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** IP410002RO
OSI, LLC	
PETITIONER	**RENT ADMINISTRATOR'S DOCKET NO** IN410012AD

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On April 9, 2020, the above-named petitioner owner filed a Petition for Administrative Review ("PAR") of an order the Rent Administrator issued on February 20, 2020 (the "order"), concerning the housing accommodation known as 457 West 47th Street, Apt [redacted] New York, New York wherein the Rent Administrator denied the owner's request to amend the 2008 Annual Rent Registration to permanently exempt due to high rent vacancy deregulation

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 claiming there was no rational basis for the denial of its application as it properly sought to amend the 2008 Annual Rent Registration due to the fact the apartment had become permanently exempt in October 2007, that the order mentions inapplicable reasons for denying the application, and the owner notes that the Rent Administrator did not request additional information before issuing the order The owner asserts that it merely made a clerical error in registering the apartment as it was not subject to rent stabilization and had not been subject to rent stabilization for the past 12 years as demonstrated by the supporting documents The owner disputes both that the Rent Stabilization Code ("RSC" or the "Code") limits amendments to "ministerial" or "clerical" errors, and the logic of the order's stated limitations when the purpose of the registration process

is for the registrations to accurately reflect the facts and circumstances regarding the subject apartments

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

The record below shows the owner initiated the proceeding on February 6, 2020 for the purpose of seeking permission to amend the 2008 Annual Rent Registration to permanently exempt based on high vacancy deregulation The owner's application included a statement from [redacted] in which he averred that upon review of the building's records by the new managing agent, it was discovered that errors were made by the prior managing agent in registering the apartment, that the apartment was incorrectly registered in 2008 as "TE Owner Occupied/Employee" as well as in all years subsequent to 2008, and that based on the information submitted with the owner's amendment application, the apartment should have been registered as "PE" based upon high rent vacancy as a matter of law

Based upon a review of the evidence presented, on February 20, 2020, the Rent Administrator denied the owner's application stating amendments to registrations may be accepted for processing when such amendment seeks 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 Rent Administrator also stated that amendments seeking to re-calculate the rental history of the apartment or other types of changes are not applicable for an amendment registration application and provided examples of changes not applicable for amendment, which included seeking to add apartment improvement rent increases, major capital improvement increases, guideline increases, vacancy allowances/longevity that were not previously charged and paid by the tenant Further, the Rent Administrator noted that amendments seeking to remove an apartment from rent stabilized status due to high rent vacancy decontrol or any other reason claimed as permanent exemption are also not allowed The Rent Administrator advised the owner that they may correct the previous error in the next registration cycle, however the owner should keep all relevant rent records on file and that registration information provided by the owner during the normal registration cycle is part of the rent history of the apartment and cannot be amended

At the outset, the Commissioner notes that a review of the Rent Administrator's proceeding reveals that the documentation and information submitted by the owner regarding same, were fully investigated and that the Rent Administrator properly predicated the decision on such documentation and the Agency's records

The Commissioner finds that the Rent Administrator correctly denied the owner's application to amend the 2008 Annual Rent Registration as registrations can only be amended for ministerial issues, such as clerical or typographical errors, as indicated by the Rent Administrator's order and in accordance with Section 2528 3(c) of the Code Section 2528 3(c), which was added to the regulations by the Rent Code Amendments of 2014, provides that an "owner seeking to amend a 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 2008 Annual Rent Registration to permanently exempt the subject apartment due to high rent vacancy deregulation As the Rent Administrator noted in her determination, amendments seeking to remove an apartment from rent stabilized status for any reason claimed are not allowed The owner's attempt to amend the 2008 Annual Rent Registration to reflect the apartment status as permanently exempt due to high rent vacancy deregulation by way of the amendment process is improper as it goes beyond the scope of an amendment application proceeding 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 denied the owner's request to amend the 2008 Annual Rent Registration to reflect the subject apartment's status as permanently exempt due to high rent vacancy deregulation, and that the owner'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 OCT 1 2021

Woody Pascal
Deputy Commissioner

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

Right to Court Appeal

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

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There is no other method of appeal.

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO IX410006RO

NCR, LLC

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO IS410010AD

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On December 10, 2020, the above-named petitioner owner filed a Petition for Administrative Review ('PAR") of an order the Rent Administrator issued on November 5, 2020 (the "order"), concerning the housing accommodation known as 428 West 47th Street, Apt [redacted] New York, New York wherein the Rent Administrator granted, in part, the owner's request to amend the 2009 annual apartment registration and denied the owner's request to withdraw the 2017 annual apartment registration

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 modification of the order as it pertains to the denial of its request to withdraw the 2017 annual registration asserting the general reason provided by the Rent Administrator for her denial was arbitrary and capricious, overly broad, and ambiguous The owner claims in substance that there was no basis in law for the denial of the amendment as the rules pertaining to amendments permit an owner to freely amend within one year, and to put limitations on it after that time period does not change the fact that an amendment may still be required, and that apartment registrations accurately reflect the facts and circumstances for each apartment, and that Rent Stabilization Code (' RSC" or "the Code") does not give DHCR authority to summarily conclude that certain amendments are not permitted The

owner cites the Matter of Yensi, Docket No CV210018RO as precedent to support its claim that its request to withdraw the 2017 annual registration in this case based on the fact that the owner's request was not an amendment that would have removed the apartment from rent stabilization status for the first time, and therefore should have been granted

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

According to the record, on July 27, 2020 the owner initiated the proceeding for the purpose of seeking permission to amend the 2009 annual registration and to withdraw the 2017 annual registration for the subject apartment after a review of the building's records by the new managing agent revealed that the prior managing agent made errors in registering the subject apartment The owner claimed the apartment was improperly registered in 2009 as temporarily exempt despite the fact the tenant, [redacted] remained in occupancy with a lease term of September 9, 2008 to August 31, 2010, and a legal rent amount of $2,104 32 Furthermore, it requested the withdrawal of the 2017 annual registration claiming it was mistakenly filed since the apartment was no longer subject to rent stabilization The owner submitted a copy of John DeStefano's 2008 Renewal Lease and the tenant's Account Ledger Based upon a review of the documents and evidence presented, the Rent Administrator on November 5, 2020 granted in part the owner's application by permitting amendments to the 2009 apartment registration as follows

Item 2	Tenant in Occupancy on 4/1/2009 Add '[redacted]'
Item 7a	Remove "Owner Occupied/Employee"
Item 8	Legal Regulated Rent on 4/1/2009 Change to "$2,104 32"
Item 10	Lease in effect on 4/1/2009 - Began On Change to "9/1/08"
	Expires On Change to "8/31/10"
Item 11	Select "Lease Renewal'

The Rent Administrator did not permit the owner's amendment request for the 2017 annual apartment registration, stating amendments seeking to re-calculate the rental history of the apartment or other types of changes are not applicable for an amendment registration application The Rent Administrator further provided examples of changes not applicable for amendment, including seeking to add apartment improvement rent increases, major capital improvement increases, guideline increases, vacancy allowances /longevity that were not previously charged and paid by the tenant The Administrator stated amendments seeking to remove an apartment from rent stabilized status due to high rent vacancy decontrol or any other reason claimed as a permanent exemption are also not allowed

At the outset, the Commissioner notes that a review of the Rent Administrator's proceeding reveals that the documentation and information submitted by the owner regarding same, were fully investigated and that the Rent Administrator properly predicated the decision on such documentation and the Agency's records

After a review of the record, the Commissioner finds that the Rent Administrator correctly denied that part of the owner's application which sought to amend the 2017 annual apartment registration as rent registrations can only be amended for ministerial issues, such as

clerical or typographical errors, as indicated by the Rent Administrator's order and in accordance with Section 2528 3(c) of the Code Section 2528 3(c), which was added to the regulations by the Rent Code Amendments of 2014, provides that an 'owner seeking to amend a 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, among other amendments, amend the 2017 annual registration by seeking to withdraw it, claiming the apartment was no longer subject to rent stabilization As the Rent Administrator noted in the determination amendments seeking to remove an apartment from rent stabilized status for any reason claimed are not allowed Moreover, that part of the owner's submitted application which sought to amend the 2017 annual registration based on the claim the subject apartment was previously deregulated is improper as it goes beyond the scope of an amendment application proceeding In addition, the owner's reliance on the Matter of Yensi is misplaced as the Commissioner therein permitted an amendment to correct the tenant names and stated, "amendments seeking to remove an apartment from rent-stabilized status due to high rent vacancy decontrol or any other reason claimed as a permanent exemption are not allowed "

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly denied the owner's request to amend the 2017 annual apartment registration by withdrawing the registration based upon the claim that the apartment was no longer subject to rent stabilization The owner'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 **OCT 1 2021**

Woody Pascal
Deputy Commissioner

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

Right to Court Appeal

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Note: During the period of the current Covid-19 emergency, as a courtesy, if the Article 78 proceeding is commenced by efiling pursuant to the Court Rules service may be effectuated, is 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
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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 JN210010RO

Zackmaxie, LLC

RENT ADMINISTRATOR'S
DOCKET NO GR210008AD

PETITIONER

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On February 23, 2021, the above named petitioner owner filed a petition for administrative review (PAR) against an order issued on January 7, 2021, by the Rent Administrator concerning the housing accommodations known as 431 Bleecker Street, Apartment [redacted], Brooklyn, NY, wherein the Administrator issued an Order Determining Facts or Establishing Rent regarding the herein stated premises, finding that the subject apartment, [redacted] is subject to the Rent Stabilization Law and Code

In the proceeding below, through correspondence received June 21 2018, the owner requested an Administrative Determination (AD) regarding the subject apartment, requesting that the Registration Statements for the apartment be amended for the years 2014 and 2015 pursuant to the Rent Stabilization Code 2520 11(e), to show that the unit was Permanently Exempt from rent regulation due to substantial rehabilitation of the unit in 2013, that all work detailed was duly filed and performed and completed prior to the filing of the registrations, but was mistakenly omitted for registration The owner further requested that after the amendment is done, the finding be applied retroactively to the date when the work was completed, in 2013

On January 7, 2021, the Rent Administrator determined that the subject apartment is subject to the Rent Stabilization Law and Code In her findings, the Rent Administrator disallowed Individual Apartment Improvement (IAI) claims made by the owner, including all electrical work completed by Willie Electric, the work proposal from Knova Contractors, the costs for appliances, and costs claimed for Grand Management Services LLC The Rent Administrator directed the owner to register the subject apartment with the Agency in accordance with the findings of the decision

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

The owner, in its PAR, requests a reversal of the Rent Administrator's order In substance, the owner argues that the Rent Administrator's order, which disallowed all individual apartment improvements and rolled back the rent for apartment [redacted] to the legal regulated rent amount of $674 45 (the rent as of August 1, 2012), was arbitrary and capricious, that all work deemed by the owner as culminating in substantial rehabilitation of the subject apartment for which the rent was (to be) legally increased were performed and the owner submitted the necessary documentation

The tenant, through his attorneys, Communities Resist opposed the petition

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

Pursuant to Section 2522 4 (a) (1) of the Rent Stabilization Code (the Code), Adjustment of legal regulated rent,

> "(a) Increased space and services, new equipment, new furniture or furnishings, major capital improvements, other adjustments
>
> (1) An owner is entitled to a rent increase where there has been a substantial increase, other than an increase for which an adjustment may be claimed pursuant to paragraph (2) of this subdivision, of dwelling space or an increase in the services, or installation of new equipment or improvements, or new furniture or furnishings, provided in or to the tenant's housing accommodation, on written tenant consent to the rent increase In the case of vacant housing accommodations, tenant consent shall not be required "

The owner's claim that substantial rehabilitation of the subject apartment necessitating IAI rent increases, allegedly culminating in deregulating the subject apartment is unsupported by the record The Commissioner finds that the Rent Administrator properly found that the record did not support the owner's position

The owner's claim concerning work purportedly completed by Willie Electric was properly found to not constitute an IAI The Code, as shown above, requires that for a tenant in occupancy at the time that individual apartment improvement(s) work is performed, such work is to be performed *on written consent* of the tenant In the instant case, no such showing had been made concerning the work claimed for the IAI rent increases Specifically, for the IAI rent increases claimed for Willie Electric, the Commissioner finds that the Rent Administrator properly disallowed such claimed costs as the owner failed to submit written consent of the tenant in occupancy for such work purportedly completed in 2009 (the Commissioner notes that this work was also found to be repair and maintenance and therefore not performed pursuant to an allowable IAI)

The owner's claim that the work purportedly performed by Knova Contractor was improperly disallowed by the Rent Administrator is not supported by the record DHCR Policy Statement 90-10 provides that IAIs must be supported by adequate documentation which should include at least one of the following (1) cancelled checks contemporaneous with the completion of the work, (2) invoices marked paid in full contemporaneous with the completion of the work, (3) signed contract agreement, or (4) contractor's affidavit indicating that the installation was completed and paid in full More importantly, the Policy Statement adds, "[w]henever it is found that a claimed cost warrants further inquiry, the processor may request that the owner provide additional documentation " Here, the Rent Administrator determined that the owner's claimed IAI costs warranted further inquiry and more documentation was needed The Commissioner notes that the owner failed to submit additional documentation as requested by the Rent Administrator Thus, the Commissioner finds that the claimed costs were properly disallowed

The owner argues further that the disallowance of the costs pertaining to the appliance(s) in the subject apartment was also improper is without merit The owner's claim that due to a fire incident at the owner's storage facility, many records were lost, and that the owner submitted communication from Signature Bank explaining that bank records (of payments) dating back to 2013 were no longer available, that should the owner be allowed access to the subject apartment, the owner would be able to access the serial numbers on the appliances to show their manufacturing dates, and that the tenant was not disputing that the appliances were new at the time of taking possession of the apartment The Commissioner notes that it is not sufficient to prove that new appliances were placed in the subject apartment, without a proper substantiation of the costs In the instant case, there were no documents showing purchase prices for the appliances which the owner claimed to have purchased The Commissioner notes that verifying purchase is only an aspect of the necessary substantiation, and that evidencing costs is an essential aspect, which the owner had been unable to demonstrate The Commissioner finds that the Rent Administrator's disallowing the value of the appliances because the owner had no documents to verify the alleged purchase was proper

The owner's claim that the Rent Administrator disallowed fees paid to Grand Management Services, LLC under the mistaken allegation that there was an entity of interest between Grand Management Services, LLC and the owner, Zackmaxie, LLC is also without merit The Commissioner finds that the owner has not effectively rebutted the presumption of the relationship between the owner and Grand Management, LLC Therefore, the Commissioner finds that the fees were correctly not allowed

Absent documentation that adequately substantiated the owner's claimed IAIs, the Rent Administrator's determination to exclude such claimed IAIs in the calculation of the rent was reasonable in this case

Lastly, with regard to the owner's statement that August 1, 2012 was outside the four-year statute of limitation in effect at the time of the initiation of the subject petition, the Commissioner notes that the sequence of events and the record as noted above do not support a case of proper deregulation[1] The Commissioner notes that the owner initiated the proceeding before the Rent

[1] The Commissioner notes that the owner also failed to provide the Notice of Deregulation with the IAI and the cost provided to the current occupant

Administrator Hence, the instant case raises a question of regulatory status of the subject apartment, and the courts have ruled that the DHCR's consideration of events beyond the look-back period is permissible if done not for the purpose of calculating an overcharge, but rather to determine whether an apartment is regulated

In light of the above, the Commissioner finds that the owner's PAR has not established any basis to modify or revoke the Administrator's determination The Commissioner notes that the evidence of record supported the Rent Administrator's conclusion that the subject apartment is subject to rent stabilization, and the petitioner-owner has failed to establish error with this conclusion

Based on the foregoing, the Commissioner finds that the Rent Administrator properly determined that the apartment was not deregulated, and the owner was not permitted to amend the annual apartment registrations as requested for the years 2014 and/or 2015

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, denied and that the Rent Administrator's order be, and the same hereby is, affirmed

ISSUED
OCT 15 2021

WOODY PASCAL
Deputy Commissioner

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

Right to Court Appeal

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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** HS210005RO
DON TOM REALTY CORP	
PETITIONER	**RENT ADMINISTRATOR'S DOCKET NO** BU210010AD

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On July 5, 2019, the above named Petitioner-owner filed a Petition for Administrative Review ("PAR") against BU210010AD, an order the Rent Administrator issued on May 31, 2019 (the "order"), concerning the housing accommodation known as 217 Eastern Parkway, Apartment [redacted] Brooklyn, New York, wherein the Rent Administrator determined that, based on the findings of an Agency hearing, the subject apartment will remain subject to the Rent Stabilization Law and Code until the vacancy of the subject tenant, due to the owner's failure to provide the subject tenant with required J-51 Riders stating the tax abatement benefits and the date the benefits were set to expire

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 counsel, requests a reversal of the Rent Administrator's order and contends that (1) the order is defective for lack of findings of fact as the order states that the owner failed to provide the tenant with the J-51 Rider but does not specify the leases that do not have the J-51 Rider, (2) the "quality and quantity of the testimony and the documentary evidence submitted by the landlord can lead to only one probative and logical conclusion – the tenant s initial lease did, in fact, have the required J-51 Rider attached to it" and (3) the tenant is no longer subject to the Rent Stabilization Law and Code due to the expiration of the J-51 tax benefits

The tenant, through counsel, opposed the owner's petition, claiming that the findings of the Administrative Law Judge ("ALJ") were supported by the record

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

Pursuant to the Administrative Code of the City of New York Section 26-504 (c) (the Rent Stabilization Law ("RSL")), dwelling units in buildings receiving J 51 tax benefits have rent stabilization protection Dwelling units that have rent stabilization protection solely as a result of the building receiving such tax benefits will remain subject to regulation "until the occurrence of the first vacancy of such unit after such benefits are no longer being received or if each lease and renewal thereof for such unit for the tenant in residence at the time of the expiration of the tax benefit period has included a notice in at least twelve point type informing such tenant that the unit shall become subject to deregulation upon the expiration of such tax benefit period and states the approximate date on which such tax benefit is scheduled to expire, such dwelling unit shall be deregulated as of the end of the tax benefit period[ ]" (*See also* Rent Stabilization Code Section 2520 11 (o) and DHCR Fact Sheet # 41 Tax Abatements)

A review of the record below reveals that in an application received on September 3, 2013, the owner filed a request for an Administrative Determination with the DHCR, requesting a determination of the regulation status of Apartment [redacted] claiming that the J-51 tax benefit for the subject building had expired The owner alleged that the tenant had executed and received a lease rider which informed the tenant of the expiration of the J-51 benefits, and that by virtue of the said expiration, the unit would no longer be subject to RSL at that time During the pending proceeding, the owner submitted copies of leases, claiming the leases included the required J-51 Riders and affidavits from principals of the owner corporation attesting that the leases offered to the tenant had the J-51 Riders attached

On September 30, 2013, the tenant was served with the owner's Administrative Determination request On October 17, 2013, the tenant responded to the notice and submitted the initial lease for the period of July 1, 1990 through June 30, 1992 and subsequent renewal leases through July 30, 2013 with no riders annexed During the pending proceeding, the tenant denied signing or receiving the J-51 Riders as the owner claimed

The Agency record reveals that the matter was sent to the DHCR Hearings Unit to determine whether the tenant received the requisite notice, by way of lease rider, of the expiration of the J-51 tax benefits and with it, the expiration of Rent Stabilization benefits

The hearing was conducted by the Administrative Law Judge on December 2 and December 5, 2016, and on March 13 and October 10 2017 At the hearing, the parties were provided with the opportunity to present their cases, call witnesses to testify and provide documentary evidence supporting their claims Based on the entire evidence of record, the ALJ found that the tenant's initial lease (1990) and the first renewal lease (1992), executed between the parties, did not contain the J 51 Riders notifying the subject tenant of the approximate date on which such tax benefit period was set to expire and that the apartment would become deregulated upon the expiration of the last lease entered into during the tax benefit period (the Commissioner notes that the ALJ found that the only other executed renewal leases, which were a result of stipulation of settlements entered into between the parties pursuant to New York City Housing Court proceedings, contained J-51 Riders)

The ALJ therefore found that the subject apartment would remain subject to the Rent Stabilization Law until the vacancy of the subject tenant due to the owner's failure to provide the

tenant with the required J-51 Rider notification relating to the tax abatement benefits and the date of termination of rent stabilization benefits with the tenant's initial lease and the first renewal lease

