vacatur in February 2017, the subject apartment was returned to the Rent Stabilization Law and Code. The Administrator also determined that the subject tenant, [redacted] failed to substantiate his succession rights claim, the Expulsion Order No. 326 no longer applied to [redacted] occupancy, and [redacted] became the first rent stabilized tenant of the subject apartment.

Preliminarily, although the tenant's initial request for an Administrative Determination made reference to the Rent Stabilization Law, however based on the Expulsion Order in effect, the tenancy of [redacted] (prime tenant) was governed by the Rent Control Law. As such, a lawful successor to the prime tenant's tenancy would be entitled to governance under the Rent Control Law rather than the Rent Stabilization Law.

Nevertheless, to qualify for succession rights, an individual would need to establish that they have resided in the subject apartment for the required amount of time. Pursuant to Section 2204.6(d)(1) of the NYCRR, if a tenant vacates the apartment and a family member was residing in the apartment with the tenant as a primary residence for a period of no less than two years immediately prior to the permanent vacating by the tenant, the owner shall not be granted a certificate of eviction as against the family member. Paragraph (3) of Section 2204.6 defines a family member as a spouse, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, or daughter-in-law of the tenant; or any other person residing with the tenant in the housing accommodation as a primary residence who can prove emotional and financial commitment, and interdependence between such person and the tenant.

With respect to the owner's PAR, the Commissioner finds that the owner does not establish any basis to modify or reverse the Rent Administrator's determination. The Commissioner notes the owner's claim that the Rent Administrator erred in failing to terminate

or stay the underlying proceeding pending the outcome of the holdover proceeding brought by the owner. However, the Administrator's decision to proceed with the tenant's Administrative Determination proceeding was proper as DHCR has concurrent jurisdiction with the courts in determining succession cases and the record does not include a court order directing a stay of DHCR's processing of the tenant's Administrative Determination proceeding pending a decision in the holdover case referenced herein.

The Commissioner notes the owner's claim that this proceeding must be held in abeyance for an unspecified time until they obtain tax records from the IRS and finds it lacks merit. An administrative proceeding is not an open-ended process and DHCR is not obligated to wait indefinitely for a response. *See generally the Matter of 701 ST. MARKS, LLC, Docket No. QK210056RO.*

The tenant and owner's assertions on appeal with regard to that portion of the Administrator's order finding that the subject tenant, [redacted] had failed to substantiate his succession rights to the subject apartment and that his tenancy is subject to rent stabilization are noted. However, after a careful review of the record, the Commissioner finds that the Administrator's determination that the tenant, [redacted] failed to substantiate his succession rights and therefore is the first rent stabilized tenant subject to the Rent Stabilization Law will not be disturbed.

An examination of the documentation submitted to the Rent Administrator by the subject tenant's counsel in the proceeding below fails to establish the subject tenant, [redacted] continuous primary residency in the apartment with [redacted] (the prime tenant) for two years prior to February 21, 2017. The Commissioner finds that the Rent Administrator's determination that the subject tenant, [redacted] was not entitled to succession rights and that [redacted] was the first rent stabilized tenant was reasonable. As for the subject tenant's assertions regarding use and occupancy, the order appealed herein does not make any determination concerning the same and thus the tenant's assertions are beyond the scope of this review (the Commissioner notes that the Housing Court is addressing such issue).

The Commissioner notes the tenant's counsel's request for a hearing on the issue of succession and finds that, notwithstanding that a party believes questions of fact purportedly exist in the record, the granting of a hearing is discretionary and not mandated by law. The Commissioner finds that the evidence and written submissions in the record were sufficient to render an Administrative Determination in this case. The record also indicates that the parties were served with copies of each parties' responses, had ample opportunity to participate in this proceeding, and were provided a full and fair opportunity to be heard on matters in issue. The Commissioner further finds that the tenant's counsel does not establish any basis to modify or reverse the Rent Administrator's determination.

Accordingly, the Commissioner finds that both the tenant and owner's petition for administrative review presents no issues of law or fact which warrant reversal or modification of the Administrator's order, and that the Administrator and Agency conducted the proceeding

below in accordance with established law, Agency practice, and principles of due process by properly determining that the subject tenant, [redacted] failed to substantiate his succession rights to the subject apartment, that the Expulsion Order no longer applied to his occupancy, and that the subject tenant, [redacted] was the first rent stabilized tenant.

THEREFORE, in accordance with the applicable provisions of the Rent Stabilization Law, and the New York City Rent and Eviction Regulations, it is,

ORDERED, that the petitions are denied, and that the Rent Administrator's order is affirmed.

ISSUED: DEC 9 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.

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	
BEATRAM BUDHU	ADMINISTRATIVE REVIEW DOCKET NO.: JQ620002RO
PETITIONER	RENT ADMINISTRATOR'S DOCKET NO.: IN620021AD

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On May 3, 2021, the above-named petitioner-owner filed a petition for administrative review (PAR) against an order issued on April 16, 2021, by the Rent Administrator concerning the housing accommodations known as 1127 Boynton Avenue, Apartment [redacted], Bronx, NY, wherein the Administrator issued an administrative determination finding that [redacted], the tenant of record in the subject apartment, was the rent controlled tenant of record and entitled to temporary exemption from primary residency; that his son [redacted] was entitled to residency, and had submitted sufficient evidence to be eligible for succession rights in the event that the tenant of record vacates the subject apartment.

The Commissioner has reviewed all of the evidence in the record and has carefully considered the portion of the record relevant to the issues raised by the petition.

In the PAR, the owner, requesting a reversal of the Rent Administrator's order, argues that [redacted] had vacated the subject apartment before the instant owner owned the premises, and long before [redacted] son moved to another premises at [redacted] Apartment [redacted][1]; that [redacted] never lived with his dad, as a result of which he was unable to produce evidence such as family pictures of any age, or any proof of financial, social or emotional support; that the documents[2] submitted by [redacted] are not the requirements for succession rights, but mere assertions and claims of identity that he lived in a rent-controlled apartment; that the instant situation came about because the owner did not hire a lawyer to appeal

[1] The owner attached correspondence "REQUEST FOR CHANGE OF ADDRESS OR BOXHOLDER INFORMATION NEEDED FOR SERVICE OF LEGAL PROCESS", on which the name [redacted] was indicated at [redacted].

[2] Tax returns, pay statements, phone bills, driver's license and birth certificate.

the DHCR decision under Docket No. TD620030AD which determined that the tenant of record herein, [redacted] has a rent-controlled status pursuant to the 1970 rent receipts submitted by the tenant of record in the proceeding; that although [redacted] was granted rent-controlled tenant status since 2006, he was not paying rent until a nonpayment proceeding was brought against him; that at a point in time, [redacted] kept the subject apartment as a storage instead of as a dwelling space and the condition was not resolved until after a violation was issued to correct the "hazardous condition" and a "collier case" was brought against the tenant; that also, a non-primary proceeding was instituted (Index # 18073/08) as [redacted] was not living in the subject apartment, which was reversed by the first appellate court in the owner's favor, but was "retired" in the lower courts; that the idea of [redacted] being admitted into long term nursing facility since 2015 seems like permanent vacating of the subject apartment, not a temporary exemption of a primary residence; that there was no concrete evidence or correspondence from the alleged long term facility; that the DHCR erred in believing the assertion by [redacted] that his father intended to live his last days in the subject apartment; that he never submitted any evidence regarding where [redacted] lived when he first vacated to long term care; that [redacted] never informed the owner of his intention to sublet the subject apartment while absent and never informed the owner that [redacted] would be taking over until his father returns; and that thus, the DHCR erred in still holding the subject apartment to be under rent control as the status was lost due to prolonged absenteeism and the tenant's non-occupancy from the day the instant owner acquired the property/building in 2005.

The tenant's answer dated June 4, 2021 was served on the owner on June 29, 2021 for response – wherein [redacted] Jr stated that while the owner has a right to appeal, his main arguments had been decided in both a trial and appellate court; that all evidence supporting [redacted] succession rights had been provided in the previous responses; that the owner had been harassing the [redacted] and was advised not to contact [redacted] on matters unrelated to essential landlord/tenant issues, which he ignored, and had recently been making a cash offer for the apartment and was requesting information which he is not privy to; that the tenant had provided copies of texts of him exhibiting the alleged harassment; and that the medical team for [redacted] was working together with the family to get him back home. The tenant attached a summary purporting to be of the last texting between him and the landlord; and the Progress Notes dated April 16, 2021, from the facility, [redacted] where [redacted] was, indicating that they were preparing to move [redacted] back into the community, outlining what needed to be done.

The owner, in its response dated July 8, 2021[3] stated that in 2006, [redacted] made an offer to the owner for a sixty thousand dollars ($60,000.00) payoff to surrender the apartment, which the owner was unable to fulfill at the time; that both [redacted] have no intention of using the apartment for dwelling purposes (but holding on for payoff) while the owner's family badly needs a place to reside; that the son comes often to check mail while none of them have actually occupied the apartment this year (2021); and that the tenant had claimed battery usage in

[3] Served on the tenant on August 9, 2021.

place of electricity, in court before, and was believed, but the electric use should be able to show how much presence was in the apartment.

[redacted] in a response dated August 30, 2021, stated that all that was necessary for a finding in the case had been provided.

In the owner's submission dated November 8, 2021[4], the owner stated that the [redacted] had not been living in the subject apartment; that the owner in his letter of July 8, 2021 had requested proofs of both, or at least one of them living there; that [redacted] did not leave the subject apartment in 2015 for long term care but from another residence, and was probably with family members and may be under medical care for a very long period.

By letter dated December 12, 2021, [redacted] stated that all the requested information had been submitted and that [redacted] was yet to be discharged from the nursing home, and yet to return to the subject apartment.

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

A review of the Rent Administrator's record reveals that by a letter dated February 18, 2020, the owner, making substantively most of the arguments herein above, had requested an Administrative Determination (AD) to determine whether [redacted] attained succession rights to the subject apartment, from his father, [redacted] the tenant of record.

During the Rent Administrator's proceeding, the tenant of record's son, [redacted] submitted a copy of his birth certificate, documents addressed to [redacted] at the subject address which included his New York State Driver's License issued on January 18, 2016, tax documents, pay statements, bank statements, phone bills, and a statement from RiverSpring Health dated July 27, 2020 stating that the tenant of record is currently a resident at [redacted] was admitted on January 22, 2016, and is receiving long-term nursing care.

Based on the evidence provided during the Rent Administrator's proceeding, as well as the records of the Agency, the Rent Administrator found that the subject apartment was subject to rent control, [redacted] was the rent-controlled tenant of record, however, [redacted] was temporarily exempt from primary residency requirements while receiving long term care at a medical facility, and that [redacted] son, [redacted] is entitled to succession right should the tenant of record permanently vacate the subject apartment.

The Commissioner notes that at this time, the tenant of record has not vacated the subject apartment. Although it is the owner's contention that the tenant of record has vacated the apartment as the tenant allegedly had not been living in the subject apartment, succession rights can only be exercised when a tenant of record vacates an apartment, which is not the case herein at this time.

[4] Served on the tenant on November 22, 2021.

As noted above, the tenant of record is receiving long term care at a medical facility, and therefore [redacted] is temporarily exempt from primary residency requirements.

Furthermore, the Commissioner notes that under DHCR Docket. No. TD620030AD (which has not been appealed and is therefore final and binding), the Rent Administrator on December 9, 2006 found that the apartment and tenant of record, [redacted] was subject to rent control as [redacted] took initial occupancy prior to July 1, 1971. The Commissioner finds that the owner may not now raise issue with the decision under Docket No. TD620030AD by way of collateral attack in the instant proceeding, and therefore such claims are barred by the principles of res judicata and collateral estoppel.