On May 31, 2019 under Docket No BU210010AD, the Rent Administrator, based on the findings in the hearing, determined that the subject apartment will remain subject to the Rent Stabilization Law and Code until the vacancy of the subject tenant, due to the owner's failure to provide the subject tenant with the required J-51 Rider notifications that stated the tax abatement benefits and the date of termination of rent stabilization benefits

Based on the foregoing, the Commissioner finds that the owner's argument that the Rent Administrator erred in their decision, claiming that all of the tenant's leases had J-51 Riders and therefore the tenant is no longer subject to the RSL, is without merit Here, the Administrative Hearing report confirms that the parties were offered the opportunity to present their cases by way of documentation and testimony The record also reveals that the ALJ carefully evaluated, analyzed, and considered all the facts, testimonies, and the documentary evidence provided by both parties, predicated their decision based upon same, and determined that the tenant's initial lease and the first renewal lease executed between the parties did not contain the J-51 Riders pursuant to the requirements provided for in Section 26-504 (c) of the RSL and Section 2520 11 (o) of the Rent Stabilization Code

Accordingly, the Rent Administrator properly relied on the findings of the ALJ, who in turn relied on the testimony and evidence produced at the hearing, to conclude that the subject apartment is subject to the Rent Stabilization Law and Code until the vacancy of the subject tenant, [redacted] as the owner failed to provide such tenant in their initial lease and their first renewal lease with the required J-51 Rider notification The owner's PAR has not established any basis to modify or revoke the Rent Administrator's order

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

NOV 10 2021

Woody Pascal
Deputy Commissioner

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

Right to Court Appeal

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

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There is no other method of appeal

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

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	**ADMINISTRATIVE REVIEW DOCKET NO** HS230004RO
DON TOM REALTY CORP	
PETITIONER	**RENT ADMINISTRATOR'S DOCKET NO** CU230029AD

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On July 5, 2019, the above named Petitioner-owner filed a Petition for Administrative Review ("PAR") of an order the Rent Administrator issued on May 31, 2019 (the "order"), concerning the housing accommodation known as 217 Eastern Parkway, Apartment [redacted], Brooklyn, New York, wherein the Rent Administrator determined that, based on the findings of an Agency hearing, the subject apartment will remain subject to the Rent Stabilization Law and Code until the vacancy of the subject tenant, due to the owner's failure to provide the subject tenant with required J-51 Riders stating the tax abatement benefits and the date the benefits were set to expire

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 counsel, requests a reversal of the Rent Administrator's order and contends that (1) the Rent Administrator's order is defective for the lack of findings of fact as the order states that the owner failed to provide the tenant with the J-51 Rider, but does not specify the leases that do not have the J-51 Rider, and further, that the order contradicts itself by saying that the owner submitted leases with J-51 Riders attached to them, (2) the quality and quantity of the testimony and the documentary evidence submitted by the owner during the Agency hearing supports the owner's claim that the tenant's initial lease and all the subsequent leases had the required J-51 Riders attached, and (3) the tenant is no longer subject to the Rent Stabilization Law and Code due to the expiration of the J-51 tax benefits

The tenant, through counsel, opposed the owner's petition, claiming that the findings of the Administrative Law Judge ("ALJ") were supported by the record

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

Pursuant to the Administrative Code of the City of New York Section 26 504 (c) (the Rent Stabilization Law ("RSL")), dwelling units in buildings receiving J-51 tax benefits have rent stabilization protection Dwelling units that have rent stabilization protection solely as a result of the building receiving such tax benefits will remain subject to regulation "until the occurrence of the first vacancy of such unit after such benefits are no longer being received or if each lease and renewal thereof for such unit for the tenant in residence at the time of the expiration of the tax benefit period has included a notice in at least twelve point type informing such tenant that the unit shall become subject to deregulation upon the expiration of such tax benefit period and states the approximate date on which such tax benefit is scheduled to expire, such dwelling unit shall be deregulated as of the end of the tax benefit period[ ]" (*See also* Rent Stabilization Code Section 2520 11 (o) and DHCR Fact Sheet # 41 Tax Abatements)

A review of the record below reveals that on September 22, 2014, the subject tenant initiated the underlying proceeding by filing a request for an Administrative Determination with the DHCR, requesting a determination of the regulatory status of the subject apartment, averring that after living in the apartment for approximately 21 years, the owner informed them that the unit is no longer subject to rent stabilization due to the expiration of the J-51 tax abatement The tenant asserted that none of their leases had J-51 Riders attached except the most recent renewal lease (the 2012 renewal lease) which the tenant had not executed Copies of leases without J-51 Riders were attached as evidence, submitted by the subject tenant

On November 3, 2014, the owner was served with a copy of the tenant's Administrative Determination request The owner in their rebuttal response received on November 21, 2014, refuted the tenant's assertions, claiming that the tenant failed to include the J 51 Riders to the leases the tenant submitted to the Agency, but that the owner claims to have provided the lease riders to the Agency

The Agency record reveals that the matter was sent to the Hearings Unit to determine whether the tenant received the requisite notice, by way of lease rider, of the expiration of the J-51 tax benefits and with it, the expiration of Rent Stabilization benefits

The hearing was conducted by the Administrative Law Judge on June 18, 2018 At the hearing, the parties were provided with the opportunity to present their cases, call witnesses to testify and provide documentary evidence supporting their claims Based on the entire evidence of record, the ALJ found that four of the leases executed between the parties did not contain the J 51 Riders, specifically the leases for the following terms (1) November 1, 2005 - October 31, 2006, (2) November 1, 2006 - October 31, 2008, (3) November 1, 2008 – October 31, 2009, and (4) November 1, 2010 – October 31, 2012 The ALJ therefore found that the subject apartment would remain subject to the Rent Stabilization Law until the vacancy of the subject tenant due to the owner's failure to provide the tenant with the required J-51 Rider notification relating to the

tax abatement benefits and the date of termination of rent stabilization benefits in four executed leases between the parties

On May 31, 2019 under Docket No CU230029AD, the Rent Administrator, based on the findings in the hearing, determined that the subject apartment will remain subject to the Rent Stabilization Law and Code until the subject tenant, [redacted] vacates the apartment, because the owner failed to provide the tenant with the required J-51 Rider notification in all of her leases which stated the tax abatement benefits and the date of termination of rent stabilization benefits

Based on the foregoing, the Commissioner finds that the owner's argument that the Rent Administrator erred in their decision, claiming that all of the tenant's leases had J-51 Riders and therefore the tenant is no longer subject to the RSL, is without merit Here, the Administrative Hearing report confirms that the parties were offered the opportunity to present their cases by way of documentation and testimony The record also reveals that the ALJ carefully evaluated, analyzed, and considered all the facts, testimonies, and the documentary evidence provided by both parties, predicated their decision based upon same, and determined that four of the tenant's executed leases between the parties did not contain the J-51 Riders pursuant to the requirements provided for in Section 26-504 (c) of the RSL and Section 2520 11 (o) of the Rent Stabilization Code

Accordingly, the Rent Administrator properly relied on the findings of the ALJ, who in turn relied on the testimony and evidence produced at the hearing, to conclude that the subject apartment is subject to the Rent Stabilization Law and Code until the vacancy of the subject tenant, [redacted] as the owner failed to provide such tenant in all leases with the required J 51 Rider notification The owner's PAR has not established any basis to modify or revoke the Rent Administrator's order

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

NOV 10 2021

Woody Pascal
Deputy Commissioner

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

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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.: CV410040RO
300 East 46th Street Owner LLC,	RENT ADMINISTRATOR'S DOCKET NO.: CT410013AD
PETITIONER	

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On October 23, 2014, the above named owner, by its counsel, filed a timely petition for administrative review (PAR) of an order issued on September 19, 2014 by a Rent Administrator concerning various housing accommodations at the premises 300 East 46th Street, New York, New York (subject building).

The Commissioner has reviewed the entire record including that portion of the record that is relevant to the issues raised by the owner's PAR.

In August of 2014, the owner's counsel filed a series of written requests with the DHCR seeking to effect amendments to the annual apartment registrations on file for 80 separate apartments at the subject building pursuant to Section 2528.3(c) of the Rent Stabilization Code (RSC). As uniformly set forth in each letter-request, counsel alleged that the owner purchased the subject building on October 10, 2013 and recently discovered that the prior owner had not properly registered the referenced unit in years past; that is to say, each affected unit had been erroneously registered as rent-stabilized in some point in time when in fact it had been lawfully deregulated on the basis of either high rent vacancy decontrol or high rent/high income decontrol. Each request was supplemented with supporting evidence in the form of purported lease history papers, rent ledgers, work invoices, payment verification, etc. unique to each individual apartment.

In the order appealed herein, the Rent Administrator terminated the proceeding on the grounds 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.

The owner's PAR and PAR-supplements dated May 6th and May 29th, 2015 contend that the Rent Administrator's denial of relief was incorrect especially in light of DHCR's responsibility to establish the propriety of the apartment registrations kept on file, and given the owner's provision, in each individual case, of apartment history documentation in support of the owner's claim of prior lawful deregulation. The petitioner argues as follows: First, the applicable law, does not limit registration amendments to the correction of ministerial or clerical errors, but rather directs that the propriety of such amendment shall be established by way of the Administrative Determination process with the goal of ensuring the accuracy of the apartment registrations that are kept on file. This, coupled with the directive under RSC section 2522.6(b) that the DHCR "shall" determine facts that are in dispute, in doubt or not known, or where the legal regulated rent must be fixed, compels the conclusion that the Rent Administrator's denial of relief in this case was in error. Secondly, if the policy associated with the newly enacted RSC provision is to limit the law's application to merely rectifying a misspelled name or clerical error, the DHCR, in effect, would be ignoring the existence of erroneous registrations thereby causing unnecessary confusion. The owner points out, for example, that the appealed order's issuance has resulted in multiple tenant complaints with the DHCR regarding their regulatory status and numerous lawsuits, costing the owner substantial legal expenses - all because the tenants now falsely believe they are rent stabilized per the information contained in the existing apartment registrations and because the DHCR refuses to grant the owner's request for amendments. Thirdly, the Rent Administrator's rationale in the order contravenes the very position taken by the State of New York in Portofino[1], to wit: that RSC 2528.3(c) was enacted to prevent fraud by providing the DHCR with an opportunity to review a proposed amended registration before an owner attempts to cover up intentional overcharges by filing an *unreviewed* amended registration in an effort "to quietly re-write history." Fourthly, the order under appeal may contradict administrative precedent as the Rent Administrator has granted amendments in other cases despite DHCR not determining the authenticity of the affected apartment's legal rent.

The petitioner contends, fifthly, that the appealed order violates the standards of the New York State Administrative Procedures Act (SAPA) as relate to the adequacy of legal or factual conclusions reached by an administrative agency. In this regard, the owner refers to two separate orders involving the tenant-initiated proceedings under Docket Number CS410077RV, issued on May 20, 2015 (involving Apt. [redacted] at the subject building) and Docket Number CR410009AD, issued on April 8, 2015 (involving Apt. [redacted] at the subject building). The owner notes that the Rent Administrator, based upon the same evidence as that presented by the owner in the instant AD proceeding, held in the first case that DHCR lacked jurisdiction due to the legal regulated rent for the affected apartment at the subject building being over $2,000.00 per month as of the base date, and held in the second case that the affected apartment is not subject to rent stabilization pursuant to high rent vacancy deregulation which occurred prior to the tenant's occupancy of the apartment. The owner contends that it is illogical that the DHCR would

[1] Portofino Realty Corp., et al. v. DHCR, Supreme Court, Kings County, Index No. 501554/2014 involves pending litigation brought by multiple owners who are intent on challenging the legitimacy of the 2014 amendments to the RSC. The owner-petitioner's argument is purportedly based upon language set forth by the NYS Attorney General's legal memorandum in opposition to owners' motion for a preliminary injunction (Point II, Section G, at P.60).

consider and adjudicate the merits of the tenant-initiated RV and AD proceedings, but at the same time summarily deny the owner-initiated AD proceeding seeking to amend rent registrations which are erroneous.

Several tenants filed an answer to the PAR objecting to the owner's claims and asserting that the owner has been denying requests for a two-year lease and committing other violations of the rent laws.

Upon careful consideration, the Commissioner is of the opinion that the PAR should be denied.

RSC Section 2528.3(c) was added to the regulations by the Rent Code Amendments of 2014. This provision states:

> An owner seeking to file an amended registration for other than the present registration year must file an application pursuant to sections 2522.6(b) and Part 2527 of this code 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.

Prior to 2014, the DHCR had routinely permitted owners to file amended regulations at any time and for any year. The DHCR however recognized that such latitude brought an unsupervised inclusion of amendments into the registration system which had the effect of corrupting the purpose of the DHCR's registration data base as a contemporaneously created history of rents, in addition to facilitating potential fraudulent contact by an owner looking to evade his/her obligations. Thus, the above provision was enacted for informational screening purposes rather than as a new adjudicatory case-type *per se*.

The owner's arguments on appeal do not furnish a basis for reversal of the Rent Administrator's decision.

Contrary to the petitioner's assertion in this proceeding, the burden to establish the propriety of the proposed amendment(s) under section 2528.3(c) rests with the owner-applicant, not the Rent Administrator. Also, the amendment application process does not confer unlimited or open-ended rights upon the owner. In reviewing such an 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 relief sought by the owner is in the form of a jurisdictional determination for numerous apartments based upon events occurring years ago - as far back as 2002 in one case - that are said to have triggered deregulation. Deregulation that is based upon high rent vacancy or luxury decontrol has been tied directly to and is a consequence of determining the legal regulated rent. The Rent Administrator correctly found however that a determination of the lawful rent cannot be made within the scope of an amendment application proceeding, as this is best left for other case types addressing overcharge complaints, lease violation complaints or AD

proceedings involving the issue of status. Moreover, since the relief in question is fact-specific and unique to each individual unit, it must be adjudicated on a case-by-case basis. If multiple tenant complaints before the DHCR or the courts presents a financial burden to the owner, this factor presumably was or should have been considered prior to the owner's purchase of the subject building.

This order and opinion is issued without prejudice to the owner's right to file a separate AD proceeding to determine the jurisdictional issue as to each individual unit, in the event an affected tenant in this matter has not already commenced such a proceeding on his/her own.

THEREFORE, based on all applicable provisions of the New York City Rent Stabilization Law and Code, it is

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

ISSUED: DEC 14 2021

WOODY PASCAL
Deputy Commissioner

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

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There is no other method of appeal.

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

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	**ADMINISTRATIVE REVIEW DOCKET NO IU210005RO**
370 HOOPER STREET HDFC,	**RENT ADMINISTRATOR'S DOCKET NO HN210238AI**
	TENANT VARIOUS
PETITIONER	

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ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

On September 11, 2020, the above named petitioner owner filed a Petition for Administrative Review ("PAR") of an order the Rent Administrator issued on August 11, 2020(the 'Order'), concerning the housing accommodation known as 370 Hooper Street, Brooklyn, NY, wherein the Rent Administrator directed the owner to register the subject building and all individual apartments as rent stabilized for the year 2018

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

The Rent Administrator initiated a proceeding after determining that the petitioner owner failed to properly register the subject accommodation with the Agency as rent-stabilized for 2018 based on records from the New York City Department of Finance ('DOF '), which indicated that the building received a J-51 benefit covering the period of July 1, 2017 to June 30, 2018

The petitioner owner was notified of the proceeding via a Notice of Proposed Action from the Agency dated April 18, 2019, wherein the petitioner was directed to register the subject building and each rental unit for the year 2018, as rental units in buildings with J 51 tax benefits cannot be deregulated or permanently exempt from rent stabilization based on high rent or any other reason There is no evidence in the record that the petitioner-owner submitted information showing that the subject accommodation was not under the Agency s jurisdiction Based on information contained in the record, the Rent Administrator issued an order on August 11, 2020, under Docket Number HN210238AI, directing the petitioner to register the subject building and all individual apartments with the Agency as rent-stabilized for the year 2018

The petitioner then filed the instant PAR on September 11, 2020 In the PAR, the petitioner-owner asserts that the order appealed herein should be reversed because the subject

building is a corporation duly organized pursuant to the provisions of Article XI of the Private Housing Finance Law and is a cooperative containing six apartments and six members, each with a one-hundred-year proprietary lease for his or her respective apartment

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

A review of the record reveals that in 1979, the New York City Department of Housing Preservation and Development ("HPD") designated the petitioner, 370 Hooper Street HDFC, a company organized exclusively for the purpose of developing a housing project for persons of low income Further, the record supports that the petitioner is organized pursuant to Article XI of the Private Housing Finance Law and the Not-for-Profit Corporation Law of the State of New York Additionally, the proprietary lease provided by the petitioner-owner indicates that the building is a cooperative corporation as it appears that units within the building are owned by shareholders who are members of the cooperative board

Therefore, pursuant to Section 26-504(a) of the New York City Rent Stabilization Law, the Commissioner finds that the subject building was not within the Agency s jurisdiction at the time of the Rent Administrator's determination The owner is no longer directed to register the subject premises with the Agency for the year 2018

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

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

ISSUED **OCT 15 2021**

Woody Pascal
Deputy Commissioner

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

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There is no other method of appeal.

STATE OF NEW YORK
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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 IT210001RO**
HANCOCK MANOR HDFC,	**RENT ADMINISTRATOR'S DOCKET NO HN210517AI**
PETITIONER	**TENANT VARIOUS**

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ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

On August 17, 2020, the above-named petitioner owner filed a Petition for Administrative Review ('PAR") of an order the Rent Administrator issued on July 30, 2020(the "Order"), concerning the housing accommodation known as 798 Hancock Street, Brooklyn, NY, wherein the Rent Administrator directed the owner to register the subject building and all individual apartments as rent stabilized for the year 2018

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

The Rent Administrator initiated a proceeding after determining that the petitioner-owner failed to properly register the subject accommodation and all individual apartments with the Agency as rent stabilized for 2018, based on records from the New York City Department of Finance ("DOF'), which indicated that the building received a J-51 benefit covering the period of July 1, 2017 to June 30, 2018

The petitioner owner was notified of the proceeding via a Notice of Proposed Action from the Agency dated November 18, 2019, wherein the petitioner was directed to register the subject building and each rental unit for the year 2018, as rental units in buildings with J-51 tax benefits cannot be deregulated or permanently exempt from rent stabilization based on high rent or any other reason There is no evidence in the record that a response was submitted by the petitioner owner Based on information contained in the record, the Rent Administrator issued an order on July 30, 2020, under Docket Number HN210517AI, directing the petitioner to register the subject building and all individual apartments with the Agency as rent stabilized for the year 2018

The petitioner then filed the instant PAR on August 17, 2020 In the PAR, the petitioner owner asserts that the order appealed herein should be reversed as the subject building is a corporation duly organized pursuant to the provisions of Article XI of the Private Housing Finance Law and is a cooperative

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

A review of the record reveals that in June 1991, the New York City Department of Housing Preservation and Development ("HPD") sold the subject property to the Northeast Brooklyn Community Land Corporation, a company organized exclusively for the purpose of rehabilitating four existing multiple dwellings into a low and moderate income, limited profit cooperative The subject property was then leased to the petitioner owner in 1992 as a non profit, low income, limited equity cooperative to be run in conformity with the existing regulatory agreement The record further supports that the petitioner is a corporation formed under the Business Corporation Law and organized pursuant to Article XI of the Private Housing Finance Law Additionally, the proprietary lease provided by the petitioner-owner indicates that the building is a cooperative corporation as it appears that units within the building are owned by shareholders who are members in the corporation

Therefore, pursuant to Section 26-504(a) of the New York City Rent Stabilization Law, the Commissioner finds that the subject building was not within the Agency 's jurisdiction at the time of the Rent Administrator's determination The owner is no longer directed to register the subject premises with the Agency for the year 2018

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

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

ISSUED

NOV 05 2021

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
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X

IN THE MATTER OF THE
ADMINISTRATIVE APPEALS OF

ADMINISTRATIVE REVIEW
DOCKET NOS JP410003RP &
JP410004RP

RENT ADMINISTRATOR S
DOCKET NO ER410200LD

[redacted] AND SP 41 PARK LLC ,

PETITIONERS X

ORDER AND OPINION GRANTING TENANT'S PETITION FOR ADMINISTRATIVE REVIEW UNDER DOCKET NO JP410004RP AND DENYING OWNER'S PETITION FOR ADMINISTRATIVE REVIEW UNDER DOCKET NO JP410003RP

The above-named tenant timely filed a petition for administrative review (PAR) of an order issued on April 19, 2019 by a Rent Administrator (RA) concerning the housing accommodation known as Apartment [redacted] located at 41 Park Avenue, New York NY 10016 The subject owner has filed a PAR of an Explanatory Addenda (EA) to the RA s order issued on September 6, 2019