Additionally, the Agency's records under Docket No. EX620001OE, shows that the owner's application to refuse the renewal of lease and/or proceed for eviction of the subject tenant, [redacted] was denied on May 11, 2017, pursuant to Section 2204.5 of the New York City Rent and Eviction Regulations which prohibits the eviction of tenants who are 62 years of age and older, disabled or has resided in the subject apartment for over 20 years. The Rent Administrator under Docket No. EX620001OE found that the tenant of record, [redacted], was a senior citizen over 62 years of age and had lived in the building for over 20 years, and that although the tenant of record had been living in an assisted living facility due to an illness since June of 2015, there is nothing to indicate that the tenant and his family had permanently vacated the subject apartment.

Based on the above, the Commissioner finds that the Rent Administrator properly granted the temporary exemption from the primary residency requirements to the tenant of record, [redacted], as there is evidence in the file from the long-term facility where the tenant of record, who is over 62 years of age, was receiving services since 2015. Furthermore, the Commissioner finds that the Rent Administrator also properly found that the son, [redacted] was entitled to residency in the subject apartment and eligible for succession rights should the tenant of record permanently vacate the subject apartment.

Based on the foregoing, the Commissioner finds that the owner's PAR has not established any basis to modify or revoke the Administrator's determination.

THEREFORE, in accordance with the applicable sections of the New York City Rent and Eviction 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: DEC 9 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
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Right to Court Appeal

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92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted]

PETITIONER

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ADMINISTRATIVE REVIEW DOCKET NO.: KM610013RT

RENT ADMINISTRATOR'S DOCKET NO.: IX610001AD

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On January 19, 2022, the above-named Petitioner-tenant filed a Petition for Administrative Review ("PAR") against IX610001AD, an order the Rent Administrator issued on December 17, 2021 (the "order"), concerning the housing accommodation known as 68 West 238th Street, Apartment [redacted] Bronx, New York, wherein the Rent Administrator terminated the tenant's Administrative Determination request, finding that the question of jurisdiction was addressed by the Housing Court which determined the subject apartment was subject to the Rent Stabilization Law and Code.

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-tenant requests a reversal of the Rent Administrator's order and claims the apartment is not rent stabilized but rent controlled because the unit is not rehabilitated, and that the Judge's "decision is false". The tenant submits with their petition copies of the Civil Court of the City of New York County of Bronx: Housing Part G, Index Number: 28287/2015 Decision/Order issued on February 16, 2017 by Judge Evon M. Asforis, the Civil Court of the City of New York County of Bronx: Housing Part, Index Number: 50391/2017 Decision/Order issued on September 29, 2018 by Judge Krzysztof Lach, the Civil Court of the City of New York County of Bronx: Housing Part S, Index No. L&T: 50391/2017 Decision/Order issued on December 12, 2019 by Judge Bernadette G. Black, rent ledgers, and Order and Report of Setting of Initial Regulated (Stabilized) Rent and Services from the New York City Department of

Housing Preservation and Development (HPD) dated March 25, 1983, with effective date of April 1, 1983.

A review of the record below shows that on December 9, 2020, the subject tenant filed a request with the Agency for an administrative determination on the regulated status of the apartment, claiming the subject apartment was rent controlled. The tenant asserted that he had lived in the subject unit with his parents since 1942, and submitted documents to support their claim, along with an order of the Civil Court of the City of New York County of Bronx: Housing Part G, Index Number: 28287/2015 issued on February 16, 2017 by Judge Evon M. Asforis indicating that the unit was rent controlled.

On January 15, 2021, the tenant's request was served on the owner. On February 3, 2021, in the owner's answer to the Petitioner-tenant's request, the owner stated that they acquired the building in 2013 and the leases for the subject unit were rent stabilized. The owner provided the Agency with an Order and Report of Setting of Initial Regulated (Stabilized) Rent and Services from the HPD dated March 25, 1983, with effective date of April 1, 1983, indicating the new initial rent of the apartment was $328.00 per month whereas the dwelling was rehabilitated and the rent was established pursuant to Article 15 of the Private Housing Finance Law, and a Rent Registration Certificate dated November 28, 1986 from the Rent Stabilization Association of New York City Inc. indicating that seventy two (72) units in the building were rent stabilized. The owner also claimed that there were multiple litigations in court where it was determined that the subject apartment was rent stabilized. The owner submitted the following Court Orders to substantiate their claim: the Civil Court of the City of New York County of Bronx: Housing Part, Index Number: 50391/2017 issued on September 29, 2018 by Judge Krzysztof Lach, the Civil Court of the City of New York County of Bronx: Housing Part S, Index Number L&T: 50391/2017 issued on December 12, 2019 by Judge Bernadette G. Black., and a copy of the payment history for the subject unit.

Based upon the record, the Rent Administrator issued an order on December 17, 2021, terminating the tenant's administrative determination request, noting that the issue of jurisdiction raised was addressed by the Housing Court, that the Housing Court has concurrent jurisdiction with this Agency, and that the Housing Court determined that the subject apartment was subject to the Rent Stabilization Law and Code.

The Commissioner notes that inasmuch as the order of the Civil Court of the City of New York County of Bronx: Housing Part G, Index Number: 28287/2015 issued on February 16, 2017 by Judge Evon M. Asforis indicated that the unit was rent controlled, a subsequent order of the Civil Court of the City of New York County of Bronx: Housing Part, Index Number: 50391/2017 issued on September 29, 2018 by Judge, Krzysztof Lach determined the apartment was rent stabilized. The Court's Order under Index Number: 50391/2017 states in pertinent part: "The Court here has taken judicial notice of the records available on Acris. Those records reveal that the prior owner, Lekaj Realty Corp., did in fact enter into an agreement with HPD on March 22, 1983 under Section 804 of the Private Finance Housing Law for the rehabilitation of the building, and private finance was leveraged from Anchor Savings Bank. Accordingly, it is the Court's finding that the subject premises was properly removed from rent control and became rent stabilized: this occurred even though the then existing tenant named [redacted] remained in

possession. The Court declines to apply collateral estoppel in this instance as it would result in an artifice or legal fiction by keeping an apartment in rent control long after it was properly removed. Applying collateral estoppel would only highlight terminating the litigation overachieving an accurate result."