The Commissioner notes that the PARs involve common issues of law and fact The Commissioner is accordingly of the opinion that they should be consolidated for disposition In addition the Commissioner has reviewed the evidence in the record and has considered that portion of the record relevant to the issues raised by the PARs

On June 10 2016 the subject owner filed with the rent agency a petition for high income rent deregulation (OPD) In the OPD the owner stated that 'the owner contests the household income stated by the tenant(s) in the attached Income Certification Form (ICF)

On April 19, 2019, the RA issued an order of deregulation based upon information verified by the New York State Department of Taxation and Finance that the total household income was in excess of $200,000 00 for (2014 and 2015)

The RA stated the following

The housing accommodation is subject to the Rent Stabilization Law of 1969 and/or the Emergency Tenant Protection Act of 1974, and that the legal regulated rent was $2 700 00 or more per month on the applicable date(s) In addition, the sum of the annual incomes of the tenant(s) named on the lease who occupied this housing accommodation as a primary residence on other than a temporary basis (excluding bona fide employees and bona fide subtenants) was in excess of $200 000 00 in each of the two proceeding calendar years Accordingly and upon the grounds stated in the Rent Stabilization Code Section 2520 11(s) or Emergency Tenant Protection Regulations Sections 2500 9(n) it is **ORDERED** that the subject housing accommodation is deregulated effective upon the expiration of the existing lease

On September 6 2019 the RA mailed to the owner an EA to the RA s order

The EA stated the following

The purpose of this addenda is to explain the impact of a new law upon an order previously issued by a Division of Housing and Community Renewal (DHCR) Rent Administrator (RA) While that order may have appeared to grant the deregulation of the above subject apartment, it may not do so if there was a Rent Stabilized or ETPA lease between the parties at the time the order was issued that remained in effect on or after June 14, 2019

On April 19 2019 the RA issued an order to the above parties with respect to the owner s application for high rent/high income deregulation It stated

ORDERED that the subject housing accommodation is deregulated effective **Upon the expiration of the existing lease** as the subject housing accommodation is subject to the Rent Stabilization Law of 1969 and/or the Emergency Tenant Protection Act of 1974

The language which makes the deregulation contingent upon the expiration of the lease in effect on the day the Rent Administrator's deregulation order was issued was taken from the applicable ETPA and RSL provisions authorizing such orders Effective June 14, 2019 the

Housing Stability and Tenant Protection Act of 2019 (HSTPA) and its subsequent amendments were enacted HSTPA repealed the high rent/high income deregulation provisions under which the above order was issued and stated that the law is to 'take effect immediately Additionally HSTPA provides that 'any unit that was lawfully deregulated prior to June 14, 2019 shall remain deregulated

If the lease in effect on the day the Rent Administrator's deregulation order was issued expired before June 14, 2019 the housing accommodation is deregulated

If the rent stabilized lease in effect on the day the Rent Administrator s deregulation order was issued expires on or after June 14, 2019, the housing accommodation remains regulated to the Rent Stabilization Law or ETPA and pursuant to HSTPA is not deregulated

If a rent stabilized lease should have been in effect on the day the Rent Administrator s deregulation order was issued the housing accommodation remains subject to the Rent Stabilization Law or ETPA and pursuant to HSTPA is not deregulated

Tenant s Contentions On PAR
Docket No HQ410033RT

On appeal, the subject tenant challenged the April 19 2019, order and argued that temporary occupants incomes were used for the income assessed in the applicable years

Owner's Contentions on PAR
Docket No HV410270RO

The owner filed an administrative appeal of the EA issued on September 6, 2019 arguing amongst other things, that the EA must be annulled as arbitrary, capricious, and unlawful, that the EA manipulates the intended effect of the deregulation order that the EA is inapplicable as the lease of reference had already expired, that there was no lease in effect on the date the deregulation order was issued, and that the EA violates the Due Process and the Takings clauses of the United States Constitution

On January 3 2020 the owner filed a supplemental PAR arguing

that pursuant to HSTPA the subject apartment was lawfully deregulated when the last rent stabilized lease in effect for the apartment expired on February 28 2019 that the *sua sponte* EA referred to a non-existent lease and that the EA is inapplicable The owner informed the agency about the relevance of the ongoing litigation regarding the Constitutionality of HSTPA which is being challenged in the case of Community Housing Improvement Program, et al v City of New York et al, E D N Y 1 19-cv-04087 (MKB)

The tenant answered by asserting that HSTPA mandates that this high income rent deregulation proceeding be dismissed that a rent stabilized lease for the subject premises would have been in effect on the date the deregulation order was issued had owner not unlawfully refused to renew the lease, that the EA does not violate the Due Process or Takings clauses of the United States Constitution and that the EA does not manipulate the substance of the deregulation order

Commissioner's Consolidated Order Under Docket Nos HQ410033RT and HV410270RO

On October 6 2020 the Commissioner issued an Order granting the tenant s PAR and denying the owner s PAR

The Commissioner determined that based upon the evidence in the record, that on February 28, 2019 the tenant's existing rent stabilized lease expired, that pursuant to RSC §2523 5(a) the owner was required to provide the tenant with a renewal lease notwithstanding the pending OPD that this renewal lease should have commenced on March 1 2019, that the renewal lease should have terminated on February 28 2020 (for a 1-year renewal lease) or February 28, 2021 (for a 2-year renewal lease), that pursuant to the plain text of HSTPA the subject apartment remains subject to rent stabilization and that as such the Commissioner need not rule on the merits of the tenant s arguments concerning occupant incomes

The Commissioner denied the owner's claims that the EA must be annulled as arbitrary capricious and unlawful, that the EA was issued *sua sponte*, without authority that the EA manipulates the intended effect of the deregulation order, and that the EA is inapplicable as the lease of reference had already expired

The Commissioner further noted that although the rent agency does not have jurisdiction to determine the constitutional issues raised by the owner, there is a strong presumption of

constitutionality of the rent laws as enacted by the New York State legislature, that no party has a vested right to any remedy under the Rent Stabilization Law, thus diminishing the owner s claim that the EA violates the Due Process and Takings clauses, and that 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 because there was no valid lease in effect as of April 19 2019

Article 78 Proceeding
New York Supreme Court Index No 160397/2020

On or about December 1, 2020 the owner instituted a proceeding under Article 78 of the CPLR seeking a review of the above-referenced Commissioner's consolidated order The owner asserted, amongst other things that DHCR S order is arbitrary capricious, and irrational in vacating the order of deregulation that DHCR correctly issued the order of deregulation after verification of the total household income by DTF that the EA violates the HSTPA and prevailing case law and cannot be applied retroactively, that the Commissioner incorrectly determined that the owner was required to serve a renewal lease, that the owner was not required to serve a renewal lease because it served a Notice of Non-Renewal on the tenant on November 26 2018 based upon the owner s belief that the tenant was not utilizing the apartment as her primary residence and that the owner is entitled to a Court order which reverses the Commissioner s order

On March 11 2021 the parties executed a stipulation agreeing to remand the matter to DHCR for further processing and issuance of a new order

On April 14 2021 the agency served the parties and their attorneys with a Notice of Proceeding to Reconsider the Commissioner's Order The agency informed the parties that the tenant s PAR under Docket No HQ410033RT will now be reconsidered under Docket No JP410004RP and that the owner's PAR under Docket No HV410270RO would be now reconsidered under Docket No JP410003RP

Holdover Proceeding Instituted by the Landlord
(Index No LT-051860-20/NY)

On or about January 24, 2020, the owner instituted a holdover proceeding, in the New York County Civil Court under Index No LT-051860-20/NY asserting that tenant, [redacted], was not occupying

the subject apartment as her primary residence

On August 16, 2021, the owner executed a stipulation to discontinue the non-primary residence holdover proceeding against [redacted] in which the owner conceded that [redacted] resides in the subject apartment and that [redacted] intends to continuously reside there

Commissioner's Determination

After a careful consideration of the evidence of record, the Commissioner finds that the tenant s petition should be granted and the owner s petition should be denied

The Commissioner rejects the owner s contentions that 'the EA must be annulled as arbitrary capricious and unlawful and that the EA manipulates the intended effect of the deregulation order See Rudin E 55th St LLC v Div of Hous & Community Renewal, 2021 NY Slip Op 31576[U], *7 (Sup Ct NY County 2021)(the statutes that the DHCR identified in the explanatory addendum were the applicable ETPA and RSL provisions authorizing deregulation orders and the HSTPA)

The Commissioner finds that the EA was not based upon any new findings or determinations by the rent agency See Rudin supra The EA merely informed the parties of the applicability of HSTPA and clarified three instances that may affect the order of deregulation i e that the subject apartment remains rent regulated if the lease in effect at the time the April 19 2019 order was issued expired on or after June 14 2019 if the lease in effect on the day the Rent Administrator s deregulation order was issued expired before June 14, 2019 the housing accommodation is deregulated, and if a rent stabilized lease should have been in effect on the day the Rent Administrator s deregulation order was issued, the housing accommodation remains regulated The EA was not a superseding order and did not manipulate , modify or revoke the April 19 2019 Order See 160 East 84TH Street Associates LLC v NYS DHCR N Y Co Index No 157557/2020 (Engoron J June 14 2021)(Appeal Pending)(affirmed DHCR s denial of an owner s PAR of the EA finding that the 'court cannot say that DHCR acted arbitrarily or irrationally in interpreting the plain language of the HSTPA ")

The Commissioner finds that the owner's contention that the EA is inapplicable because the lease of reference had already expired is misplaced Given that this was a rent stabilized apartment prior to April 19, 2019, the Commissioner finds that a

rent stabilized lease should have been in effect on the day that the RA s order was issued See W 79th LLC v NY State Div of Hous & Community Renewal, 2021 NY Slip Op 31709[U] *11 [Sup Ct NY County 2021)(it was reasonable for the DHCR to read the plain language of HSTPA, Part D Section 8 in conjunction with RSC §2531 3 as well as the case law that interprets those provisions and to conclude that it could not authorize the deregulation of rent stabilized apartments after June 14, 2019, even pursuant to previously issued deregulation orders if such orders provided for the apartments to remain subject to rent stabilization until the expiration of an existing rent stabilized lease)

On February 28, 2019 the tenant s rent stabilized lease expired The owner was required to provide the tenant with a renewal lease notwithstanding the pending OPD Rent Stabilization Law (RSL) §26-504 3 conditioned high income/high rent deregulation on the expiration of an existing lease The April 19 2019 order in accordance with the RSL specifically conditioned deregulation upon the expiration of an existing lease Therefore the fact that no lease was in effect, as outlined in scenario three of the EA, the owner could not deregulate the subject apartment after June 14, 2019 See 87th Street Sherry Assoc LLC v DHCR, N Y Co Index No 153999/2020 (Edmead J 12/22/20)(Appeal Pending), See also Hoy v NYS DHCR, N Y Co Index No 159513/19, (Kotler, J , May 19 2020)(Appeal Pending) In these decisions, the court agreed with DHCR's interpretation of HSTPA Part 'D in the instant context, finding that deregulation was contingent upon the expiration of an existing and current rent stabilized lease

The Commissioner rejects the owner's assertion that it was not required to serve a renewal lease because it had served Notice of Non-Renewal The courts in both ML 1188 Grand Concourse LLC v Khan, 60 Misc 3d 1215[A], 2018 NY Slip Op 51139[U], *3 [Civ Ct Bronx County 2018) and Grandview Park Assoc LLC v Lundy, 64 Misc 3d 914, 922 (City Ct 2019), found that the offering and execution of renewal leases after service of the notice of termination and prior to the commencement of a holdover proceeding did not vitiate the termination notice The Courts found that the owner s compliance with the rent stabilization code of offering rent stabilized renewal leases did not warrant the dismissal of a holdover proceeding

The Commissioner further notes that the owner's contentions that it reasonably believed that [redacted] was not utilizing the subject premise as her primary residence is belied by the evidentiary record First, the owner affirmed in the June 10, 2016 OPD that [redacted] total household income exceeded

$200 000 00 for 2014 and 2015 and given that luxury deregulation petitions are specific to the tenant in occupancy the owner s subsequent assertion that it reasonably believed that [redacted] was not the primary resident, directly contradicts the owner s OPD Second, agency registration records indicate that the owner has registered [redacted] as the rent stabilized tenant of record from 2016 through 2021 Lastly, the terms of the stipulation discontinuing the holdover proceeding acknowledge the Slater tenancy

Based on the foregoing, the Commissioner confirms its original determination that a rent stabilized lease should have been in effect at the time the RA's deregulation order was issued and the fact that such lease was not effect, prohibits deregulation after the passage of HSTPA and in accordance with the EA

Even if the Notice of Non-Renewal justified the owner not offering a renewal lease after the filing of the OPD, the Commissioner finds that subsequent events including the apartment registrations and the discontinuance of the Holdover Proceeding wherein the owner conceded to the past and continuing tenancy of [redacted], support the deeming of a renewal lease effective March 1, 2019 See Marin v 21-23 Bond St Assoc LLC 47 Misc 3d 1206[A], 1206A 2015 NY Slip Op 50461[U], *2 (City Ct 2015)(whether the tenant remained in possession of the premises after the expiration of the lease without any indication that the tenant would be vacating the premises within a particular period of time supports a finding that there was an implied lease) The deeming of a renewal lease effective March 1 2019 leads to the conclusion that such lease would not have expired until after the RA s order and after the passage of HSTPA thereby preventing deregulation under scenario two of the EA

The Commissioner rejects the owner s assertions that the EA was issued *sua sponte* without authority On June 14, 2019 the Legislature enacted HSTPA which repealed the high rent/high income deregulation provisions under which the Administrator s order was issued The EA merely explained how HSTPA applied to three specific scenarios that may have existed at the time the April 19, 2019 order was issued Two such scenarios (an existing lease expiring after June 14 2019 or no current lease in effect) would result in the apartment remaining regulated Indeed as of the effective date of HSTPA, the existence of either of the above two scenarios meant that the subject apartment was not deregulated and therefore is not encompassed by the phrase in HSTPA that apartments legally deregulated prior to June 14, 2019 shall remain deregulated HSTPA specifically stated 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 ' Here if the apartment remained rent regulated because the qualifying event for the deregulation (i e a current lease expiration) had not yet taken place as of June 14 2019, it could not be deregulated thereafter The Commissioner notes that the legislature drew its own bright line test of deregulation as to those orders at the RA level where the order was not yet effective Moreover, the application of HSTPA to this matter is not based upon the independent judgement of the rent agency, but, rather it is pursuant to the plain text in HSTPA, and the rent agency is statutorily obliged to apply HSTPA to all cases where the current lease expires on or after June 14, 2019 or there was no such lease in effect See 215 East 68th Street L P v DHCR, N Y Co Index No 159716/2020 (Engoron J November 11 2020)(the Court affirmed DHCR's denial of a PAR which similarly challenged HSTPA s application to the statutory provisions of high rent/high income deregulation and stated that it 'cannot say that DHCR acted arbitrarily or irrationally in interpreting the plain language of the HSTPA , that the legislature as is its prerogative made the determination that the public policy of this State was best served in overhauling the rent stabilization laws' and that "it was the legislature s determination that such changes be implemented as of June 19, 2019 ") See also 160 East 84TH Street Associates, LLC *supra*

The fact that the 2016 petition was determined based on tenant income in 2014-2015 events that occurred before the passage of HSTPA is of no matter 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 is no valid argument that the EA violated the owner's Due Process rights or constituted a Taking of the subject apartment On June 14 2019, the law changed so that stabilized units could no longer be deregulated based on high income/high rent This change precluded DHCR s granting such applications after June 14 2019 As a result, the subject unit remained regulated

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 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)(in dismissing an owner's HSTPA challenge, the Court found that that claimants alleging an applied regulatory takings face a heavy burden rejecting an owner s claim that the effect of HSTPA is not rationally related to increasing the supply of affordable housing, helping low-income New Yorkers, or promoting socio-economic diversity and that HSTPA's amendments perpetuates New York's housing crisis and fails to target the people it claims to serve , and found that the legislative purposes and justifications offered for the regulations were valid) See also Bldg & Realty Inst of Westchester & Putnam Counties, Inc v New York, 2021 US Dist LEXIS 174535 at *87-88 [SDNY Sep 14 2021, No 19-CV-11285 (KMK)(Court dismissed challenges to HSTPA under the Due Process and Takings Clauses of the U S Constitution finding that HSTPA builds upon a long-standing regime of rent-stabilization that has repeatedly been upheld by courts)

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 impaired by HSTPA because the owner did not have a vested right to deregulate the apartment before the enactment of HSTPA because there was no valid lease in effect as of April 19 2019 See also Pledge v DHCR supra

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

ORDERED, that the tenant s petition be, and the same hereby is granted, and that the owner's petition be, and the same hereby is denied

ISSUED

OCT 12 2021

Woody Pascal
Deputy Commissioner

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

Right to Court Appeal

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

Note: During the period of the current Covid-19 emergency as a courtesy if the Article 78 proceeding is commenced by filing 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 filed 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 15th 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.: JV410002RP

RENT ADMINISTRATOR'S
DOCKET NO.: ZF410258LD

OWNER: ASPENLY COMPANY LLC

PETITIONER X

ORDER AND OPINION REMANDING PROCEEDING TO THE RENT ADMINISTRATOR

The above-named tenant timely filed a petition for administrative review (PAR) of an order issued on May 19, 2017, by a Rent Administrator (RA) concerning the housing accommodation known as Apartment , located at 45 East 89th Street, New York, NY 10128, wherein the RA determined that the subject apartment was to be deregulated upon the expiration of the existing lease pursuant to Section 2520.11(s) of the Rent Stabilization Code.

On June 9, 2011, the owner filed a petition for high income rent deregulation alleging that the legal rent for the subject apartment was $2,000 or more per month and requesting verification of the household income in order to establish that the total annual income of the household was in excess of $175,000 in each of the two preceding calendar years.

A detailed summary of this administrative proceeding can be found in DHCR PAR order under Docket No. FR410058RT issued on June 14, 2018, pp. 1-6, and is incorporated by reference in this order.

On May 19, 2017, the RA issued an Order determining that the subject apartment is deregulated upon the expiration of the existing lease because the tenant failed to provide the required income verification and tax information to DHCR.

On June 23, 2017, the tenant filed a PAR asserting that the RA's order deregulating her apartment should be revoked; that she responded to DHCR's requests for information and provided all the relevant tax returns and/or evidence; that no tax returns were filed; and that the relevant household income did not exceed the statutory threshold amount required for high income rent deregulation in either of the two relevant tax years.

On June 14, 2018, the Commissioner issued an Order under Docket Number FR410058RT, denying the PAR. The Commissioner determined that the tenant did not provide the income verification and tax information; that pursuant to section 2531.4(b) of the Rent Stabilization Code ("RSC"), the tenant was required to file an answer to the owner's petition for deregulation within 60 days and to provide DHCR with such information as DHCR and DTF shall require to verify whether the relevant annual total household income exceeds the specified $175,000 statutory threshold required for high income rent deregulation; and that pursuant to RSC §2531.6, the tenant's failure to provide such information, required that DHCR issue an order deregulating the subject apartment.

The tenant instituted a proceeding under Article 78 of the CPLR challenging the Commissioner's order. The tenant asserted, amongst other things, that DHCR had no authority to deregulate an apartment simply because the tenant failed to file her tax returns; that DHCR can only deregulate upon default if the tenant fails to provide any information; that she has a debilitating disease that prevents her from filing tax returns.

The Supreme Court denied the tenant's Article 78 petition, finding that it was proper for DHCR to default the tenant for failing to provide necessary information to verify her household income. The tenant appealed.

On December 22, 2020, the Appellate Division, First Department issued an Order directing the matter be remanded to DHCR for further fact-finding and a new determination on the merits.

On October 13, 2021, the agency served the parties and their attorneys with a Notice of Proceeding to Reconsider the Commissioner's Order.

The Commissioner now finds that, pursuant to the Appellate

Division's Order, this matter is remanded to the RA for further fact-finding and a new determination of the owner's deregulation application on the merits.

As the matter is now being remanded to the RA, the parties and their representatives should direct any future submissions to the RA once the parties and their representatives are advised of the RA's new Docket Number for the remanded proceeding.

THEREFORE, in accordance with the applicable provisions of the Rent Stabilization Law and pursuant to the Appellate Division Order, it is

ORDERED, that the proceeding be, and the same hereby is, remanded to the RA for further fact-finding and a new determination.