The Commissioner further notes that the most recent decision of the Civil Court of the City of New York County of Bronx: Housing Part S, Index No. L&T: 50391/2017 issued on December 12, 2019 by Judge Bernadette G. Black also affirmed that the subject apartment was rent stabilized, finding "[t]he Resolution Part Judge denied the respondent's motion, finding that the subject premises had been properly removed from rent-control and was rent-stabilized, implicitly holding that the regulatory status of the premises had been properly pleaded in the petition."

Accordingly, the Commissioner finds that the Civil Court has concurrent jurisdiction with the DHCR in determining the rent regulatory status of the apartment, as a result, the DHCR is barred by the principles of res judicata and collateral estoppel from addressing the tenant's claim that the subject premises is not rent stabilized but rent controlled as the Civil Court previously found the subject apartment rent-stabilized. Furthermore, a party may not collaterally attack an unfavorable Housing Court decision by resorting to the DHCR administrative process. The tenant either needs to seek vacatur of the Housing Court decision or pursue an appeal to the Appellate term.

In view of the above, the Commissioner finds that the Petitioner-tenant has failed to substantiate their claim to revoke the Rent Administrator's determination in this case, and that the Rent Administrator correctly terminated the proceeding as the Housing Court addressed the issue of jurisdiction. The tenant's PAR has not established any basis to modify or revoke the Rent Administrator's determination.

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

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

ISSUED: DEC 9 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
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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
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JAMAICA, NEW YORK, 11433

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	**ADMINISTRATIVE REVIEW DOCKET NO.: IX420004RO**
RIVERSIDE VENTURA LLC,	:	**RENT ADMINISTRATOR'S DOCKET NO.: IM420001AD**
PETITIONER	:	

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On December 9, 2020, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on November 4, 2020 (the "Order"), concerning the housing accommodation known as 654 W. 161st Street, Apt. [redacted], New York, NY, wherein the Rent Administrator determined that the tenant is entitled to succession rights for the subject apartment.

The Commissioner has reviewed the entire evidence of the record including that portion of the record that is relevant to the issue raised by the PAR.

On January 15, 2020, the tenant initiated the underlying proceeding to determine the rent regulation status and the tenant's succession rights to the subject apartment.

In response, the petitioner-owner asserted that the tenant would be the second successor to the apartment, thereby warranting a 20% rent increase pursuant to the Rent Regulation Reform Act of 1997, which permitted a 20% vacancy increase for every other succession to a rent-controlled tenancy.

The tenant submitted evidence in the form of various documents that appear to show that the tenant was residing in the subject apartment for at least the two years preceding the death of the mother of the tenant, [redacted], who was the tenant of record until her passing on October 31, 2017. The tenant submitted Medicare documents from 2015, 2016, and 2017, and the tenant also provided documentation which appears to show that the tenant is [redacted] son. Based on evidence contained in the record, on November 4, 2020, the Rent Administrator determined under Docket No. IM420001AD, that the subject apartment is subject to the Rent and Evictions Regulations and the tenant is entitled to succession rights to the subject apartment, and further that the petitioner-owner is not entitled to a 20% vacancy increase as the New York

Housing Stability and Tenant Protection Act of 2019 ("HSTPA") eliminated vacancy increases. The petitioner-owner then filed the instant PAR.

In the PAR, the petitioner-owner seeks a modification of the Rent Administrator's order, asserting that it is entitled to a 20% vacancy increase upon the second succession to the rent-controlled subject apartment pursuant to Rent Regulation Reform Act of 1997 as [redacted] death occurred in 2017, prior to the enactment of HSTPA; that HSTPA cannot be applied retroactively; and that HSTPA does not expressly state that the act shall apply to pending matters.

The Commissioner having reviewed the petitioner-owner's appeal and any and all supporting documentation, any and all statements made by the affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations, finds that the petitioner's appeal should be denied.

At the outset, it is undisputed that the tenant is the second successor to the subject apartment. The petitioner-owner cites various cases in an effort to bolster its position (Docket Nos. HV610226RO, FQ430026RT, and HM210023RT); however, in each of those matters, the underlying matter was filed prior to HSTPA taking effect on June 14, 2019, whereas the underlying matter in the instant proceeding was commenced after HSTPA took effect. As such, there was no pending matter before the Rent Administrator at the time that HSTPA took effect on June 14, 2019. The mere fact that the tenant's mother passed away in 2017 does not automatically give the tenant succession rights. The tenant's succession rights were not established until November 2020. The 20% vacancy increase, if applicable, would not have taken effect until it was deemed that the tenant was the second successor, an issue which was not before the Rent Administrator prior to June 14, 2019. Additionally, the Commissioner notes that no party has a vested right to any remedy under the Rent Stabilization Law.

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly determined that the tenant is entitled to succession rights to the subject apartment and the owner is not entitled to a twenty percent (20%) vacancy increase. As such, the owner's PAR has not established any basis to revoke the Rent Administrator's determination.

THEREFORE, in accordance with the applicable provisions of the New York City Rent and Eviction Regulations, it is

ORDERED, the petition is denied, and the Rent Administrator's order is affirmed.

ISSUED: DEC 14 2022

Woody Pascal
Deputy Commissioner

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IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: HX410139RO

BELNORD PARTNERS LLC.,

RENT ADMINISTRATOR'S
DOCKET NO.: GR410208LD

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 [redacted]/[redacted] 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; 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, 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

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 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 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-

. 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.

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 March 15, 2018, through March 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 2018 application (June 12, 2018) 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 2018 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:

OCT 03 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.: HX410140RO

RENT ADMINISTRATOR'S
DOCKET NO.: FR410224LD

TENANTS: [redacted]

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

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On June 13, 2017, the owner filed a Petition for High-Rent/High-Income deregulation wherein the owner requests verification of the tenant's household income.