ISSUED:

DEC 08 2021

Woody Pascal
Deputy Commissioner

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

Right to Court Appeal

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There is no other method of appeal.

STATE OF NEW YORK
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GERTZ PLAZA
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JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEALS OF

ADMINISTRATIVE REVIEW DOCKET NO IX410001RT

[redacted]

RENT ADMINISTRATOR'S DOCKET HV410005OD

PETITIONERS

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ORDER AND OPINION DENYING PETITIONS FOR ADMINISTRATIVE REVIEW

The petitioners timely filed administrative appeals of an Order of the Rent Administrator issued on October 29, 2020, concerning the housing accommodation known as 253 E 77th Street, New York, NY, which granted the owner's application to modify the building's central heating system from a steam pipe/radiator system to an electrical baseboard heating system with baseboard units in individual apartments

The petitioners, tenants of Apts [redacted] and [redacted] filed separate petitions for administrative review (PAR) seeking reversal of the Rent Administrator's order The tenant of Apt [redacted] claims, in sum, that the owner's application to modify services is not justified because there was no claim that the current heating system is defective or inoperative, nor is there another justification for the modification, that the owner did not state whether hot water will be provided to tenants and whether tenants will be liable for the cost of powering hot water if the current system, which provides both services, is modified, that the owner's application was premature because the owner did not apply for permits with the Dept of Buildings or enter into contracts for the installation of the new system before filing its application that the tenant s due process rights were violated because she was not served with a copy of the owner's letter to the Division dated 8/21/2020 which she claims the Rent Administrator heavily relied on in making its determination that failure to serve the owner's letter violates Section 307(2) of SAPA because the letter is considered an *ex parte* communication, and further, that the Rent Administrator based its decision on this *ex parte* communication, which violates SAPA and warrants vacating the Rent Administrator's order

The tenant of Apt [redacted] claims, in sum that the owner's application to modify services should not have been granted because if the current heating system is eliminated, common areas of the building will not have adequate heating, that the owner did not submit a plan showing that heat will be provided to common areas of the building and that, upon information and belief, she was not served with a copy of the owner's letter, dated 8/21/2020

The owner responded to the petitioners' answers stating, in sum, that heat will be provided in the building's common areas and that appropriate temperatures will be maintained, that there is no evidence of heating elements being removed from common areas that neither the Rent Stabilization Law or Rent Stabilization Code require an owner prove that a modification or substitution of service is necessary or justified, that the owner will

provide hot water at no cost to the tenants, but the Division lacks the authority to address this issue which concerns the Housing Maintenance Code, that a modification in service is necessary or that the Division s review of this matter is limited to whether the subject modification is an adequate substitution of service, that the claim that neither tenant received a copy of the owner's August 2020 letter is insufficient to vacate the Rent Administrator s order because the owner's letter repeats what is already in the record and there is no prejudice to the tenants, and finally, that the Rent Administrator's order does not violate SAPA because the tenants were aware of the underlying application and received other correspondence in the proceeding

The Commissioner having reviewed the petitioners' appeals and any and all supporting evidence submitted by the parties, the underlying case file, and all relevant Rent Regulatory Laws and Regulations finds that the appeals do not have merit and should be denied

Section 2522 4(e) of the Rent Stabilization Code (Code) permits a modification or substitution of service at no change in the legal regulated rent on the grounds that such modification or substitution is not inconsistent with the Rent Stabilization Law or Code An application for modification of services may be granted when it is determined that the proposed modification is an adequate substitute for the existing service In the subject application the owner proposes replacing a steam pipe/radiator heating system with an electrical heating system that operates using individual baseboard units The installation of the baseboard units and the cost of electricity for heat will be paid by the owner In this case the substitution of a gas heating system with an electrical heating system constitutes an adequate substitution of service that is not inconsistent with the Rent Stabilization Law or Rent Stabilization Code

As for the claim that the owner did not show that modification from gas to electrical heating units was necessary the Commissioner notes that the owner was not required to prove that the modification was necessary due to a defective existing service/system because the proposed modification is an adequate substitution The Commissioner further notes that the owner is not required to apply for government permits or enter into contracts to modify services prior to the Division's approval its application

As for the petitioners' claim that there will be no heat in common areas of the building and that the owner has not indicated whether hot water will be provided or who will pay for it if the current system is modified, the Commissioner notes that owner has agreed to provide for these services in letters to the Division Furthermore, the Rent Administrator order states that the owner agreed to maintain heat in the common area The owner does not have to submit a plan for the heating of common areas as claimed unless requested by the Division Any tenants with complaints of a reduction in these services or the owner's failure to maintain these services may file a service complaint for a reduction of rent with the Division, if the facts so warrant

The Commissioner finds no merit in the claim that the failure to serve the owner's 8/21/2020 letter violates the petitioners' due process rights and Section 307(2) of SAPA The Rent Administrator has discretion to serve an owner's submission upon tenants Notwithstanding, the record of this proceeding shows that both petitioners were served with the owner's application and meaningfully participated in the underlying proceeding, as evidenced by their answers Additionally any alleged violation of due process by not serving a copy of the owner's letter is remedied in this appeal as the concerns raised in the letter have been addressed

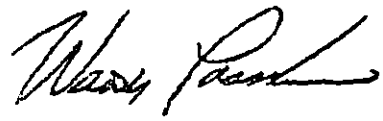
Furthermore, the owner's letter is not an *ex-parte* communication that violates Section 307(2) of SAPA nor does the Rent Administrator's order violate SAPA Based on a review of the record below, it is clear that the

Rent Administrator's decision was based on the information in the owner's application and the Division's policies, which allow an owner to substitute the service at issue Accordingly these claims are without merit

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

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

ISSUED **OCT 18 2021**



WOODY PASCAL
Deputy Commissioner

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

Right to Court Appeal

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

Note: During the period of the current Covid-19 emergency, as a courtesy, if the Article 78 proceeding is commenced by filing 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 IV410017RT
[redacted] PETITIONER	RENT ADMINISTRATOR'S DOCKET NO HT410011OD

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-named Petitioner timely refiled an administrative appeal of an Order of the Rent Administrator issued on August 31, 2020, concerning the housing accommodation known as 253 E 77th Street, New York, NY, 10075, which granted the owner's application to modify services by converting the gas stoves in rent regulated apartments to electric stoves at the owner s expense, with no change to the legal regulated rent

The Petitioner seeks to have the Rent Administrator's order revoked or at minimum modified to give the Petitioner a permanent rent reduction The Petitioner claims, in sum, that the conversion from a gas stove to an electric stove is not an adequate substitution of service but a decrease in service, that the Rent Administrator failed to consider that the conversion will increase the tenant's electricity costs, that the Rent Administrator mistook the owner's agreement to pay for the stove installation and connect the new stoves to its own electric meter and panel to mean that tenants will not have to pay for electricity used by the stove, that the owner failed to prove that the conversion is necessary for the building's operation or that the conversion will have no financial impact on the tenant(s) The Petitioner also cited to government reports and news releases regarding the higher cost of electricity compared to the cost of natural gas

The owner answered the PAR claiming that it is untimely and should be dismissed because the Petitioner's first PAR (Docket No IV410005RT) which was rejected was a day late and therefore this PAR is also untimely, that there will be no financial impact to the tenant's electric costs because the owner agreed to connect the stoves to its own electric panel and meter and pay for electricity costs associated with the installation maintenance, and use of the stoves, that the owner waived its right to a rent increase for the stoves, that the Petitioner's reliance on government reports and news releases regarding the higher cost of electricity compared to natural gas is misplaced because the owner already agreed to pay any electricity costs associated with the stove, and that because the subject conversion is routinely granted by DHCR the owner is not required to prove that it is necessary based on the age or condition of the current stoves

The Petitioner replied stating that she did not receive a copy of the owner's letter to the Division, dated August 24, 2020, in which the owner stated that it will pay for installation costs and any electric costs associated with the stove and that tenants will not be responsible for any costs associated with the stove, that the Petitioner only became aware of the letter because it was attached to the owner's PAR response, that the Rent Administrator issued its order without the Petitioner being given an opportunity to review or respond to the owner's letter, and in violation of her due process rights that the Division s failure to send the owner's letter to the Petitioner before issuing the subject order constitutes a prohibited *ex parte* communication that violates §307(2) of the New York State Administrative Procedure Act (SAPA) and finally that this PAR is timely because it was filed within 35 days of the first PAR being rejected

Administrative Review Docket No IV410017RT

The Commissioner having reviewed the Petitioner s appeal and any and all supporting evidence submitted by the parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the appeal does not have merit and should be denied

As preliminary matter, neither this PAR nor the Petitioner's first PAR are untimely Pursuant to Advisory Opinions 2020-1, all DHCR matters that were not final as of March 13, 2020 were extended by an additional 30 days for the purposes of filing submissions The initial extension, which included the filing of petitions for administrative review, was further extended through November 3, 2020 by Advisory Opinions 2020 2 through 2020-8 Additionally, the Petitioner timely refiled the current PAR after the order rejecting the prior PAR was issued

Section 2522 4(e) of the Rent Stabilization Code permits a modification or substitution of service at no change in the legal regulated rent, on the grounds that such modification or substitution is not inconsistent with the Rent Stabilization Law (RSL) or Code It is the established position of the Division that the conversion of gas cooking stoves to electric cooking stoves, with no change in the legal regulated rent, constitutes an adequate substitution of service that is not inconsistent with the Code and Regulations

Based on a review of the record of this proceeding, the owner agreed to connect the wiring for the electric stoves to its own electric meter and panel, and pay the costs of installing, maintaining and operating the stoves The owner further agreed in letters dated 9/18/2019 7/19/2020, and 8/24/2020 to pay all electric costs associated with the tenants' use of the stoves so their electricity costs will not increase Finally, the Rent Administrator's order states electric stoves will be installed at no cost to the tenants and that the tenants will not be paying for electrical costs associated with the stoves The Commissioner accordingly finds no merit in the Petitioner's claim that its electricity costs will increase because of the conversion

The Commissioner notes that the tenant's request for a rent reduction was not raised below and is not appropriate as the subject conversion is an adequate substitution of service The owner was also not required to show that the substitution at issue is necessary for the building's operation as conversion to electric stoves are permitted

Finally, the Commissioner finds no merit in the claim that the supposed failure to serve the owner's 8/24/2020 letter violates the Petitioner s due process rights or that it constitutes an *ex parte* communication in violation of Section 307(2) of SAPA The Rent Administrator has discretion to serve an owner's submission upon tenants Notwithstanding, the record of this matter shows that the Petitioner was served with the owner s application and other letters to the Division that re-iterate the owner s claims in support of its underlying application (including that the subject conversion will not result in additional electricity costs to the tenants) The record further reflects that the Petitioner meaningfully participated in the underlying proceeding, as evidenced by her answers and letters to the Division Any supposed failure to serve a copy of the owner's letter is not a sufficient basis to vacate the Rent Administrator s order

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

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

ISSUED **OCT 18 2021**

WOODY PASCAL
Deputy Commissioner

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

Right to Court Appeal

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There is no other method of appeal.

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

----------X

IN THE MATTER OF THE
ADMINISTRATIVE APPEALS OF

ADMINISTRATIVE REVIEW
DOCKET NO AO410033RT

Various Tenants of
165 William Street, New York, NY

RENT ADMINISTRATOR'S
DOCKET NO ZB410002OD

PETITIONERS

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ORDER AND OPINION DENYING PETITIONS FOR ADMINISTRATIVE REVIEW

On various dates between March 12, 2012 and March 16, 2012, the petitioner-tenants of apartments [redacted], [redacted], [redacted] and [redacted] filed their various Petitions for Administrative Review (PARs) against an order of the Rent Administrator issued on February 8, 2012, concerning the housing accommodations known as 165 William Street, Various Apartments, New York, NY, wherein the Administrator granted the owner's application to modify services, which permitted the owner to terminate rent inclusion of electricity and change from master metering to direct metering in the subject building

The tenants in their individual PARs, contend as follows, severally and/or jointly, in substance that lofts are physically a different type of dwelling units than apartments, or at least a separate or distinct subset of apartments, that many of the tenants use ample power supply and the cost of electricity was contained in the rents, that the assessment of electrical costs (in reference to the rent reduction granted to the tenants) is way under the average current cost and that if the intent of the statute is to reduce the rent by the monthly amount of actual electric use, the reduction should be approximately $300 00, or more, based on the 7th and 10th floor electric bills as they are already directly metered spaces, that the rent adjustment established by the Update 2 to Operational Bulletin 2003-1 and Policy Statement 93-2 only take into account the standard apartment building, that the outcome, using the schedule of rent reduction was manifestly inequitable, and that pursuant to Section 2522 8 of the Rent Stabilization Code (the Code), the Agency may take the equities into

consideration in making its determinations The tenants, citing the Matter of 131-135 Duane Street Tenants, argue that the Agency may alter rigid formulas specifically when it comes to loft apartments[1]

The tenants contend further that the rent reduction granted should reflect the cost of their historic monthly use of electricity, which had been included int their rents for decades, that the tenants had always paid for electricity in a negotiated and agreed upon amount set forth in the Lease, and have no objection to continuing to pay the same amount, and that the Rent Administrator's order (the schedule of rent reduction) should be reversed as it is inconsistent with the Rent Stabilization Law and Code (Section 2522 4(d)) due to the owner's failure to comply with the requirements of Operational Bulletin 2003-1, and that there was no indication that there was a building-wide rewiring and inadequate proof that the wiring within the unit was sufficient

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

Sections 2522 4(d) and (e) of the Rent Stabilization Code (RSC) requires the landlord to maintain required services included in the regulated rent of rent stabilized apartments unless and until the owner files an application to the DHCR to decrease or modify said required services and an order permitting such decrease or modification has been issued The implementation of these sections must not be inconsistent with the Rent Stabilization Law and Code

On February 16, 2011, the owner filed an application for permission to modify services, to wit to terminate rent inclusion of electricity and change from master metering to direct metering On February 8, 2012, the Rent Administrator granted the owner's application, permitting the owner to install individual meters in the subject apartments, or in the building, and thereafter, the tenants were to be paying their own electric bills, based on tenant's usages, with a concomitant rent reduction based on the Agency's schedule of rent reduction

The Commissioner finds that after a review of the entire record, there is no basis to modify or revoke the Rent Administrator's order Foremost, the Commissioner notes that as required by the DHCR the owner requested permission, and was granted same, from the Agency prior to modifying services

The Commissioner notes that the Matter of 131-135 Duane Street Tenants cited by the tenant(s) is not applicable herein as the issue in that case concerned demolition based eviction and/or relocation, for which the Code had outlined a stipend and the procedure to apply, pursuant to Section 2524 5(a)(2)(ii)(b) of the Code Equally, in the instant case, the DHCR Operational Bulletin 2003 1 and Policy Statement 93-2 outline the procedure for permitting rent reductions as therein stated Although the tenants argue about the perceived insufficiency of the granted rent reduction amount, stating *inter alia*, for instance, that the cost of electricity on the 7th floor which had been divided into three apartments should be considered as a guide concerning how much the rent reduction should be as the lofts are about the same in size, the Commissioner notes that the consideration of equities will not permit such analogy

[1] Admin Rev Docket No TE420012RT

The tenants' claim that the approved monthly rent reductions are insufficient is without merit The Commissioner notes that as indicated in the New York State DHCR Operational Bulletin 2003-1 and its attendant, applicable, Updates (Number -2), the schedule of rent reductions is derived from data analysis by the New York City Rent Guidelines Board, as well as the New York City Department of Housing Preservation and Development (HPD) tabulation of data from the United States Census Bureau entitled "2008 NYC Housing and Vacancy Surveys" Based on the foregoing, the Commissioner finds that the tenants' arguments are insufficient

The tenants' contention that the owner probably did not rewire the entire building is speculative and without foundation The Commissioner notes that as this issue is not supported by any documentary evidence, it is rejected herein

Based on the foregoing, the Commissioner finds, after a review of the entire record, that the tenants' PARs have not established any basis to modify or revoke the Administrator's determination Accordingly, the tenants' petitions are denied

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

ORDERED, that these petitions be, and the same hereby are, denied and that the Rent Administrator's order be, and the same hereby is, affirmed

ISSUED **NOV 16 2021**

WOODY PASCAL
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Geltz 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

ADMINISTRATIVE REVIEW DOCKET NO.: IX410007RT

[redacted]

PETITIONER(S)

RENT ADMINISTRATOR'S DOCKET: HV410006OD

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The Petitioner timely filed an administrative appeal of an order of the Rent Administrator issued on November 30, 2020, concerning the housing accommodation known as 188 E. 93rd Street, New York, NY, which granted the owner's application to modify the building's central heating system from a steam pipe/radiator system to an electrical baseboard heating system with individual baseboard units in each apartment, and with the cost of electricity for heating and hot water paid by the owner.

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

The Petitioner seeks a reversal of the Rent Administrator's order and claims that the owner did not satisfy its burden of proof in order to have its modification application granted; that the current heating system is not claimed to be inoperative or defective and there is no explanation of why the system should be replaced; that the owner failed to show why a modification is warranted despite having the burden to do so; that the application failed to include documentation from a plumber explaining why the heating system needs to be changed; that the owner's application was premature because no Department of Buildings (DOB) permits were applied for prior to filing the subject application; that the order should be vacated because it was granted without the Division serving the Petitioner a copy of the owner's letter, dated 11/24/2020, which responded to tenant objections in the lower proceeding; that failure to serve the owner's letter on the Petitioner violated his due process rights because he was denied the opportunity to review and respond to the owner's letter; that the order should be vacated and this matter remanded with instructions to serve the Petitioner with a copy of the letter; that the owner's letter is a prohibited *ex-parte* communication that violates §307(2) of the State Administrative Procedure Act (SAPA); that the order violates §307(2) of SAPA because the Rent Administrator relied on and quoted part of the owner's letter in the order (specifically, the part which states that tenants will not have to pay any electric costs required to provide hot water in their apartments); that although the order references the owner's agreement to provide hot water at its own expense, the owner failed to state this in its application and therefore, the application should have been denied as it violates §27-2031 of the Housing Maintenance Code which requires hot water to be provided in tenant apartments.

The owner responded to the PAR stating that it contained baseless allegations that fail to establish a sufficient basis to revoke/modify the order; that the claim the Petitioner was not served with the owner's letter is a delay tactic similar to the claim raised by the Petitioner in the proceeding below regarding untimely/late service of the

modification application; that the Petitioner is not prejudiced by not receiving the owner's letter because he was aware of the underlying application, filed an answer, and filed the instant PAR; that the application is not premature and DOB permits will be applied for once the modification is approved; that there is no requirement to show that the current system is defective, inoperative, or that a substitution of service is necessary based on the system's age, nor is documentation or an affidavit from a plumber required to justify the change; that the Petitioner's SAPA claims are meritless because he was made aware, through this PAR, that all costs required to provide heat and hot water will be paid by the owner; and finally, that this PAR should be denied because the modification at issue is an adequate substitution of service.

Section 2522.4(e) of the Rent Stabilization Code permits a modification or substitution of service at no change in the legal regulated rent, on the grounds that such modification or substitution is not inconsistent with the Rent Stabilization Law (RSL) or Code. It is the Division's established position that replacing a steam pipe/radiator heating system with an electrical heating system that operates using individual baseboard units powered by owner supplied electricity, constitutes an adequate substitution of service consistent with the Rent Stabilization Law or Rent Stabilization Code. Contrary to the Petitioner's claims, an owner is generally not required to show that a modification or decrease in service is necessary or justified, or that an existing service/system is defective, when the proposed change has been deemed an adequate substitution of service, per the Division's policies. Moreover, the owner's application was not premature because there is no requirement that government permits be applied for before the Division approves a modification, nor is documentation from a plumber required to justify a modification unless specifically requested. These claims are without merit.

The Commissioner also finds no merit in the Petitioner's due process violation claims or SAPA claims. The Rent Administrator has the discretion to serve an owner's submission upon tenants. Here, the Petitioner was served with the owner's application and meaningfully participated in the underlying proceeding, as evidenced by his answer. The Petitioner was not prejudiced by not being served with the owner's letter which simply responded to the Petitioner's claims and those raised by other tenants in the proceeding below (including the provision of hot water and the cost of electricity to provide same). The owner's letter is not an *ex-parte* communication that violates SAPA, nor does the Rent Administrator's order violate SAPA. The record of this proceeding reflects that the Rent Administrator's decision was based on the Division's policies, which allow for the substitution at issue. Any reference or reliance on the owner's letter does not prejudice the Petitioner but addresses his objections to the modification.

Finally, the claim that the underlying application violates the Housing Maintenance Code is without merit. The provision of the HMC cited by the Petitioner requires an owner to supply hot water to an occupied dwelling unit. Although the owner's application did not address whether hot water will be provided, the owner's letter to the Division confirmed its agreement to provide this service as well as its understanding of its obligation to do so. Any tenants with complaints of a reduction in this service or the owner's failure to maintain this service may file a petition with the Division. For the reasons stated above, vacatur of the Rent Administrator's order is unwarranted.

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

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

ISSUED: DEC 17 2021

WOODY PASCAL
Deputy Commissioner

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

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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 JN410001RO

RENT ADMINISTRATOR S
DOCKET NO GT410004OE

951 LLC

TENANT [redacted]

PETITIONER X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner petitioner timely filed an administrative appeal (PAR ') against an order issued on December 29, 2020 by the Rent Administrator (RA) concerning the housing accommodation known Apt [redacted] located at 951 First Avenue New York NY which denied the petitioner s application seeking an order to refuse renewal of lease and to proceed for eviction of the subject tenant pursuant to Section 26 408(c) of the New York City Rent Control Law

The petitioner filed the underlying application on August 16, 2018 The application included plans approved by the New York City Department of Buildings (DOB) to demolish this five story building containing eight-units which included unit [redacted] and a plan to construct a two family unit

In opposition, the tenant s responses stated that the dubious statements made by the petitioner in the various affidavits which it has submitted reflect adversely upon the bona fides of its demolition application The tenant asserted that the petitioner appears to be masquerading its true intentions with respect to the subject building, which may be to sell, and not demolish Further the tenant pointed out that the petitioner listed this building for sale with a Manhattan brokerage company prior to the eviction proceeding The tenant questioned the petitioner's good faith in this eviction proceeding

In reply the petitioner argued that while it did contemplate selling the building between 2014 and 2016, it ultimately decided to pull the subject building from the market and undertake this construction project instead Further, the petitioner admitted the vacated unit, or any replacement unit would be subject to rent control under New York City Rent Control Law (NYCRCL) §26 408(h) In addition, the petitioner acknowledged that it would be subject to civil and criminal penalties pursuant to NYCRCL§§26 412 & 413 for filing a false application

The RA determined that the petitioner has not satisfied NYCRCL §26 408(c) which requires that the report and certification to alter or demolish occupied housing accommodation (DHCR Form RC-50) be filed with the DHCR and served on the affected tenants prior to the submission of building plans to the DOB Here since the petitioner s plans were filed at the DOB a few months before the RC 50 notice was served on the affected tenants the petitioner s application was denied

On PAR, the petitioner contends that the RA s order is arbitrary and capricious because §26 408(c) neither states nor implies that service of a RC 50 after filing plans with DOB is relevant to the salient issue of good faith nor warrants dismissal of a demolition application The petitioner argues contrary to the RA s findings, the RC 50 notice is not directed to the ultimate determination of a demolition application Instead, its intended purpose and function is to provide notice to the tenant of an owner s intent to alter or demolish its building and inform the tenants of their protections from harassment and illegal eviction Therefore, the RA s dismissal of the petitioner's demolition application was improper since the RA never found that the petitioner has unlawfully harassed any tenant as defined pursuant to NYCRCL §26 412(d)

Further the petitioner argues that the RC 50 notice was timely because the DOB s Plan Examiner disapproved the petitioner s original plans and application shortly after the RC 50 was served on the tenants Then, the petitioner revised its plans which DOB approved The RA s order denying the petitioner s application does not stand scrutiny as the petitioner served its RC-50 on tenants prior to the submission of its final set of plans, which were ultimately approved

Lastly the petitioner argues that petitioner s due process rights have been violated because the petitioner should have had a full and fair opportunity to respond to this alleged issue before the RA's improper dismissal The petitioner contends that a hearing should have been conducted

In opposition to the PAR, the tenant stated that the petitioner had failed to follow the clear and unambiguous legal procedures set forth in HYCRCL §26 408(c) as well as the regulations promulgated by the DHCR thereto 9 NYCRR 2203 10 entitled Certification concerning alteration or demolition of buildings

> The landlord shall submit a certified statement to the Division of Housing and Community Renewal, upon forms prescribed by the administrator before filing plans and applying for a permit to alter or demolish all or part of a building containing housing accommodations subject to these regulations Such certified statement **shall** be submitted at the **earliest** of the following dates
>
> (a) not less than 30 days before commencement of **any work** for which the filing of plans and obtaining of permits is required, or
>
> (b) at least 30 days and not more than 120 days prior to filing **any such plans** or applying for such permit, or

(c) within 30 days after the first communication written or oral to **any tenant or occupant** of such building of the landlord s intention to alter or demolish [emphasis added]

The tenant asserted that both the New York City Rent Control Law and Rent Regulations require that an owner serve a copy of Form RC 50 on the tenants and file Form RC 50 containing proof of service with the DHCR prior to submission of building plans to the DOB in cases like the subject premises which contain rent controlled tenants The tenant asserts that the DOB website reveals that the petitioner filed three applications with the DOB regarding prospective work on the subject building on November 24 2017 and the Form RC 50 was signed by the petitioner's representative on January 29, 2018, mailed on January 30 2018 and had not been sent to the rent controlled tenants and DHCR prior to the petitioner's original filings with the DOB The tenant states whether there was harassment or not is irrelevant to this clear and unambiguous procedural requirement

In reply, petitioner states that it met the requirements of the Rent Control Law and Regulations for filing a demolition eviction application and it must be noted that none of the criteria for granting a demolition application includes the filing of a RC 50 form at any specific time '

The Commissioner having reviewed the entire evidentiary record finds that the PAR is denied, and the RA's order is affirmed

The petitioner s argument that the RC 50 form was solely used for harassment purposes is meritless This procedural requirement of service of the RC 50 is unrelated to, and is not conditioned upon, any harassment claims Both 9 NYCRR 2203 10 and DHCR Fact Sheet 11 (Demolition) specifically sets out a notice requirement to demolish a building that contains rent controlled tenants and this notice requirement shall be at the earliest of three stated scenarios which in this case meant that the petitioner had to serve the RC 50 notice, and file same with DHCR prior to filing its initial plan with DOB on November 24, 2017 The fact that the initial plan was rejected is of no matter since the notice requirement is not tied to or contingent upon the DOB approval of such plans

Based on the foregoing the RA's determination is proper and rationally based and no hearing is required since the petitioner's application is insufficient on its face

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

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

ISSUED

NOV 0 1 2021

Woody Pascal
Deputy Commissioner

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

Right to Court Appeal

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

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* is 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, 15th 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 JS210019RO

ZHU YOUNG CORPORATION

RENT ADMINISTRATOR'S
DOCKET NO HN210004UC

PETITIONER X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner-owner timely filed an administrative appeal (PAR) against an order issued on June 15, 2021, by the Rent Administrator (RA) concerning all building-wide housing accommodations in the premises located at 1227 Broadway, Brooklyn, NY 11221 which denied the owner's application for exemption from rent regulation by virtue of substantial rehabilitation

Procedural History

The owner commenced this proceeding on February 20 2019, by filing an application to determine whether the premises were exempt from rent regulation due to substantial rehabilitation pursuant to Rent Stabilization Code (RSC) §2520 11(e) and DHCR Operational Bulletin 95-2

In the application, the owner stated that it purchased the subject building on July 31, 2014, that the building became vacant before renovations commenced from or about October 2004 through January 2007, and that pursuant to NYCRR 2520 11(e) a presumption existed at the time the building became vacant that it was in substandard or seriously deteriorated condition

The owner alleged that that there are no elevators and no incinerators in the subject building, that at least 75% of the remaining 15 building-wide and apartment systems listed in Operational Bulletin 95-2 were replaced including the plumbing, heating, gas supplies, electrical wiring, intercoms, windows, fire escapes, roof, interior stairway, kitchens, bathrooms, floors, ceiling and wall surfaces, pointing/exterior surface as needed, and replacement of all doors and frames

On October 9, 2019, the agency requested that the owner provide the following additional information/evidence within 21-days

1 Submit an affidavit from the owner who did the rehabilitation The affidavit must address the following
   a The condition of the building prior to the rehab
   b Dates the work commenced and ended
   c What caused the tenants to vacate the building?
   d Did any of the prior tenants return after the renovation?
   e DOB job numbers related to the project
   f How much did the project cost?
2 The owner who did the rehabilitation must submit the following documents
   a Proof of payment such as invoices & cancelled checks
   b A copy of the PW3 (Cost Affidavit) which the architect certified to DOB
3 Submit a full-blown copy of all DOB approved architectural plans for the projects
4 Submit a copy of all DOB job applications, permits, and Letter of Completion

By letter dated, November 18, 2019, the previous owner Morty Kozak responded to the agency's October 9 2019 request by submitted an affidavit which stating the following

"I was the owner who did the substantial rehabilitation for the building " "I purchased this collapsed building for $650,000 " "I'll answer the following questions as requested

a Prior to the substantial rehabilitation, the building was an empty building and almost collapsed and there was no one stayed or lived in the building (Please see enclosed pictures A)
b The work commenced on 10/25/04 and the work completed on 1/9/07
c The building almost collapsed and was 100 percent empty and vacant and no one lived or stayed in the building It was in

a completely dilapidated condition

d No tenant was living in the building prior to the substantial rehabilitation Therefore, no one returned (Please see enclosed pictures A)

e The DOB Job number related to this project was 301785502 (Please see enclosed DOB application)

f The project cost about one-million dollars

g I don't have any proof of payment anymore or any invoices and cancelled checks because the project took place 15 years ago The record is gone even the banks don t keep those records anymore By law, I only had to keep all records for 7 years

As you can see from the attached photographs the building was uninhabitable Almost everything was rebuilt "

On July 15, 2020 and August 6, 2020, the agency requested that the owner submit a copy of the PW3 (Cost Affidavit) which the owner certified to DOB for the following DOB jobs 301785502, 302234428, 302160195

On August 25, 2020, the owner responded that it is very difficult to obtain the PW3 as the job was done over 16 years ago The architect no longer has these documents

RA's Determination

The RA found that the evidence presented does not substantiate the owner's claim that 75% of building-wide and individual apartment systems including common areas were replaced, that the owner has not submitted necessary evidence for proper examination and determination by DHCR such as full scale copy of the architectural plans approved by the Department of Buildings ("DOB"), proof of payments such as invoices, cancelled checks and DOB cost affidavit (PW3) which details/itemizes the work approved by DOB, that DHCR will not find that the building has been substantially rehabilitated within the meaning of Section 250 11(e) of the Rent Stabilization Code unless the owner demonstrates that the criteria set forth in Operational Bulletin 95-2 have been met, and that the owner is hereby advised to file annual registrations with the DHCR and provide regulated leases to all residential tenants in accordance with the Rent Stabilization Code

Contentions on PAR

On PAR, the owner contends, amongst other things that the RA improperly denied the application that the proof submitted by the

owner is sufficient to find that the subject building was substantially rehabilitated, that the owner is also submitting an affidavit of Todd A Ernst, the architect in charge of the substantial rehabilitation of the building sworn to on July 19, 2021, that the owner filed a FOIL request with DHCR and reserves the right to supplement this PAR, that the courts have accepted proof of a substantial rehabilitation of a building which did not include proof of payment or proof of specified items, Dimas Gardens v DHCR 24 Misc 3d 1205(A)(Sup Ct Kings County 2009)(owner submitted certificates of occupancy, approved plans and statements from the landlord and its attorney), Matter of Sharp, DHCR Admin Rev Dkt No DO410034RT (owner submitted DOB records, plans, photographs, proof of demolition and construction and certificate of occupancy) Matter of Kic, DHCR Admin Rev Dkt No GP210019RT (owner submitted DOB records, architect and contractor affidavits and cost affidavit), Various Tenants of [redacted], DHCR Admin Rev Dkt No SE210086RT(owner submitted description of work, affidavit of architect, DOB records and certificate of occupancy), that here, the work was completed on or before January 2007-nearly 15 years ago-and long before the current owner took title, and that the current owner contacted the prior owner, which no longer had contracts, invoices or cancelled checks evidencing the work

Law on Substantial Rehabilitation

RSC §2520 11(e) provides that housing accommodations in buildings substantially rehabilitated as family units on or after January 1, 1974 are exempt from rent stabilization DHCR Operational Bulletin 95-2 ("OB 95-2") outlines the criteria an owner must meet to prove substantial rehabilitation Section III of OB 95-2 sets forth the documentary requirements

III Documentation

The following documentation will be required from owners in support of a claim for substantial rehabilitation Records demonstrating the scope of the work actually performed in the building These may include an itemized description of replacements and installation, copies of approved building plans, architect's or general contractor s statements, contracts for work performed, appropriate government approvals and photographs of conditions before, during and after the work was performed Proof of payment by the owner for the rehabilitation work may also be required

Commissioner's Decision

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

RSC §2529 6 provides that

> review pursuant to this Part shall be limited to facts or evidence before a Rent Administrator as raised in the petition Where the petitioner submits with the petition certain facts and evidence which he or she establishes could not reasonably have been offered or included in the proceeding prior to issuance of the order being appealed, the proceeding may be remanded for redetermination to the Rent Administrator to consider such facts or evidence

Based upon RSC §2529 6, the Commissioner will not consider Architect Todd A Ernst s July 19, 2021 affidavit which was submitted for the first time on PAR It is the petitioner's responsibility to comply with requests from the RA and to meet its burden of proving substantial rehabilitation Moreover, the matter was pending for over two years before the RA and the owner had ample opportunity to present this evidence and failed to do so The Commissioner notes that the doctrine of scope of review promotes administrative efficiency as it requires all proof to be submitted to the initial fact-finder, in this case the RA

Even if the affidavit was considered on PAR, it does not support the owner's application for deregulation The opinion of an architect, engineer or contractor stating that the work was completed, standing alone, is insufficient to prove a substantial rehabilitation See Matter of Pena v Div of Hous & Community Renewal, 67 Misc 3d 1231[A], 2020 NY Slip Op 50693[U], *2 [Sup Ct, Kings County 2020)(Court affirmed DHCR's determination to deny an owner s application for substantial rehabilitation because the RA found that the petitioner failed to submit adequate documentation)

The Commissioner finds that the scope of work has not been adequately defined Petitioner failed to provide the agency with a full-blown copy of architectural plans for the project approved by DOB DOB cost affidavits, construction contracts, invoices, and cancelled checks

The Commissioner notes that the former owner's statement that the rehabilitation cost was about one million dollars is belied by DOB records DOB Job No 301785502 indicates that the job cost is estimated at $240,000 00 DOB Job No 302234428 indicates that the job cost is estimated at $6000 00 DOB Job No 302160195 indicates that the job cost is estimated at $25,000 00 All three jobs collectively estimated that the job cost was $271,000 00, which is $729,000 00 (72%) less than the estimated $1,000,000 affirmed by the former owner Given the inconsistencies between the former owner's affirmed estimated costs and the DOB record, it would be reasonable for the RA to require proof of payment in the form of invoices and cancelled checks It is of no matter that the project took place 15 years ago The owner and his predecessor maintain a continuing responsibility to retain records sufficient to meet the burden of proving substantial rehabilitation

The Commissioner notes that the photographs submitted lack evidentiary value, as there is no affirmation in the record as to who took the photographs, when they were taken or to substantiate their authenticity Moreover, the photographs are not a substitute for actual construction records, contractor invoices and proof of payment

The owner's reliance on the cases cited in its PAR is misplaced In Dimas Gardens v DHCR, the Court remanded the proceeding to DHCR to reconsider evidence that was not reviewed by the Rent Administrator or Commissioner, including a pre-rehabilitation Certificate of Occupancy indicating that the building was occupied only for the permissible use of an "Office, storage and garage for two cars", and that after the rehabilitation, the building had six new apartments, in Matter of Sharp the owner submitted documentation pertaining to a construction loan backed by a mortgage of the subject property in the amount of $1,000,000 00, an accountant's letter stating that there were $996 490 00 in "capital expenditures primarily in the form of building improvements", and proof of payments to the general contractor, in Matter of Kic, the owner produced multiple cost affidavits, an affidavit from both the architect and licensed general contractor, and DOB plans/work permits which demonstrated the scope of the work, in Various Tenants of [redacted], the Commissioner found that the evidence presented set forth the scope of work performed and the Condominium Offering Plan, in conjunction with DOB records, proved that the owner replaced the requisite systems required pursuant to Operational Bulletin 95-2 Those matters are not analogous to the facts herein

Based on the record evidence the owner has not proven a substantial rehabilitation in the subject premises

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

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

ISSUED OCT 27 2021

Woody Pascal
Deputy Commissioner

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

Right to Court Appeal

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

Note: During the period of the current Covid-19 emergency, as a courtesy if the Article 78 proceeding is commenced by efiling pursuant to the Court Rules, service may be effectuated, as limited, as follows: by forwarding the court's email indicating the assignment of the Index Number and the documents received by the court i.e. Notice of Petition, Petition, and other efiled documents to DHCRLegalMail@nyshcr.org. Upon receipt of the complete filings, the receipt of such documents will be acknowledged by email. Only after such acknowledgement of receipt of such documents will the service by email be deemed good service on New York State Division of Housing and Community Renewal (DHCR). DHCR is not the agent for service for any other entity of the State of New York or any third party. In addition, the Attorney General must be served at 28 Liberty Street, 15th 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 JR210007RP

RENT ADMINISTRATOR'S
DOCKET NO FT210002UC

OWNER 693 MADISON STREET LLC

PETITIONER X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On August 11 2017, 693 Madison Street LLC (owner") commenced this proceeding by filing an application to determine whether the building located at 690 Madison Street, Brooklyn, NY 11221 was exempt from rent regulation due to substantial rehabilitation in accordance with Rent Stabilization Code (RSC) §2520 11(e) and DHCR Operational Bulletin 95-2 (OB 95-2)

Procedural History

In its August 11 2017 application the owner alleged that the building was completely vacant when the rehabilitation began that no prior tenants returned after the rehabilitation, that pursuant to RSC §2520 11(e) a presumption existed at the time the building became 80% vacant that it was substandard or seriously deteriorated, that the building was gut-renovated starting in November 2005 and completed in April 2007 by a previous owner under Department of Buildings (DOB) Job No 302043928

In support of the application, the owner submitted, amongst other things 1) Architectural plans approved by DOB, 2) Copy of DOB Work Permit data and inspection records, 3) Copy of the DOB file, 4) Photographs of the completed work, 5) Printout of the DOB

Application Detail for Alteration Job No 302043928 6) DOB Letter of Completion and 7) Engineer's affidavit

Tenants, by counsel, opposed the owner's application by asserting amongst other things that the tenants have been harassed, that the owner obtained vacancy of the building illegally and fraudulently, that the owner has not presented sufficient evidence that the building was in substandard condition before the work started, that the owner did not prove that the building was at least 80% vacant before the work started and that the owner has not proven that at least 75% of the building-wide and individual apartment systems including common areas, were replaced

On July 2, 2018, the tenants submitted a report prepared by Ibrahim Greenidge of Bolt Architecture, PLLC Mr Greenidge asserted that he inspected the building on May 14, 2018, that the rear fire escape was original, that the bulkhead roof was not replaced, that the skylight was original, that the gravity vent in the courtyard was abandoned that the kitchen cabinets were not replaced in apartment [redacted], and that the intercom in Apartment [redacted] was not replaced

DHCR Agency Inspection

On October 11, 2018 a DHCR agency inspector conducted an inspection of the subject building The agency inspector was asked to inspect the entire building's exterior interior including all apartments the basement, and public areas, to determine whether the work allegedly performed between 2005-2007 met the criteria set forth in RSC §2520 11(e) and OB 95-2

The agency inspector made the following findings

> It does appear that the building was gut renovated between 2005-2007 Originally the apartments were left-side and right-side, but the 2nd, 3rd and 4th floor apartments are now situated front and rear A security camera system was also installed and is operational All apartments have 2 full bathrooms, identical kitchens with laminate counter tops, laminate wood cabinets, gas range, dishwasher, and refrigerator Hardwood flooring was installed throughout each room in each apartment

The inspector annexed 46 photographs to the inspection report and noted that the building manager and a tenant representative from The Urban Justice Center was present during the inspection

Rent Administrator's Order

On November 30, 2018, the Rent Administrator (RA) issued an Order granting the owner's application for substantial rehabilitation The RA determined that the building was in substandard condition or at least 80% vacant when the renovation commenced, that the owner claimed that the building was completely vacant when the rehabilitation began and that no prior tenants returned after the rehabilitation, that no proof exists that the prior tenants were harassed