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 13, 2017; 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 2015 and the 2016 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, 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 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).

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. With respect to the instant matter, a review of the Rent Administrator's file indicates that the matter was actively being processed by the Administrator up to the passage of HSTPA.

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 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

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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.

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:
OCT 03 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

IN THE MATTER OF THE
ADMINISTRATIVE APPEALS OF

30 PARK AVENUE LLC,

ADMINISTRATIVE REVIEW
DOCKET NOS.: HX410231RO
HX410236RO

RENT ADMINISTRATOR'S
DOCKET NOS.: GQ410033LD
FQ410334LD

TENANT: [redacted]

PETITIONER

ORDER AND OPINION DENYING PETITIONS FOR ADMINISTRATIVE REVIEW

The owner timely filed two petitions for administrative reviews (PARs) of respective orders issued on November 13, 2019 by the Rent Administrator (RA) concerning the housing accommodations known as Apartment [redacted] at 30 Park Avenue, New York, New York, 10016.

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 May 15, 2017, and May 3, 2018, the owner filed with the rent agency two Petitions for High-Rent/High-Income deregulation wherein, the owner stated that it: "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 two 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 the PARs and in the owner's supplements, the owner asserts, among other things, that the RA's Orders must be reversed as arbitrary, capricious and unlawful; that DHCR's delay in processing the petitions was negligent or willful; that the law at the time the High-Rent/High-Income deregulation Petitions were filed should be applied; that the RA was required to have processed the petitions 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 applications.

After a careful consideration of the evidentiary records, the Commissioner finds that the owner's PARs 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, 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 Orders 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 rent deregulation for apartments that were 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. These determinations are on the merits as the rent agency is precluded from determining that the subject apartment is High Income/High Rent deregulated as there is no longer any standard under Rent Stabilization that permits the reviews 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 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 applications. 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 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 tenant(s) income in 2015-2016 and 2016-2017, events that occurred before the passage of HSTPA, are of no matter given that the apartment could not have been deregulated after June 14, 2019, which are prospective determinations. 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 applications 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 after June 14, 2019. As a result, the subject unit remained regulated. The owner's Due Process arguments, which are premised on its claim of

retroactivity, are 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 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 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 these deregulation applications did not divest the agency from issuing the November 13, 2019 Orders, which under the clear direction of the Legislature were 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."

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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.

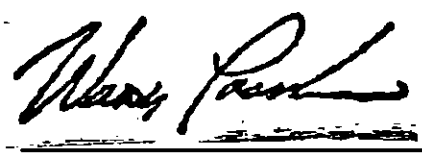
The Commissioner also notes that no party has a vested right to any remedy under the Rent Stabilization Laws and Regulations, thus diminishing the petitioner's claim that the application of HSTPA deprives the petitioner of due process. The petitioner had no vested right in the continuation of a particular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

ISSUED:
OCT 03 2022



Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
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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.: HX410232RO

30 PARK AVENUE LLC.,

RENT ADMINISTRATOR'S
DOCKET NO.: GQ410010LD

[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 [redacted] located at 30 Park Avenue, New York, New York, 10016.

On May 1, 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

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The expiration of the time periods prescribed by the applicable luxury deregulation sections of the Code, shall not

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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 notes that the owner filed a 2017 petition which was assigned Docket number FQ410342LD. 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 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 FQ410342LD Order that a 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:
OCT 03 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

ADMINISTRATIVE REVIEW
DOCKET NO.: HX410238RO

220 East 72nd Street REIT LLC.

RENT ADMINISTRATOR'S
DOCKET NO.: GQ410096LD

PETITIONER

[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 Premises: [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, 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 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 further points out that agency records indicate that, the owner renewed the tenants' lease for the term of January 1, 2018 through December 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-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

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.

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").

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

OCT 03 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

BELNORD PARTNERS LLC.,

PETITIONER

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ADMINISTRATIVE REVIEW
DOCKET NO.: HV410150RO

RENT ADMINISTRATOR'S
DOCKET NO.: HR410357LD

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] 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 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 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 March 15, 2018 through March 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:

OCT 03 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.: HX410233RO

30 PARK AVENUE LLC.,

RENT ADMINISTRATOR'S
DOCKET NO.: GQ410022LD

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 30 Park Avenue, New York, New York, 10016.

On May 1, 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 applicable luxury deregulation sections of the Code, shall not

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.

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:
OCT 05 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

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ASPENLY CO. LLC.,

ADMINISTRATIVE REVIEW
DOCKET NO.: HX410098RO

RENT ADMINISTRATOR'S
DOCKET NO.: GQ410559LD

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 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 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.

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").

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 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

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.

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:
OCT 11 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.: HX410234RO

30 PARK AVENUE LLC.,

RENT ADMINISTRATOR'S
DOCKET NO.: GQ410024LD

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 30 Park Avenue, New York, New York, 10016.

On May 1, 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] . . . 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 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 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 FQ410329LD. 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 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 FQ410329LD Order that a 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:
OCT 11 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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: HX410241RO
220 East 72nd Street REIT LLC	RENT ADMINISTRATOR'S
PETITIONER	DOCKET NO.: GQ410104LD
	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], 220 East 72nd Street, New York, New York.

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 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.

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 332(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 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

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.

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 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
OCT 11 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.: HX410101RO

ASPENLY CO. LLC.,

RENT ADMINISTRATOR'S
DOCKET NO.: GQ410554LD

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 requests verification of the household income because the owner 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 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] . . . 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

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 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.

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or deliberate conduct." The Court noted that the evidentiary record was devoid of evidence of negligent or deliberate conduct by DHCR.

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:
OCT 12 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

ADMINISTRATIVE REVIEW
DOCKET NO.: HX410197RO

HITCHCOCK PLAZA INC

RENT ADMINISTRATOR'S
DOCKET NO.: GQ410459LD

TENANT(S): [redacted]

PETITIONER 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] located at 200 W 90th Street, New York, New York, 10024.

On May 24, 2018, the owner filed with the rent agency a Petition for high income rent deregulation wherein the owner stated that it: "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 an Order Denying Petition and Terminated the subject proceeding. 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 by supplemental submission, the owner asserts, among other things, that, had DHCR complied with applicable mandatory deadlines, this matter would have been concluded prior to the enactment of HSTPA; that DHCR erred by applying the repeal of the High-Rent/High-Income deregulation provisions retroactively; that HSTPA is inapplicable here, where the owner's right had already vested; that the New York Court of Appeals invalidated the retroactive portions of HSTPA in Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal, (35 NY3d 332 [2020]); that HSTPA's repeal of High Rent/High Income deregulation does not provide for retroactive application; and that HSTPA does not achieve the Legislature's intended purpose.

After a careful consideration of the evidence in the 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 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 apartments that were 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 this 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 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 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 this 2018 petition would have been determined based on the tenant's income in 2016-2017, events that occurred before the passage of HSTPA, is of no matter given that this 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 the challenged 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 an 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 further points out agency records indicate that, the owner renewed the tenant's lease for the term of December 1, 2017, through November 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

[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.

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 applications here are 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".

The Commissioner further rejects petitioner's contentions that HSTPA does not achieve the Legislature's intended purpose. The Court in Community Hous. Improvement Program v City of NY et al, found that the legislative purposes and justifications offered for HSTPA 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 apartments before the enactment of HSTPA. See supra Pledge v DHCR. Accordingly, DHCR finds that the owner has not identified a particular right that vested by virtue of changes in prior processing rules.

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 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 Laws and Regulations, it is

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

ISSUED:

OCT 17 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

ADMINISTRATIVE REVIEW
DOCKET NO.: HX410200RO

HITCHCOCK PLAZA INC,

RENT ADMINISTRATOR'S
DOCKET NO.: GQ410458LD

TENANT: [redacted]

PETITIONER 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] located at 200 W 90th Street, New York, New York, 10024.

On May 24, 2018, the owner filed with the rent agency a Petition for high income rent deregulation wherein the owner stated that it: "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 an Order Denying Petition and Terminated the subject proceeding. 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 by supplemental submission, the owner asserts, among other things, that, had DHCR complied with applicable mandatory deadlines, this matter would have been concluded prior to the enactment of HSTPA; that DHCR erred by applying the repeal of the High-Rent/High-Income deregulation provisions retroactively; that HSTPA is inapplicable here, where the owner's right had already vested; that the New York Court of Appeals invalidated the retroactive portions of HSTPA in Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal, (35 NY3d 332 [2020]); that HSTPA's repeal of High Rent/High Income deregulation does not provide for retroactive application; and that HSTPA does not achieve the Legislature's intended purpose.

After a careful consideration of the evidence in the 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 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 apartments that were 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 this 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 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 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 this 2018 petition would have been determined based on the tenant's income in 2016-2017, events that occurred before the passage of HSTPA, is of no matter given that this 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 the challenged 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 an 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 applications here are 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

[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.

physical and regulatory takings claims. The Court also found that claimants who allege an as applied regulatory takings claim face a "heavy burden".

The Commissioner further rejects petitioner's contentions that HSTPA does not achieve the Legislature's intended purpose. The Court in Community Hous. Improvement Program v City of NY et al, found that the legislative purposes and justifications offered for HSTPA 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 apartments before the enactment of HSTPA. See supra Pledge v DHCR. Accordingly, DHCR finds that the owner has not identified a particular right that vested by virtue of changes in prior processing rules.

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 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 Laws and Regulations, it is

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

ISSUED:

OCT 17 [redacted]

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

30 PARK AVENUE LLC.,

ADMINISTRATIVE REVIEW
DOCKET NO.: HX410235RO

RENT ADMINISTRATOR'S
DOCKET NO.: GQ410025LD

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 30 Park Avenue, New York, New York, 10016.

On May 1, 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] . . . 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 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 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: OCT 17 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.: HX410322RO

CLERMONT YORK ASSOCIATES, LLC,

RENT ADMINISTRATOR'S
DOCKET NO.: GR410462LD

TENANT: [redacted]

PETITIONER 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] located at 444 East 82nd Street, New York, New York, 10028.

On June 25, 2018, the owner filed with the rent agency a petition for high income rent deregulation wherein the owner stated that it: "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 an Order Denying Petition and Terminated the subject proceeding. 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 by supplemental submission, the owner asserts,

among other things, that, had DHCR complied with applicable mandatory deadlines, this matter would have been concluded prior to the enactment of HSTPA; that DHCR erred by applying the repeal of the High-Rent/High-Income deregulation provisions retroactively; that HSTPA is inapplicable here, where the owner's right had already vested; that the New York Court of Appeals invalidated the retroactive portions of HSTPA in Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal, (35 NY3d 332 [2020]); that HSTPA's repeal of High Rent/High Income deregulation does not provide for retroactive application; and that HSTPA does not achieve the Legislature's intended purpose.

After a careful consideration of the evidence in the 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 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 apartments that were 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 this 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 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 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 this 2018 petition would have been determined based on the tenant's income in 2016-2017, events that occurred before the passage of HSTPA, is of no matter given that this 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 the challenged 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 an 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 applications here are 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

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.

a "heavy burden".

The Commissioner further rejects petitioner's contentions that HSTPA does not achieve the Legislature's intended purpose. The Court in Community Hous. Improvement Program v City of NY et al, found that the legislative purposes and justifications offered for HSTPA 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 apartments before the enactment of HSTPA. See supra Pledge v DHCR. Accordingly, DHCR finds that the owner has not identified a particular right that vested by virtue of changes in prior processing rules.