The RA noted that DOB records indicate that the prior owner obtained DOB approval on October 17 2005 for 'Removal of interior Partitions' under DOB Job No 302027429 at an estimated cost of $25 000 00, that a subsequent application was approved on November 23 2005 for 'Proposed Interior Renovation of 8 existing apartments' under DOB Job No 302043928 at an estimated cost of $250 000 00, that two other jobs were filed under DOB Job No 302155236 on May 1 2006 for a new sprinkle system, and DOB Job No 302239520 for HVAC Units and Plumbing on November 15, 2006, and that DOB issued a Letter of Completion for the work related to the main DOB Job Nos 302027429 and 302043928

The RA further indicated that the owner submitted amongst other evidence, an affidavit from Paul F Marino (Professional Engineer) who inspected the building on August 4, 2017, that Mr Marino stated that he reviewed HPD records and the DOB Job files, that Mr Marino described the structural and physical alteration of the building under DOB Job No 302043928, including the reduction of room-count per floor and the addition of a second bathroom per unit, that the scope of work described in the affidavit indicates that at least 75% of the building-wide and individual apartment systems including common areas were replaced that on October 11, 2018, DHCR conducted an inspection of the subject premises, that the DHCR inspector confirmed that the building had been gut-renovated and that the original Left-side and Right-side apartment structures were changed to the Front and Rear apartments

The RA determined that the rehabilitation claimed by the owner met the threshold of replacing 75% of building-wide and individual

apartment systems set forth in OB 95-2 and RSC 2520 11(c), that there is no indication that the owner received any Government financing or Abatement for the renovations, and that the subject building is exempt from regulation pursuant to RSC 2520 1 11(c) and OB 95-2

PAR Proceeding
Docket No HM210008RT

On January 2, 2019, tenants attorney who appeared in the underlying action, filed a PAR on behalf of petitioner Jane Ledesma, resident of apartment 2F contending, amongst other things that the RA erred in his findings that 1) 75% of the building systems were replaced 2) a gut rehab took place and 3) there was no fraud or harassment towards former or current tenants

Owner s counsel opposed the PAR asserting, amongst other things that, petitioner does not have standing and that the evidence supports affirming the RA s Order

On June 21, 2019 the Commissioner issued an Order under Docket No HM210008RT, finding that the petitioner does not have standing, that the petitioner is not the tenant of record of apartment 2F, that petitioner's attorney/representative may not untimely add other tenants, or the tenant(s) association to such PAR, and that the PAR is confined to a determination of the rights of Ms Ledesma the petitioner herein

Administrative Determination Proceeding
Docket No FX210001AD

On November 27 2017, tenant(s) representative/attorney filed an application requesting that DHCR make an administrative determination that the subject building is rent stabilized

On May 21 2019 the RA found that the jurisdiction issue in the instant proceeding has been determined under Docket No FT210002UC, wherein it was found that the subject building has been substantially rehabilitated and is therefore exempt from regulation pursuant to RSC 2520 11 The administrative determination was terminated under FX210001AD and no PAR was taken of that order

Article 78 (Kings Supreme)
Index No 3228/2019

Petitioner instituted a proceeding under Article 78 of the CPLR in Supreme Court Kings County under Index No 3228/2019 seeking a review of the Commissioner's June 21, 2019 Order under Docket Number HM210008RT Petitioner challenged, amongst other things the Commissioner's dismissal of the petitioner's PAR application on the basis that the tenants' association representative lacked standing to file the PAR

On March 30, 2021 Hon Debra Silber, J S C issued a decision finding in relevant part that the June 21, 2019 Order under Docket No HM210008RT improperly dismissed the PAR application solely on procedural grounds that is on the basis that the tenants' association representative lacked standing to file the PAR that this dismissal was arbitrary and improper, that there is one remaining tenant from the original group of tenants that filed the PAR that DHCR shall reopen PAR Docket No HM210008RT, for further processing consideration and review, that DHCR shall accept and consider Petitioner's April 2019 PAR Supplement (Part II) which was referenced in the original PAR filing, that the scope of the remand is limited to the regulatory status of Apartment 3R only, which is currently occupied by [redacted], the only remaining tenant from the 693 Madison Street Tenants Association, that the remaining seven of the eight apartments in the subject building at 693 Madison Street, Brooklyn, NY are and shall remain deregulated pursuant to the deregulation order which the PAR at issue herein was filed to challenge

Reconsidered PAR Proceeding
Docket No JR210007RP

On June 24, 2021, the agency served the parties with a Notice of Proceeding to Reconsider Order The June 24, 2021 notice informed the parties that the Commissioner s June 21, 2019 Order under Docket No HM210008RT has been remitted to the agency for further consideration, and that said order would be reconsidered under Docket No JR210007RP

Petitioner filed two supplements to the PAR The first supplement, labeled PAR Supplement (Part 1), asserts, amongst other things, that the tenant association members endure harassment

PAR Supplement (Part 2), asserts amongst other things, that the petitioner has strong reason to believe that the subject building was illegally and fraudulently deregulated that the owner showed no evidence that the building was in substandard condition before the work started or at least 80% vacant at that time, that the owner bears the burden of proving substantial rehabilitation that the simple submissions of documents is not sufficient to meet this burden that the owner retained an engineer to make self-serving claims that 75% of the building structures were completed that owner's retained engineer does not have first-hand knowledge on the work which was allegedly completed, that the owner shows no proof of actual work allegedly completed in 2007 that the scope of work was not set forth, that the owner supplied a Letter of Completion which was only requested and issued by the former owner's architect months after the current owner took possession and a decade after the alleged construction that In the Matter of the Administrative Appeal of Lawrence Cook (July 2020) Administrative Review Docket No HV410003RK, the Commissioner said that "contractor's records, invoices, proof of payments and unverified photographs alone are insufficient to prove substantial rehabilitation without direct evidence from an engineer or architect outlining the scope of work and stating that the required percentage of building systems and common area requirements were made " Id at 6 In that case the Agency rules against the building s rent stabilization exemptions because the owner s architect affidavit was self-serving and couldn t be substantiated Id at 9, that the Commissioner in the Matter of the Administrative Appeal of SH Harman (January 2021), Administrative Review Docket No IV210004RO found that the opinion of an architect, engineer or contractor stating that the work was completed standing alone is insufficient to prove substantial rehabilitation, that the tenant associations architect Ibrahim Greenidge from Bolt Architect, questioned whether some of the systems set forth in OB 95-2 were ever changed, that Mr Greenidge found that six of the building systems were not likely replaced in the alleged 2005-2007 rehabilitation contradicting the owner's architect's report that Mr Greenidge opined that the condition of the fire escape, roof, building exterior, gravity vent/interior court, kitchen cabinets in apartment 3R, intercom replacement in apartment 2R and front building exterior revealed that these structures were dated and likely not changed during the alleged work

Petitioner further asserts that the RA's November 30, 2018 decision states that an agency inspection on October 11, 2018

reported that the subject building was gut renovated without any details about the agency's inspection report or particularly distinguishing what work was done between 2005 and 2007 that the former owner failed to obtain a new certificate of occupancy for work it completed 15 years ago that the owner did not prove that the building was in substandard condition or that it was at least 80% vacant, that the buildings rent history is inconsistent with the owner's substantial rehabilitation claims, that DHCR has previously found that a building cannot be found to be substantially rehabilitated where an owner harasses tenant(s), and that the agency must deny the owner s substantial rehabilitation application because the owner submitted grossly inadequate documentary evidence

On September 29, 2021, owner s counsel responded to the tenant s PAR application PAR Supplement Part 1 and PAR Supplement Part 2 The owner asserts that pursuant to the March 30, 2021, Order issued by Justice Silber, this PAR is only applicable to Apartment 3R in the subject building which is occupied by tenant Ava T Pennie Cross that after oral argument and due deliberation the Court held that the Owner performed a substantial rehabilitation of the building and further held that seven of the eight units in the building are deregulated that the Court also held that the petition was granted to the extent of remanding the proceeding for DHCR to decide the regulatory status of Apartment 3R on the merits that the Article 78 Order was not appealed and as such this is a final binding order

Owner s counsel asserts that the tenant's PAR Supplement (Part 1) lacks merit, that the RA's order specifically addressed and denied the same harassment allegations and that the RA found that after careful consideration of all the information and evidence no proof exists that any of the tenants were harassed The owner further asserts that the judge s order affirmed the RA s findings that the tenants were not harassed that the tenant s conclusory harassment claims have no bearing on the substantial rehabilitation, and that, nonetheless, the owner categorically denies that any of the tenants were harassed

Owner s counsel contends that the tenant's PAR Supplement (Part 2) should not be considered because the tenant failed to submit a complete copy of the original PAR and the supplement within 30-days of the Article 78 Order as required by the court Order, that pursuant to paragraph 3 of the court Order the tenant was required to submit her papers to DHCR on or before April 29,

2021 that the date stamp on tenant's submission evidences that it was submitted on May 10, 2021 and that DHCR strictly enforces PAR filing requirements (citations omitted) Owner's counsel further asserts that it was not served with a complete copy of the original PAR (i e the PAR filed by [redacted] thus it is presumed that the tenant did not submit a complete copy of this PAR)

The owner asserts, assuming arguendo, that DHCR reviews PAR Supplement (Part 2) the tenant in Part 2 fails to state any basis for reversal of the Deregulation Order, that the only new submission by the tenant is almost an identical copy of the tenant's prior submissions, which were all rejected by the RA and Court that the tenant s submissions consist of conclusory allegations which provide no evidentiary or legal value See In the Matter of the Administrative Appeal of Summer Lee, Adm Dckt No GQ210076RT (8/19/18)(tenant s conclusory claims that owner failed to substantially rehabilitate the building were not enough to overcome the evidence submitted by owner which include DOB approved plans physical inspection, DOB applications, DOB work permits, sworn statements by the architect, and photographs), that tenant s claims that there was no new certificate of occupancy is patently false, that the owner was only required to obtain a Letter of Completion from DOB, which was supplied to the RA that the Bolt Architecture report which the tenant claims questions the renovations was found to be without merit that the DOB records and evidence submitted by the owner in the underlying proceeding and the agency's inspection contradict the Bolt report and that based on the foregoing, the PAR should be immediately dismissed in its entirety because the tenant failed to state a basis for reversal of the Deregulation Order

Commissioner's Decision
JR210007RP

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

As a preliminary matter pursuant to the March 30 2021 Court Order 693 Madison Street Tenants Association had standing to file the subject PAR in the name of [redacted] The Court further noted that the scope of this remand is limited to the regulatory status of Apartment 3R only, which is currently occupied by Ava T Pennie Cross, the only remaining tenant from the 693 Madison Street Tenants Association The Commissioner finds that the PAR and its

supplements were timely submitted in accordance with the Court remit

The Court Order unequivocally established that seven of the eight apartments in the subject building located at 693 Madison Street, Brooklyn NY, are and shall remain deregulated because they were substantially rehabilitated As stated by the New York Court of Appeals in Martin v Cohoes 37 NY2d 162, 165 (1975) the doctrine of the 'law of the case' is a rule of practice an articulation of sound policy that, when an issue is once judicially determined, that should be the end of the matter The Court of Appeals further noted that "[a]s distinguished from issue preclusion or claim preclusion law of the case addresses the potentially preclusive effect of judicial determinations made in the course of a single litigation before final judgment " In accordance with the Court of Appels holding in Martin v Cohoes the March 20, 2021 Court Order is the law of this case

As noted by Justice Silber the scope of this remand is limited to the determination of the regulatory status of Apartment 3R only If the Commissioner finds that [redacted] resided in apartment 3R at the time that the substantial rehabilitation was performed then apartment [redacted] would continue to retain its rent stabilized status until [redacted] vacates the apartment See Copeland v NY State Div of Hous & Community Renewal, 164 Misc 2d 42, 53 (Sup Ct, NY County 1994)(tenants who continuously occupy their apartment during a substantial rehabilitation are entitled to the protections of rent regulation) Here, petitioner annexed to the supplemental PAR an affidavit from [redacted] in which she states

> My name is [redacted] I live at 693 Madison Avenue Brooklyn New York 11221 Apartment #3R I moved in the building **March 2014**

Given that the record evidence establishes that the subject rehabilitation was performed between 2005-2007, apartment 3R was deregulated before [redacted] occupancy commenced As such, she is not entitled to the protections of a tenant in occupancy prior to and/or during the rehabilitation Moreover there is no evidence that apartment 3R was not rehabilitated as part of the work in 2005-2007, and therefore the apartment should be deregulated along with the other 7 apartments in the building

The Commissioner notes that petitioner incorrectly asserts that the owner was required to obtain a new Certificate of Occupancy after the completion of the substantial rehabilitation The DOB records in evidence indicate that the owner was only required to obtain a Letter of Completion, which it supplied to the RA The Commissioner further notes that it is immaterial that the owner did not obtain this Letter of Completion from DOB until April 20, 2017, since the DOB and agency record are unequivocally clear that the work was performed between 2005-2007 See Matter of the Administrative Appeal of SS4E Capital Ventures LLC , Docket No EV410065RT (substantial rehabilitation is retroactive to the date when the work was completed)

Petitioner s assertion that the owner and/or prior owner harassed former tenants to vacate is unsubstantiated Moreover the Commissioner finds that the owner met its burden of proving that the building was completely vacant and in substandard condition when the rehabilitation commenced Given that the agency inspector and DOB record indicate that between 2005-2007 the building was gut-renovated, which included alteration of the building's structural components, it would not be plausible to presume that the subject premise was occupied and not in substandard condition As such the evidentiary record supports the owner s assertion that the subject building was vacant and in substandard condition when the rehabilitation commenced Any claimed harassment of tenants subsequent to the substantial rehabilitation has no bearing on this matter The tenants may file a separate harassment complaint with the agency

The Commissioner further notes that the overwhelming evidence supports the RA s determination that all eight apartments in the subject building were deregulated based upon substantial rehabilitation As previously noted the owner provided sufficient evidence which included architectural plans approved by DOB an Engineer Affidavit complete DOB file DOB Work Permits and a DOB Letter of Completion which encompassed the claimed work The evidence submitted by the owner and the Engineer Affidavit is also consistent with the findings of the DHCR inspector who found that the premises, including all of the apartments, were substantially rehabilitated in 2005-2007

The cases cited by the petitioner for the proposition that the owner failed to prove that apartment 3R was substantially rehabilitated between 2005-2007 are inapposite For instance, petitioner s reliance upon In the Matter of the Administrative

Appeal of Lawrence Cook, (July 2020) Administrative Review Docket No HV410003RK, is misplaced In the Matter of the Administrative Appeal of Lawrence Cook the Commissioner found that amongst other deficiencies the relevant DOB job application descriptions were limited to **plumbing work at cellar only**', which did not encompass 75% of the building wide and apartment systems that the scope of work encompassing a substantial rehabilitation was never set forth and that pursuant to RSC §2520 11(e)(5)building systems did not comply with applicable building codes and requirements Unlike In the Matter of the Administrative Appeal of Lawrence Cook in this matter the scope of work was lawful and adequately defined

Petitioner s reliance upon in the Matter of the Administrative Appeal of SH Harman (January 2021), Administrative Review Docket No IV210004RO, for the proposition that the opinion of an architect engineer or contractor stating that the work was completed standing alone is insufficient to prove substantial rehabilitation is also misplaced Unlike Matter of the Administrative Appeal of SH Harman in this matter as discussed above and below, significant evidence in addition to an engineer s affidavit prove that the former owner performed a substantial rehabilitation between 2005-2007

The Commissioner finds that the petitioner's claim that the agency inspection report lacks details about what work was done between 2005 and 2007 is entirely without merit To the contrary the agency inspector stated that "**It does appear that the building was gut renovated between 2005-2007** " Next, the agency inspector delineates each of the systems in OB 95-2 and concludes that the required systems were replaced between 2005-2007, in each of the apartments in the building, including apartment 3R The 46 photographs that the inspector annexed to his report further corroborate the above conclusions

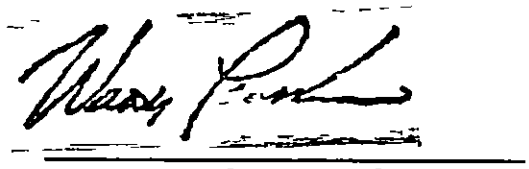
It was reasonable for the RA to rely on the observations of an agency inspector in determining that the subject premise was substantially rehabilitated in accordance with RSC 2520 11(e) and OB 95-2 The observations of the agency inspector who is non-biased and is specifically trained in performing apartment inspections and recognizing the age of work performed sufficiently rebuts the petitioner's assertions that the owner failed to prove that it replaced 75% of building-wide and individual apartment systems set forth in RSC 2520 11(e) and OB 95-2 See Sierra v Commr of the Div of Hous & Community Renewal, 2020 NY Slip Op 34056[U], *11 (Sup Ct, NY County 2020)(court found a rational basis

for this agency to rely on an agency inspection report and that the court may not substitute its judgment for the Deputy Commissioner's on matters of factual analysis)

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

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

ISSUED



NOV 03 2021

Woody Pascal
Deputy Commissioner

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

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this Article 78 proceeding with the courts is within 60 days of the issuance date of the Deputy Commissioner's order. This 60 day deadline for appeal may be extended by executive orders at https://governor.ny.gov/executiveorders. No additional time can or will be given for 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 filing 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 filed 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, 15th 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

LS No 001009

ADMINISTRATIVE REVIEW
DOCKET NO JU210004RP

852 HART LLC,

RENT ADMINISTRATOR'S
DOCKET NO GR210003UC

PETITIONER X

ORDER AND OPINION REMANDING PROCEEDING TO THE RENT ADMINISTRATOR

Petitioner timely filed an administrative appeal (PAR) against an order issued on August 5, 2020, by the Rent Administrator (RA) concerning all building-wide housing accommodations in the premises located at 852 Hart Street Brooklyn, New York 11237 which denied the petitioner s application for exemption from rent regulation by virtue of substantial rehabilitation

Procedural History

Petitioner commenced this proceeding on June 6 2018, by filing an application to determine whether the building located at 825 Hart Street, Brooklyn, New York was exempt from rent regulation due to substantial rehabilitation in accordance with Rent Stabilization Code (RSC) §2520 11(e) and DHCR Operational Bulletin 95-2 (OB 95-2)

The petitioner stated that it purchased the subject premises on April 23, 2010, that the subject premises was entirely vacant when the rehabilitation commenced in January of 2016, that pursuant

to NYCRR 2520 11(e) a presumption existed at the time the building became vacant that it was substandard or seriously deteriorated, that the renovations commenced in January 2016 and were completed in May of 2016 under Department of Buildings (DOB) Job No 340339280, and that it spent approximately $702 947 47 to gut-renovate the subject premises, that at least 75% of the building-wide and apartment systems listed in Operational Bulletin 95-2 were replaced including the plumbing, heating, electrical wiring, intercoms, windows, roof, fire escapes, interior stairways, kitchen, bathrooms, floors, ceiling and wall surfaces, pointing and surface repairs were performed as needed, replacement of all doors and frames, and that there are no elevators, incinerators or waste compactors in the subject building The owner indicated that no government financing or tax abatement was received for the project

In support of the application, the petitioner submitted amongst other things A printout of the deed dated April 16, 2010 transferring the premises from Appoo Sameshwar ("prior owner") to the petitioner 852 Hart LLC ("current owner'), before and after photographs of the work, contractor invoices and cancelled checks to prove payment, an affidavit from Engineer Yaakov Stern, who drafted the architectural plans, an affidavit from Architect Victor Fernandes, an affidavit from Managing Agent Joel Rubin, DOB Job file under DOB Job No 340339280 and the DOB Letter of Completion under DOB Job No 340339280

RA's Determination

On August 5, 2020 the RA issued an order denying petitioner's application for substantial rehabilitation

The RA recounted the petitioner's assertions that the building was acquired by the owner in April of 2010, that the owner started renovations in January 2016, that the renovations were completed in May of 2016, that the prior tenants vacated the building by tenant buy-out and that the building was reconfigured with the addition of a new floor

The RA reviewed all the information and evidence finding that the architectural plans presented by the owner did not show any form of change to the building's structure, that there was no new certificate of occupancy to legitimize the new floor claimed, and that the affidavit of Victor Fernandes (owner's architect) did not confirm any structural changes to the building

The RA determined that pursuant to OB 95-2 the agency will not find a building to be exempt based on substantial rehabilitation unless the owner clearly demonstrates that the criteria set forth in the DHCR Operational Bulletin has been met, that the owner was required to clearly show that the building was in substandard condition or at least 80% vacant when the renovation commenced and that the building/systems comply with all applicable building codes and requirements

Contentions on PAR

On PAR, the petitioner alleges that the evidence submitted demonstrates that the owner substantially rehabilitated the subject premise pursuant to OB 95-2 and RSC §2520 11(e), and that DHCR should have granted the owner's application for substantial rehabilitation, that the agency should reverse the RA's August 5 2020 order, that DHCR arbitrarily and capriciously determined that the owner's claims were unsubstantiated, that the agency failed to properly consider and weigh the evidence presented to it, that the owner accidently stated in its affidavit and in the application rider that a new floor was added, that a new floor was not added and therefore, no new certificate of occupancy was required by DOB, that there was no structural changes to the building, that the substantial rehabilitation consisted of an Alteration Type 2, meaning that there was not a change in ingress/egress of the building, that DHCR improperly determined that the owner did not complete a substantial rehabilitation, and that DHCR improperly determined that the subject building is not exempt from rent regulation

PAR Order IU210004RO

On December 7 2020, the Commissioner issued an Order denying petitioner's PAR The Commissioner found amongst other things, that the evidence supports the RA's determination that petitioner was not entitled to deregulate the building based upon substantial rehabilitation, that the petitioner failed to prove that the building was at least 80% vacant of residential tenants when the renovation commenced, that petitioner failed to provide adequate evidence to prove that the vacancy rate was lowered to below 80% by lawful means, that petitioner's application has a stark inconsistencies, that the RA correctly determined that the petitioner failed to comply with "all applicable building codes and requirements" and therefore there cannot be a finding of substantial rehabilitation, and that the petitioner failed to prove that at least 75% of the building-wide and apartment systems were replaced

Owners Article 78 Under Index No 502737/2021

On February 3, 2021, the owner filed a petition in New York Supreme Court challenging the order under docket number IU210004RO The owner asserted, amongst other things, that the Commissioner's determination that the owner did not complete a substantial rehabilitation was arbitrary and capricious, that it was arbitrary and capricious for DHCR to determine that the owner did not prove that the building was vacant before the substantial rehabilitation commenced, that it was arbitrary and capricious for the agency to not overlook the owner's typographical error that an additional floor was added to the building, and that it was arbitrary and capricious for the agency to find that the owner failed to comply with DOB codes

On June 28, 2021, the parties executed a So-Ordered stipulation agreeing to the following that the above entitled CPLR Article 78 proceeding, Index No 502737/2021, is settled on the agreement that, this proceeding shall be remitted to DHCR's Rent Administrator for further proceedings and a new determination based both on the record assembled in the Rent Administrator's proceeding under Docket No GR210003UC and certain documents in the record under this Index number, specifically, such further proceedings will include consideration of the documents contained in NYSCEF Document No "24" entitled, 'Transcript of Proceedings," and particularly pages 202 through 210, previously characterized as "buyout agreements,' and the documents contained in NYSCEF Doc no "37," characterized as "2009-2010 leases "

On September 21, 2021 the agency notified the parties in writing that the prior order under IU210004RO would be reconsidered pursuant to the parties' duly executed stipulation of remand dated June 28, 2021

Commissioner's Decision

Pursuant to the June 28, 2021, So-Ordered stipulation under Index No 502737/2021, this proceeding shall be remitted to the RA for further processing and a new determination based both on the record assembled in the RA s proceeding under Docket No GR210003UC and the following documents in the record under Index No 502737/2021 documents contained in NYSCEF Document No "24" entitled, "Transcript of Proceedings," and particularly pages 202 through 210, previously characterized as "buyout agreements " and the documents contained in NYSCEF Doc no "37," characterized as "2009-2010 leases "

As the matter is now being remanded to the RA, the parties and their representatives should direct any future submissions to the RA once the parties and their representatives are advised of the RA s new Docket Number for the remanded proceeding

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

ORDERED, that the proceeding be, and the same hereby is, remanded to the Rent Administrator for any further processing and other determinations that the RA deems appropriate

ISSUED

NOV 09 2021

Woody Pascal
Deputy Commissioner

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

Right to Court Appeal

This Deputy Commissioner's order can be further appealed by either party only by filing a proceeding in court under Article 78 of the Civil Practice Law and Rules seeking judicial review. The deadline for filing this Article 78 proceeding with the courts is within 60 days of the issu 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 gi In preparing your papers please cite the Administrative Review Docket Number which appears the front page of the attached order. If you file an Article 78 appeal the law requires that a full c of your appeal papers be served on each party including the Division of Housing and Communit Renewal (DHCR). With respect to DHCR your appeal must be served on DHCR Counsel's offic 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 filing 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 Numb and the documents received by the court i.e. Notice of Petition, Petition and other filed docun to DHCRLegalMail@nyshcr.org. Upon receipt of the complete filings the receipt of such docun 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 Stat New York or any third party. In addition the Attorney General must be served at 28 Liberty Stre 15th Floor, New York, NY 10005. Since Article 78 proceedings take place in the Supreme Court ad ...able 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

LS No 000602

ADMINISTRATIVE REVIEW
DOCKET NO JT210001RP

Gates Residence LLC,

RENT ADMINISTRATOR'S
DOCKET NO EX210001UC

PETITIONER X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On December 2, 2016 petitioner-owner, commenced this proceeding by filing an application to determine whether the building located at 1516 Gates Avenue, Brooklyn, NY was exempt from rent regulation due to substantial rehabilitation in accordance with Rent Stabilization Code (RSC) §2520 11(e) and DHCR Operational Bulletin 95-2 after January 1, 1974

The petitioner stated that the interior of the building was demolished and rebuilt as new between June 2008 - February 2009 and that 100% of the building's systems were replaced In support of the application the petitioner submitted 1) Architectural plans for Department of Buildings (DOB)Job No 310154855 2) Copy of DOB Work Permit, 3) DOB Application Detail for Job No 310154855, 4) Construction photos 5) DOB Application Detail for Job No 321512001, 6) Cancelled checks, and 7) engineer's affidavit

On December 22, 2017, the agency sent the petitioner a final notice requesting a copy - of the new Certificate of Occupancy or Letter of Completion

In response to the agency's request, the petitioner stated in a letter dated August 30, 2018, that in order to obtain the Letter of Completion the petitioner must install a new electric HVAC system to speed the process The petitioner asserted that the delay was created by a clerical oversight and the DOB, which never updated its records regarding the current boiler system installed in 2008

On September 11 2018, the Rent Administrator determined that the rehabilitation claimed by the petitioner did not meet the threshold of 75% of building-wide and individual apartment systems replacement as set forth in DHCR Operational Bulletin 95-2 The Rent Administrator found, in an affidavit sworn to on April 21 2017, that the engineer attested that the heating distribution system, fire-escapes, interior stairways, and roof were not replaced Further, the DOB did not have any record to show electrical wiring replacement (such as an electrical application or electrical permits) The Rent Administrator found that while two (2) of the seventeen (17) building-wide and individual apartment systems listed in the Operational Bulletin (elevator/incinerator) are absent in the subject building, five (5) of the remaining fifteen (15) items were not completely replaced as determined above

The Rent Administrator further noted that the petitioner did not demonstrate that any work which may have been done complied with all applicable building codes and requirements as the petitioner was unable to obtain a new Certificate of Occupancy or a DOB Letter of Completion for DOB Job No 310154855 Therefore, the subject building is not exempt from regulation based on substantial rehabilitation The building remains subject to the Rent Stabilization Law and Code The Rent Administrator advised the petitioner to file the applicable yearly Rent Registration with DHCR

On October 4, 2018 the petitioner filed a timely-PAR application contending that the evidence before the Rent Administrator proved that the petitioner met the threshold of replacing 75% of the systems in the building and that the Rent Administrator failed to thoroughly read the expert affidavit which established that fact Further, the petitioner argues the Rent Administrator failed to seek clarification regarding the clerical errors in the affidavit and instead sought the electrical permits or applications from the DOB

The petitioner asserted that the Rent Administrator acted arbitrarily in failing to recognize that the complete demolition required replacement of electrical wiring and overlooked the evidence of the completed heating system Moreover the petitioner argued, that based on the absence of the Letter of Completion which was being processed, the Rent Administrator erred by failing to simply terminate the Exemption Application

On June 7, 2019, the Commissioner issued an order and opinion under Docket No GV210036RO denying the petitioner's PAR

Thereafter the petitioner instituted a proceeding under Article 78 of the CPLR in Supreme Court, Kings County under Index No 3090/2019, seeking a review of the Commissioner's order Pursuant to a Court-ordered Stipulation of Settlement to Remand to DHCR, the matter was remanded to the agency for further consideration

The agency served the tenants and the petitioner with Notice of Proceeding to Reconsider Order

On July 21 2020, DHCR issued an Order and Opinion Denying Petition for Administrative Review The PAR Order found that after reviewing the Letter of Completion for DOB Job No 310154855 and a revised expert affidavit submitted by the petitioner, the petitioner was not able to satisfy the requirements under Operational Bulletin 95-2 to establish that 75% of the building-wide and apartment systems were replaced

It also found that the petitioner could not establish that it replaced the electricity system pursuant to OB 95-2, despite the engineer's affidavit stating it was replaced, because the petitioner failed to file electrical permits as required by law NYC Administrative Code 27-3018(b), NY Administrative Code 27-3018(b)

Additionally, the Boiler/Heating System did not qualify because there were 6 open DOB boiler violations as well as a DOB lien under OATH/ECB No 39002050K stating 'failure to maintain building in code-compliant manner service equipment-boiler " The Commissioner determined that the current DOB violations led to a reasonable inference that the boiler/heating system was not replaced pursuant to applicable building codes as required under Operational Bulletin 95-2, and therefore it could not find that the system was replaced

The Order also found that although the petitioner's expert stated that the fire escape was structurally sound, there was a February 16, 2016, partial vacate order for the premises which stated, "egress-locked/blocked/improper/no secondary means building exit fire escape- no access " The PAR Order stated that the order had not been lifted and that it demonstrates that the fire escapes were not functional or non-existent Additionally it determined that the petitioner s evidence that it installed a layer of rubber on the roof contradicted the petitioner's claim that the roof did not need to be replaced because it was structurally sound

Lastly, the Commissioner found that the interior stairways were not replaced because the DOB records lack a mention of the claimed replacement and do not suggest that interior demolition was performed to the extent necessary for the work to be done Additionally, PW3 Cost Affidavit filed under DOB Job No 310154855 did not check off boxes for partial demolition, non-structural demolition or structural work and the DOB records demonstrated that concrete work was not authorized, and steel reinforcing was not permitted

On September 14, 2020, the petitioner filed an Article 78 Petition in Kings County Supreme Court In the Petition the petitioner made a number of claims including that DHCR failed to provide due process, failed to properly consider whether 75% of the existing building wide systems were replaced failed to properly consider evidence to show that the building was substantially rehabilitated, failed to properly consider evidence that systems were structurally sound, relied on irrelevant DOB filings and documents relied on DOB violations that were issued after the renovations, failed to accord proper weight to the engineer's affidavits, failed to credit proof offered that the building was fully renovated diverged from prior precedent and failed to afford proper weight to evidence provided by the petitioner

On July 28, 2021, the Kings Supreme Court remitted the matter to DHCR for further review and processing for the purposes of issuing a new determination The parties agreed "that upon remittal the petitioner's Article 78 petition and the attached exhibits will be deemed submitted as a response to the issues raised by the DHCR's July 21, 2020, PAR Order "

Law on Substantial Rehabilitation

RSC §2520 11(e) provides that housing accommodations in buildings substantially rehabilitated as family units on or after January 1, 1974 are exempt from rent stabilization

DHCR Operational Bulletin 95-2 outlines the criteria an owner must meet to prove substantial rehabilitation

I

A At least 75% of the building wide and apartment systems must have been completely replaced, and all ceilings, flooring and wall surfaces in common areas must have been replaced, and ceiling wall and floor surfaces in apartments, if not replaced, must have been made as new

List of building wide and apartment systems

1 Plumbing
2 Heating
3 Gas supply
4 Electrical wiring
5 Intercoms
6 Windows
7 Roof
8 Elevators
9 Incinerators or waste compactors
10 Fire escapes
11 Interior stairways
12 Kitchens
13 Bathrooms
14 Floors
15 Ceilings and wall surfaces
16 Pointing or exterior surface repair as needed
17 All doors and frames

Limited exceptions to the extent of the rehabilitation work may apply where the owner demonstrates that a particular component of the building or system has recently been installed or ungraded so that it is structurally sound and does not require replacement, or that the preservation of a particular component is desirable or required by law due to its aesthetic or historical merit

B The rehabilitation must have been commenced in a building that was in a substandard or seriously deteriorated condition The

fact that the building was vacant at the time of the rehabilitation is proof that the building was in such condition

C DHCR will not find the building to have been substantially rehabilitated if it can be established that the owner has attempted to secure a vacancy by an act of arson or DHCR has made an outstanding finding of harassment

D All building systems comply with all applicable building codes and requirements, and the owner has submitted copies of the building's certificate of occupancy before and after the rehabilitation

III

The following documentation will be required from owners in support of a claim for substantial rehabilitation Records demonstrating the scope of the work actually performed in the building These may include an itemized description of replacements and installation, copies of approved building plans, architect's or general contractor's statements contracts for work performed, appropriate government approvals and photographs of conditions before, during and after the work was performed Proof of payment by the owner for the rehabilitation work may also be required

Commissioner's Decision

The Commissioner, having reviewed the record herein, finds that the petition should be denied because the petitioner has not demonstrated that it has established an exemption from rent regulation for substantial rehabilitation under Operational Bulletin 95-2

The genesis of a substantial rehabilitation is the DOB filings Although the petitioner claimed that a June 2008 - February 2009 gut renovation replaced 100% of the systems under OB 95-2 (and a revised engineer's affidavit stated that all of the systems other than the fire escape and roof were replaced), these contentions are belied by the petitioner's DOB filings

According to the DOB application, which was approved on June 13 2008, Job No 310154855 was described as

RENOVATE EXISTING 6-FAMILY DWELLING BY RELOCATING BATHROOMS AND KITCHENS CELLAR AS ACCESSORY USE WITH 2-PIECE BATHROOM FOR EACH APARTMENT ON 1ST FLOOR REPLACE BOILER WITH FURNACES NO CHANGE IN OCCUPANCY, EGRESS, OR USE

The DOB PW3 Cost Affidavit contains a description of work as follows interior renovations $65,000 and installation of plumbing fixtures $25,000 The Commissioner notes that the petitioner's claimed total cost of the job of $90,000 listed on the affirmed PW3 is $250,000 less than the $340,000 cost listed in the signed June 16, 2008, proposal from Rebuilding America

DOB's website contains detailed instructions on how to fill out a PW3 The DOB PW3 instructions page form states, in relevant part, that this 'form must be completed by the responsible individual(s) as determined by filing type and phase of submission shown below in order to provide a detailed construction cost breakdown for the work being submitted "[1] The website also provides an example of an adequately documented PW3, as follows

Category of Work	Description of Work	Area/Units	Unit Cost ($)	Total Cost ($)	Work Category Total Cost ($)
General Construction (OT)					
Non-Structural Demolition	Removal and disposal of interior partitions fixtures suspended ceilings floor finishes and HVAC duct work	6 000 SF	$12 SF	$72 000	
Interior Renovation	Installation of new partitions doors floor finishes and suspended ceilings	6 000 SF	$75 SF	$450 000	$522 000
Mechanical (MH)	Removal of the existing HVAC unit and installation of a new unit and ductwork	20 Ton	$5 000/Ton	$100 000	$100 000
Plumbing (PL)	Installation of new bathroom fixtures with piping.	18 Fixtures	$5 000/Fixture	$90 000	$90 000
Sprinkler (SP)	Relocation of existing sprinkler heads	25 Heads	$900/Head	$22 500	
	Existing sprinkler head replacement	10 Heads	$250/Head	$2 500	$25 000
			TOTAL JOB COST		$737 000

The petitioner's PW3 submitted in this matter grossly underestimated the job cost and is devoid of work descriptions encompassing work as in the example above See 398 Crescent LLC , DHCR Admin Review Dkt No JN210030RO (6/2/2021)

The DOB record also contains the following statements that undermine the petitioner's claims that the building was not only in a substandard or seriously deteriorated condition, but substantially rehabilitated

[1] See https //www1 nyc gov/assets/buildings/pdf/pw3ins pdf

DOB Job permit No 310154855-010EW-OT

Performing work in 50% or more of the area of the building **No**
Demolishing 50% of more of the area of the building **No**

It should be noted that the performance of replacement or renovation work in 50% or less of the building cannot result in an exemption from rent regulation See [redacted], DHCR Admin Review Dkt No JN210030RO (6/2/2021)

Additionally, under DOB permit No 310154855-01-PL the petitioner's Master Plumber [redacted] certified in its application for plumbing permits

Altering 10% or more of the existing floor surface area of the building **No**

The petitioner claims that the reason why the permits state that work was not being done in more than 50% of the building and on 10% or more of the floors is because those permits were for work done years later However, no permits were issued when the substantial rehabilitation allegedly took place in 2008 - 2009 and the earliest issued permit listed is from 2016 which relates to the work approved on June 13, 2008

The Commissioner further finds that the Letter of Completion stating that the work was signed off on November 1, 2019 under Job No 310154855 does not prove a substantial rehabilitation since the signoff does not encompass the extent of work necessary to establish a substantial rehabilitation exemption Given that the DOB is the agency that is empowered to ensure safe construction and to enforce New York City Construction Codes, it is reasonable for DHCR to rely on the filings with DOB and the DOB approvals before finding that an entire building is no longer subject to rent regulation [2] See [redacted], DHCR Admin Review Dkt No JN210030RO (6/2/2021) See also SH Harman LLC v New York State Div of Hous & Community Renewal, Index No 505537/2021 (Ingrid, J 11/8/21)(DHCR may rely on DOB records in a substantial rehabilitation matter) Since a tenant's rent stabilization

[2] See www1 nyc gov/assets/buildings/pdf/building_one_city pdf (The New York City Department of Buildings is tasked with enforcing the New York City Construction Codes in order to ensure that construction across the five boroughs is completed safely and within the City s zoning regulations The main functions include issuing of construction permits inspecting construction sites and licensing and registration of trades contractors and other industry professionals)

protections are significant, it is important for DOB filings to be filled out correctly to ensure that those protections are not improperly undercut

The petitioner further claims that DHCR, in its previous PAR Order (DHCR Admin Dkt No HX210008RP (7/21/2020)), violated due process when it reviewed the petitioner s DOB filings The petitioner claimed that when DHCR "take[s] it upon itself to investigate records that are beyond the scope of the party s submission it is necessary for that party to be given an opportunity to respond." First, although disputed by the Commissioner, the claim is moot The parties have agreed that the petitioner's petition will be considered a response to issues raised in the July 21 2020, PAR Order which included a review of the DOB records Regardless, on March 24, 2017, the petitioner responded to a Request for Additional Evidence/Information from DHCR requesting copies of all inspection records and certifications to DOB regarding all building-wide and apartment systems being replaced, by stating that DHCR should refer to the DOB website for any and all documents requested DHCR is entitled to review both the DOB records as well as the record itself when analyzing and issuing determinations

Given that the Rent Administrator found that 10 of 15 existing systems were replaced and given that 12 of 15 systems were needed to reach the 75% threshold, the failure to replace four or more of the above five systems must result in a failure of the substantial rehabilitation application The five systems in question are interior stairways, electrical wiring, heating/boiler, fire escapes and roofing While the Commissioner finds that the petitioner demonstrated that the interior stairways were replaced, it does not find that electrical wiring, heating/boiler, fire escapes and roofing were replaced and should count towards OB 95-2 s 75% threshold The Petitioner s own assessment of the work and credibility must further be viewed against the aforementioned affidavit which it now asserts were incorrect and incomplete DOB filings which are not credible

DHCR Admin Review Dkt No HX210008RP (7/21/2020) originally found that the petitioner did not replace the interior stairways because the work was not included in the job description in the DOB records, no boxes were checked off for partial demolition, non-structural demolition or structural work, and the records did not reflect that concrete work was authorized or steel reinforcing was permitted DHCR has nonetheless considered the fact that the petitioner's revised affidavit claimed that the staircase had been

replaced and that pictures of the work was provided The Petitioner has also alleged that the work on the staircase did not require steel or concrete work because the building has a wooden frame For these reasons, the Commissioner determined that the petitioner has provided sufficient evidence to establish that the interior stairways have been replaced