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 notes that the owner filed a 2017 petition which was assigned Docket Number FQ410587LD. 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. The Order denying the 2017 petition was issued on May 31, 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 petitions overlap given that both required this agency to confirm with the New York Department of Tax and Finance whether the tenant's income exceeded $200,000 in 2016. The Owner was specifically advised in the FQ410587LD Order that a 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 Laws and Regulations, it is

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

ISSUED:

OCT 17 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
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JAMAICA, NEW YORK 11433

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

BELNORD PARTNERS LLC.,

PETITIONER

ADMINISTRATIVE REVIEW
DOCKET NO.: HX410166RO

RENT ADMINISTRATOR'S
DOCKET NO.: GR410183LD

[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 [redacted] 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 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 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 states 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, 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, 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 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 tenants' 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

1 In *Rudin E. 55th St. LLC*, the Court agreed that the Deputy Commissioner's findings were reasonable

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 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 laws as enacted by the New York State Legislature. In Community Hous. Improvement Program v City of NY et al, 2020 US Dist LEXIS

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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.

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 1, 2018 through May 31, 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 2018 application (June 12, 2018) 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 2018 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 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:

OCT 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

ADMINISTRATIVE REVIEW
DOCKET NO.: HX410376RO

BELNORD PARTNERS LLC.,

RENT ADMINISTRATOR'S
DOCKET NO.: FR410200LD

[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 [redacted] located at 225 West 86th Street, New York, New York, 10024.

On June 13, 2017, 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, and in a supplement, the owner asserts, among other things, that the Petition for High-Rent/High-Income deregulation

was filed on June 13, 2017; 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 2015 and the 2016 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 states 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, 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 HSTPA violates owners' 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, 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 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 2017 Petition would have been determined based on tenants' 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).

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

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 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 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

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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.

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:

OCT 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

X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: HV410138RO

BELNORD PARTNERS LLC.,

RENT ADMINISTRATOR'S
DOCKET NO.: HR410348LD

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 August 29, 2019, by a Rent Administrator (RA) concerning apartment [redacted] 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.

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 states 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 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 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 tenants' 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, 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 tenants' lease for the term of June 1, 2018 through May 31, 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 (June 13, 2019) 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 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").

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:

OCT 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

58th Street Capital, LLC

ADMINISTRATIVE REVIEW
DOCKET NO.: HX410133RO

RENT ADMINISTRATOR'S
DOCKET NO.: GO410005LD

[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 [redacted] at 210 East 58th Street, New York, New York, 10022.

On March 6, 2018, the owner filed a Petition for High-Rent/High-Income deregulation.

On November 13, 2019, the RA issued the Order herein under review, which Order stated:

> 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 Petition for High-Rent/High-Income deregulation was for the 2018 filing period; that the statutory High-Rent/High-Income deregulation thresholds would have been met if determined that the total annual household incomes of the occupants of the subject housing accommodation was more than $200,000.00 in each of the two

preceding calendar years - 2017 and 2016, and if determined that the legal regulated rent exceeded $2,733.75 per month, as of January 1, 2018; that the law in effect at the time the petitioner filed the Petition for High-Rent/High-Income deregulation is the applicable law, and not the law in effect at the time of DHCR's determination; that the unit was deregulated because the tenant failed to answer; that the RA erred by retroactively applying HSTPA to the filing date of this Petition for High-Rent/High-Income deregulation; that the law in effect on the filing date of this Petition for High-Rent/High-Income deregulation must be followed in this proceeding; that the law in effect at that time permitted luxury deregulation if the statutory criteria had been met; that the implementation of HSTPA in eliminating High-Rent/High-Income deregulation violates the "Takings Clause" of the U.S. Constitution, as the owner did not receive just compensation for the utilization of his private property for public use; that the Order at issue was based on a law change with no rational basis; that HSTPA results in continued occupancy of tenants least in need of assistance; that the owner was denied due process as the effect of the HSTPA as applied in this matter amounts to a regulatory taking; that the rent agency's delay in processing this proceeding prior to the effective date of HSTPA has caused the owner harm; that, if the rent agency had processed this proceeding in a timely manner, a decision on the merits could have been issued prior to the enactment of HSTPA; and that based upon the above, this proceeding should be reopened for processing on the merits of this Petition for High-Rent/High-Income deregulation.

On May 7, 2020, the owner filed a supplement to the PAR, arguing, among other things, that the date of significance is the date the ICF was served; that DHCR failed to timely process the Deregulation Petition; that retroactive application of HSTPA to this proceeding is contrary to the intent of the Legislature, and such application is thereby unconstitutional; that Part "D" of HSTPA is not retroactive; and that the New York Court of Appeals invalidated the retroactive portions of HSTPA in Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal, 35 N.Y.3d, 332 (2020).

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 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 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).

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]

[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 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 answer 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 finds that the rent agency does not have jurisdiction to determine the remaining constitutional issues raised by the petitioner. The Commissioner notes, however, that

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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.

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 the owner's arguments that the RSL as amended is not rationally related to its legitimate legislative process. See also 74 Pinehurst LLC v. State of NY, 19-CV-6447 (EDNY) (appeal pending). The Court also rejected an argument that HSTPA's amendments "perpetuates New York's housing crisis and fails to target the people it claims to serve" and found that the legislative purposes behind HSTPA were valid. In addition, those changes made by the HSTPA do not render the Rent Stabilization Law unconstitutional. See 335-7 LLC et al. v. City of NY, 20-CV-01063; BRI v. NY, 19-CV-11285 (SDNY) (2021 US Dist. Lexis 174535).

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.

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 Laws and Regulations, it is

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

ISSUED: OCT 25 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: 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@hcr.ny.gov. 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

58th Street Capital, LLC

ADMINISTRATIVE REVIEW
DOCKET NO.: HX410142RO

RENT ADMINISTRATOR'S
DOCKET NO.: GN410011LD

[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 [redacted] at 210 East 58th Street, New York, New York, 10022.

On February 27, 2018, the owner filed a Petition for High-Rent/High-Income deregulation.

On November 13, 2019, the RA issued the Order herein under review, which Order stated:

> 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 Petition for High-Rent/High-Income deregulation was for the 2018 filing period; that the statutory High-Rent/High-Income deregulation thresholds would have been met if determined that the total annual household incomes of the occupants of the subject housing accommodation was more than $200,000.00 in each of the two

preceding calendar years - 2017 and 2016, and if determined that the legal regulated rent exceeded $2,733.75 per month as of January 1, 2018; that the law in effect at the time the petitioner filed the Petition for High-Rent/High-Income deregulation is the applicable law, and not the law in effect at the time of DHCR's determination; that the unit was deregulated because the tenant failed to answer; that the RA erred by retroactively applying HSTPA to the filing date of this Petition for High-Rent/High-Income deregulation; that the law in effect on the filing date of this Petition for High-Rent/High-Income deregulation must be followed in this proceeding; that the law in effect at that time permitted luxury deregulation if the statutory criteria had been met; that the implementation of HSTPA in eliminating High-Rent/High-Income deregulation violates the "Takings Clause" of the U.S. Constitution, as the owner did not receive just compensation for the utilization of its private property for public use; that the Order at issue was based on a law change with no rational basis; that HSTPA results in continued occupancy of tenants least in need of assistance; that the owner was denied due process as the effect of HSTPA as applied in this matter amounts to a regulatory taking; that the rent agency's delay in processing this proceeding prior to the effective date of HSTPA has caused the owner harm; that, if the rent agency had processed this proceeding in a timely manner, a decision on the merits could have been issued prior to the enactment of HSTPA; and that, based upon the above, this proceeding should be reopened for processing on the merits of this Petition for High-Rent/High-Income deregulation.

On April 28, 2020, the owner filed a supplement to the PAR, arguing, among other things, that the date of significance is the date the ICF was served; that DHCR failed to timely process the Deregulation Petition; that retroactive application of HSTPA to this proceeding is contrary to the intent of the Legislature, and such application is thereby unconstitutional; that Part "D" of HSTPA is not retroactive; and that the New York Court of Appeals invalidated the retroactive portions of HSTPA in Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal, 35 N.Y.3d, 332 (2020).

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 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 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).

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]

[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

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 answer 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 finds that the rent agency does not have jurisdiction to determine the remaining constitutional issues raised by the petitioner. The Commissioner notes, however, that there is a strong presumption of constitutionality of the rent laws as enacted by the New York State legislature. In Community

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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.

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 the owner's arguments that the RSL as amended is not rationally related to its legitimate legislative process. See also 74 Pinehurst LLC v. State of NY, 19-CV-6447 (EDNY) (appeal pending). The Court also rejected an argument that HSTPA's amendments "perpetuates New York's housing crisis and fails to target the people it claims to serve" and found that the legislative purposes behind HSTPA were valid. In addition, those changes made by the HSTPA do not render the Rent Stabilization Law unconstitutional. See 335-7 LLC et al. v. City of NY, 20-CV-01063; BRI v. NY, 19-CV-11285 (SDNY) (2021 US Dist. Lexis 174535).

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.

The Commissioner further points out that agency records indicate that the owner renewed the tenant's lease for the term of January 2, 2018 through December 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-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 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").

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 Laws and Regulations, it is

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

ISSUED:

OCT 25 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: 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@hcr.ny.gov. 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

58th Street Capital, LLC

ADMINISTRATIVE REVIEW
DOCKET NO.: HX410143RO

RENT ADMINISTRATOR'S
DOCKET NO.: GN410012LD

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 a Rent Administrator (RA) concerning apartment [redacted] at 210 East 58th Street, New York, New York, 10022.

On February 27, 2018, the owner filed a Petition for High-Rent/High-Income deregulation.

On November 13, 2019, the RA issued the Order herein under review, which Order stated:

> 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 Petition for High-Rent/High-Income deregulation was for the 2018 filing period; that the statutory High-Rent/High-Income deregulation thresholds would have been met if determined that the total annual household incomes of the occupants of the subject housing accommodation was more than $200,000.00 in each of the two

preceding calendar years - 2017 and 2016, and if determined that the legal regulated rent exceeded $2,733.75 per month, as of January 1, 2018; that the law in effect at the time petitioner filed the Petition for High-Rent/High-Income deregulation is the applicable law, and not the law in effect at the time of DHCR's determination; that the unit was deregulated because the tenant failed to answer; that the RA erred by retroactively applying HSTPA to the filing date of this Petition for High-Rent/High-Income deregulation; that the law in effect on the filing date of this Petition for High-Rent/High-Income deregulation must be followed in this proceeding; that the law in effect at that time permitted luxury deregulation if the statutory criteria had been met; that the implementation of HSTPA in eliminating High-Rent/High-Income deregulation violates the "Takings Clause" of the U.S. Constitution, as the owner did not receive just compensation for the utilization of his private property for public use; that the Order at issue was based on a law change with no rational basis; that HSTPA results in continued occupancy of tenants least in need of assistance; that the owner was denied due process as the effect of the HSTPA as applied in this matter amounts to a regulatory taking; that the rent agency's delay in processing this proceeding prior to the effective date of HSTPA has caused the owner harm; that, if the rent agency had processed this proceeding in a timely manner, a decision on the merits could have been issued prior to the enactment of HSTPA; and that based upon the above, this proceeding should be reopened for processing on the merits of this Petition for High-Rent/High-Income deregulation.

On April 29, 2020, the owner filed a supplement to the PAR, arguing, among other things, that the date of significance is the date the ICF was served; that DHCR failed to timely process the Deregulation Petition; that retroactive application of HSTPA to this proceeding is contrary to the intent of the Legislature, and such application is thereby unconstitutional; that Part "D" of HSTPA is not retroactive; and that the New York Court of Appeals invalidated the retroactive portions of HSTPA in Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal, 35 N.Y.3d, 332 (2020).

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 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 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).

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]

[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

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 answer 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 finds that the rent agency does not have jurisdiction to determine the remaining constitutional issues raised by the petitioner. The Commissioner notes, however, that there is a strong presumption of constitutionality of the rent laws as enacted by the New York State legislature. In Community

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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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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.

The Commissioner further points out that agency records indicate that the owner renewed the tenant's lease for the term of December 15, 2017 through December 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-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 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").

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 Laws and Regulations, it is

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

ISSUED: OCT 25 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.