Although the petitioner provided an affidavit stating that the electricity had been replaced the DOB records contradict this claim The system does not qualify for replacement because the DOB file does not contain an application for electrical work and the architectural plans submitted by the petitioner do not show wiring diagrams The absence of DOB permits disqualifies an electrical system from consideration in a substantial rehabilitation case See RSC § 2520 11(e)(5)(requiring that all building systems must comply with applicable building codes and requirements "), NYC Administrative Code 27-3018(b)("Before commencing any electrical work a master electrician business or special electrician shall file with the commissioner an application for a work permit to be issued by the department '), NY Administrative Code 27-3018(b)("No such work shall be performed until the commissioner has reviewed and approved such application and issued an appropriate permit for such work ") Since the alleged work was not properly filed, it cannot qualify to satisfy the substantial rehabilitation requirements

The Commissioner also determined that the heating/boiler system was not properly replaced during the time of the alleged substantial rehabilitation The DOB filings provide inconsistent information In the 2008 Application Details for Job No 310154855, the petitioner described the work as 'replacing the boiler with furnace," even though work on the boiler was not checked under "work types " Work on the boiler was also not checked off on under the certified PW3 Cost Affidavit or on the Required Items Checklist for Professional Certification Additionally, a permit for the work on the boiler was not issued until January 26, 2017

Even if the work was done sometime before February 2009, the petitioner admits it was done incorrectly The petitioner stated in a March 24, 2017, letter that the

> boilers were placed in a different location from the original plans A new job has been filed for this work and will be inspected and signed off in the near future by DOB

Then on January 19, 2018, the petitioner claimed that the architect that worked on the heating system did not properly retain their records, and that they needed to hire a new architect to confirm that the necessary work had been completed in accordance with the filed plans in order to obtain a Letter of Completion On September 4, 2018, the petitioner informed DHCR that it was withdrawing the original boiler application which was not signed off on and installing a new HVAC system in order to obtain the Letter of Completion Ultimately, the 2008 permit application was not signed off on until November 1 2019, when a Letter of Completion was also obtained

Since the boiler was originally installed in a place that did not comport with the DOB plans and the petitioner was not able to get a sign off until it installed a new heating system more than ten years later, the petitioner cannot establish that it was properly replaced when the substantial rehabilitation application was filed See OB 95-2, See [redacted] DHCR Admin Review Dkt No HU210021RO (3/3/2020)(a heating system should not be counted towards the requisite replaced items pursuant to OB 95-2 when the system was improperly installed)

Additionally, work that is performed in a piecemeal fashion should not be counted towards an exemption from rent regulation for substantial rehabilitation Smolarczyk v Towns 166 A D 3d 786 87 N Y S 3d 552 (2d Dep't 2018)("The Deputy Commissioner's determinations that the additional work was a separate project from the prior work and that the additional work did not qualify as a substantial rehabilitation had a rational basis and were not arbitrary and capricious")

According to OB 95-2(C) all building systems need to comply with applicable building codes and requirements The boiler does not comply with this since it had a number of violations that were issued starting in 2008 and were not corrected until February 2019

Additionally, the petitioner's engineer's affidavit admits that the fire escape and roof were not replaced in the building but claims that they were structurally sound The petitioner argued throughout the proceeding that these systems should count towards the 75% threshold based on the engineer's claim, but DHCR disagrees

According to RSC § 2527 11 DHCR has the power to issue operational bulletins on its own initiative with respect to the RSL and RSC Operational Bulletin 95-2 "sets forth the position of

the Division of Housing and Community Renewal (DHCR) regarding circumstances under which the agency will find that a building has been substantially rehabilitated within the meaning of TPR [the Emergency Tenant Protection Regulations] section 2500 9(e) and RSC section 2520 11(e) " While RSC §2520 11(e) states that one of the exceptions to replacing 75 percent of the requisite building-wide and apartment systems can be granted when an 'owner demonstrates that a particular component of the building or system has recently been installed or upgraded or is structurally sound and does not require replacement," DHCR's Operational Bulletin 95-2 states that an exception can be granted when the "owner demonstrates that a particular component of the building or system has been **recently** installed or upgraded so that it is structurally sound and does not require replacement " (emphasis added)

DHCR promulgated the OB 95-2 interpretation of the rent laws to help owners who, in a reasonable amount of time prior to doing a substantial rehabilitation, spent money to replace or upgrade a system such that replacing it again during the substantial rehabilitation would not be economically feasible To grandfather in every system that does not require an upgrade would create an absurd result of enabling the threshold to be met with limited work

In this case, the petitioner offers no evidence to show that the fire escapes were recently installed or upgraded The petitioner also only claims that it added one layer of rubber to the roof which it admits was part of regular routine maintenance that was not part of the roof's replacement The owner wants it both ways since it claims to have done repairs to the roof as part of its plan, but not replace the roof The owner is attempting to create a third category of exclusions in which a system does not need to be replaced, even though work needs to be done, something that OB 95-2 does not recognize Exclusions from regulation protection must be strictly construed <u>See Sommer v New York City Conciliation & Appeals Bd</u> 93 A D 2d 481, 485, 462 N Y S 2d 200, 203 (1st Dep't 1983)

The petitioner cites <u>Reif v New York State Div of Hous & Cmty Renewal, 205 Saint James LLC</u>, (Index Nos 510088/14 and 504068/18) to claim that a system should count towards the 75% threshold under OB 95-2 if a petitioner's affidavit supports its claim that it was structurally sound However, <u>Reif</u> concerns a system in which parts of it were considered structurally sound while other parts were recently replaced According to PAR Order (Admin Review Dkt No FW210004RP) that was affirmed by <u>Reif v</u>

New York State Div of Hous & Cmty Renewal, 205 Saint James LLC, (Index Nos 510088/14 and 504068/18)

> [t]he Operational Bulletin allows for exceptions to complete replacement of a system where the owner demonstrates that the particular component of the building or system has recently been installed or upgraded so that it is structurally sound and does not require replacement The DOB documents submitted by the owner establish that the boiler was in fact replaced in November 2000 the boiler thus qualifies for an exception due to its recent installation

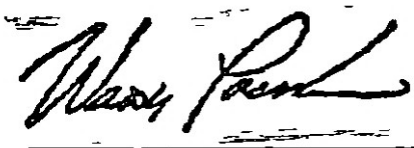
In Matter of Trabucchi v NY State Div of Hous & Community Renewal, 2009 NY Slip Op 31579[U], *6-7 [Sup Ct, NY County 2009]) fire escapes were permitted to count towards the 75% threshold when they were not completely replaced but work was done on them to bring them up to code Additionally, Bartis v Harbor Tech, LLC 147 AD3d 51, 59-60 (2d Dept 2016) cites DHCR's OB 95-2 which provides for "limited exceptions to the stated criteria [and] may be granted where the owner demonstrates that a particular component of the building or system has recently been installed or upgraded so that it is structurally sound and does not require replacement "

The Commissioner finds that the petitioner was not able to demonstrate that it was exempt from rent regulation due to substantial rehabilitation in accordance with DHCR Operational Bulletin 95-2

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

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

ISSUED NOV 17 2021



Woody Pascal
Deputy Commissioner

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

Right to Court Appeal

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

11 Realty NY, LLC,

PETITIONER

----------X

SJR NO.: 13,398
ADMINISTRATIVE REVIEW DOCKET NO.: XL420001RP
(reconsideration of SJ420020RO)

RENT ADMINISTRATOR'S DOCKET NO.: NJ420039RP
(KJ420011UC)

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW, AFTER COURT REMIT

By Order and Opinion under Administrative Review Docket Number SJ420020RO, issued January 13, 2009, the Deputy Commissioner denied the above owner's Petition for Administrative Review (PAR) concerning various housing accommodations at the premises known as 11 West 84th Street, New York, New York. This PAR sought review of an Order Pursuant to Remand, issued October 29, 2002 under Docket Number NJ420039RP, wherein the Rent Administrator determined that the building located at 11 West 84th Street (subject building) and the adjacent building located at 11 1/2 West 84th Street (the other building) are subject to the New York City Rent Stabilization Law and Code because they constitute a single horizontal multiple dwelling (HMD) containing six or more housing accommodations.

The owner commenced a C.P.L.R. Article 78 Proceeding for review of the January 13, 2009 Order and Opinion claiming that such determination was not supported by applicable law or by the applicable facts. The owner argued that the evidence before the Division included an affidavit sworn to on September 10, 2007 by Howard Zimmerman, a licensed architect, setting forth a detailed review of the physical aspects and features of the two buildings[1], as well as Mr. Zimmerman's professional conclusion that the facilities of the subject building were "overwhelmingly separate" from those of 11 1/2 West 84th Street. The owner argued that the Zimmerman affidavit and other documentation in the record, inclusive of the Division's own March 2001 inspection report, established the existence of separate features and/or facilities as between the two buildings, with respect to: tax lot, ownership, heating system, façade, roof,

[1] The subject building and the other building, 11 1/2 West 84th Street, may be referred to herein from time to time as "the buildings" or "the two buildings."

physical location (when viewed in relation to an existing alleyway between the two buildings), chimney, basement, entrance door, water main, electric main, gas connection, lighting system, bell-buzzer system, and billing for the services of water, sewer and electricity. The owner lastly alleged that a May 16, 2002 inspection report was relied upon by the Deputy Commissioner but such evidence was never served upon the owner for rebuttal. On October 1, 2009, the parties stipulated with the consent of the court to have the matter remitted back to the DHCR, and in response to the court remit, the Division opened a remand proceeding referenced under Docket Number XL420001RP.

Procedural Background

On or about October 8, 1996, [redacted] on behalf of Kain Realty, the managing agent for the then owner, Paul Properties, Inc., filed an application with DHCR to determine whether the subject building was exempt from the Rent Stabilization Law and Code based upon the claim that the subject building contained less than six housing accommodations. This proceeding was assigned the Docket Number KJ420011UC.

The managing agent of the prior owner alleged that the subject building contains five apartments, and that the other building, 11 ½ West 84th Street, contains twenty rent-stabilized apartments which are registered with the DHCR. These allegations were not disputed by the tenants.

On March 14, 1997, various tenants, by their counsel, filed an answer in opposition to the owner's application alleging that the apartments situated in both the subject building and the other building were all rent stabilized because the two buildings constituted a single horizontal multiple dwelling. The tenants alleged, inter alia, that the records of the New York County Clerk's Office document that the two buildings had been conveyed by common deed during the period from 1934 to 1986; that the two buildings were almost identical in appearance, were initially built together, and were issued a common 'NB' permit, the predecessor to the modern Certificate of Occupancy); that the two buildings share a roof and have a common chimney; that the two buildings share a backyard which is physically separated from the backyards of all other surrounding buildings by masonry and wood fences; and, that both buildings had previously shared a heating plant.

The tenants further alleged that the two buildings were registered together with the DHCR as a single building under the building ID number 115779. The tenants submitted documentary evidence which included a title insurance company's report indicating that the two buildings were constructed at the same time and that such construction was pursuant to a single permit issued by the then applicable city building agency. The tenants also submitted another title insurance company's report indicating that the two buildings had been transferred and conveyed under a single deed as early as April 1934 and continuing through May 1986, based upon the records of the New York City Clerk's office.

In June 1997, the DHCR conducted inspections of the subject building. The inspection report indicated that 11 West 84th Street contains five apartments, has a single water and sewer line, and has a single boiler and hot water tank.

An order was issued by the Rent Administrator on September 12, 1997 determining that the subject building and the other building did not constitute a HMD based on the results of the inspections conducted in June 1997.

The tenants filed administrative appeals for review of the September 12, 1997 order. They alleged that the Rent Administrator failed to take into account the long history of common ownership of the two buildings, as well as the many shared physical characteristics between the two buildings.

In an Order and Opinion issued on October 29, 1999 (Docket Numbers LJ420119RT, et al.), the Deputy Commissioner determined that the matter should be remanded back to the Rent Administrator for further processing and redetermination of the HMD issue. It was noted that:

> The issue of the existence of a common heating system until a few years prior to the Rent Administrator's determination should be investigated by the Rent Administrator.
>
> In addition, ...the agency inspector did not answer all of the questions contained in the inspection request. Upon remand, the Rent Administrator should either conduct another inspection to answer these questions; find that the answers may be ascertained without another inspection; or show why answers to these questions are not relevant to this particular proceeding.
>
> After the Rent Administrator considers the answers unanswered by the inspector and the status of the heating system since the rent stabilization base date, a new decision will be made based upon the entire record as to whether or not the subject premises is part of a horizontal multiple dwelling.

On July 5, 2000, in the remand proceeding referenced under Docket Number NJ420039RP, the Rent Administrator requested the prior owner's managing agent to provide the following information: the date of the subject building's original construction, and details as to any and all alterations to the subject building since the base date of Rent Stabilization, along with copies of any certificates of occupancy and copies of work permits, and to list any and all building systems shared with any adjacent buildings on the Rent Stabilization base date and as of the present. By a reply letter dated July 9, 2000, the prior owner's managing agent alleged, in pertinent part, that the subject building was constructed in 1900 approximately; that the subject building has had common management with the other adjacent building; and that the subject building does not have common building systems with any other building.

On March 14th and 22nd, 2001, the DHCR conducted further inspections at which time the inspector reported that the two buildings have an identical front façade, as well as a common courtyard. The inspections further revealed that the subject building had a separate heating system, and that there was no evidence of "remnants" of a common heating system in the other building's cellar; and that the subject building had a separate water main, a separate lighting system, separate gas connection, separate basement, separate intercom system, separate building

entrance, separate chimney, and separate roof. The inspector lastly noted that he was unable to determine whether the subject building had a separate sewer line.

On February 20, 2002, one of the tenants submitted a reply alleging, in part, that the inspector's finding of no evidence of remnants of a common heating system between the two buildings was incorrect, further noting that "anyone living at this property in the early 1980s will support the statement that there was a common heating system." In support of this claim, the tenant submitted a report from architect Leonard Herczeg, R.A. dated February 19, 2002 which stated, in part:

> Our inspection of the courtyard between 11 and 11 ½ had previously revealed two pipes crossing the courtyard apparently originating in the cellar of 11 ½ and entering the cellar of 11. The larger pipe is clearly visible in the cellar of 11 and is capped.
>
> The same large pipe is clearly visible in the cellar of 11 ½ in the boiler area. The wall penetration going out to the courtyard can be clearly seen. There is still a large zone valve on the pipe which made it possible to shut off the steam going into 11 in the event of an emergency while still providing steam from the same boiler into the piping for 11 1/2. Past the zone valve is an elbow and then about two feet of pipe which is clearly cut off in the middle. A section of about four feet long was cut and removed, and the branch pipe coming off the boiler was capped with a plug in the same manner as the other end of the pipe in the cellar of 11.
>
> There is an identical zone valve just past the branching which also made it possible to shut off the steam to 11 ½ while still providing steam to 11. The two were simply two parts of the same system, supplied by the same boiler. The original boiler was probably replaced with a smaller and more modern model when the buildings were separated, but the arrangements of the pipes and valves can leave no doubt that the system was originally common. [The architect also submitted photographs which, he claimed, show remnants of a common heating system as between the two buildings].

On May 16, 2002, the DHCR conducted another inspection of the subject premises and the inspector specifically noted that he was granted access to the basements of both 11 and 11 ½ West 84th Street. The inspector reported the existence of remnants of steam pipes and hot water pipes that have been cut and capped connecting both buildings. The inspector further reported his observation of a four-foot cut and capped pipe in the cellar of 11 ½ West 84th Street that would have been continued into the basement of 11 West 84th Street. The inspector also reported the existence of an un-used steam and water pipe connecting both buildings.

In the order issued on October 29, 2002, here under review, the Rent Administrator stated:

> A physical inspection conducted by the agency on April 18, 2002[2] based on photographs submitted by the tenants found remnants of steam and water pipes that have been cut and

[2] This date is an error, as April 18, 2002 was the date of the inspection request. The actual inspection was conducted on May 16, 2002, as noted.

capped with indicates that there was a common heating system for the two buildings. A copy of the inspection report was mailed to the owner on June 14, 2002 and July 11, 2002 for the owner's response to the findings. The owner has failed to respond to the notices.

After a review of the entire file the Rent Administrator finds that the subject application was originally filed by the owner under Docket No. KJ420011UC to obtain an order of exemption from rent stabilization for the subject building. The owner's failure to submit an answer to the inspection report which found that the two buildings had shared a heating system in the past validated the tenant's claim that there existed a heating system on or after the base date servicing the two buildings. The Rent Administrator also finds that the two buildings have a history of common ownership, common courtyard and other common characteristics which contribute to the tenants' claim that the two buildings form a horizontal multiple dwelling that contains six or more housing accommodations subject to the Rent Stabilization Code.

On January 12, 2004, the owner and petitioner herein, 11 Realty NY, LLC, acquired ownership of the subject building. On this same date the current owner-petitioner acquired ownership of 11 ½ West 84th Street as well, under a separate deed.

During the appeal proceeding under SJ420020RO, the DHCR's processing included another physical inspection of the subject premises conducted on January 19, 2007, centering upon an examination of the roof area of the two buildings. The inspector reported, among other things, that the roof top between the two buildings has an uninterrupted parapet; that there is a shared chimney between the two buildings, that there is a shared wall between the two buildings, approximately 20-feet in length from the front of the building and then forks out creating an air shaft between the two buildings; that there is a similarity of the façade as to both buildings; and that there is common rear yard for both buildings.

During the appeal proceeding under SJ420020RO, the Division also sent the owner-petitioner a request for additional information and evidence by letter dated November 20, 2006, including the following:

> You are also directed to submit to the rent agency evidence showing how the subject building was billed for heat and electricity as of July 1, 1974 (or if the applicable utilities do not maintain records going back to that date, then as of the earliest date on record). Such evidence must show whether the heat and electricity usage were billed for the subject building only, or billed for the subject building and another building combined.

Included with the November 20, 2006 letter was a copy of the request letter sent to the prior owner's managing agent, Kain Realty on July 5, 2000. Such prior letter requested additional evidence inclusive of a listing of all building systems[3] shared with adjacent buildings or garden complex on the Rent Stabilization base date, a listing of all the building systems presently shared with adjacent buildings or garden complex, "details of all alterations or changes made in the building since the base date of Rent Stabilization coverage", and "copies of current

[3] It was noted on this request letter that the term "building systems" includes but is not limited to: common water main, common electric main, common gas connection, etc.

and previous certificate(s) of occupancy and copies of work permits." The November 6, 2006 letter, which included a copy of the prior owner's July 9, 2000 reply letter, informed the current owner that the aforementioned directions to the prior owner were not complied with.

In its February 12, 2008 submission to the DHCR, owner's counsel provided, among other things, payment history documentation from Consolidated Edison Company (ConEd) showing separate billing for electrical consumption for each of the two buildings from December 2004 through December 2006, further noting that "...the dates on the printout are the earliest dates available. The owner, however, is in the process of attempting to obtain more complete records."

Processing on Remand

Prior to the commencement of the remand proceeding, the Division received two letters from the tenants' counsel alleging action taken by the owner in October 2009 to destroy or alter evidence, to wit: the cutting and removal of a single heating pipe which was said to have connected the two buildings. These letters, both of which included before-and-after photographs of the alleged condition, were served on the owner's counsel on May 11, 2010.

In a responsive letter dated June 15, 2010, owner's counsel acknowledged that the pipe in question had been removed but pointed out that no negative inference should be drawn because the pipe in question was "old, rusty and useless", and because the removal was done while the owner was in the process of performing certain Landmark-approved work. The owner, by its counsel, asserted that the existence of the pipe did not constitute evidence that the subject buildings were ever served by a single heating system, especially in view of the Division's inspection report prepared in March 2001 which found that there was no evidence of a common heating system, and the inspection report prepared in May 2002 which found cut and capped pipe remnants but no pipe that connected the buildings.

The owner's counsel maintained moreover that the evidence in the record supports the finding that the subject building was not part of an HMD with 11 1/2 West 84th Street as of the relevant base date. In summing up the salient points raised during the administrative review proceeding under SJ420020RO, the owner's counsel notes that its July 9, 2000 submission before the DHCR 1) explained that the two buildings do not share any systems and that each building has its own heating system; 2) argued that the mere existence of cut and capped pipe remnants would not warrant the conclusion of a shared heating system on or after the base date; and 3) argued that even if the two buildings shared a heating system at one time, this would not warrant the conclusion of HMD status as a matter of fact or of law. The owner's counsel further noted that its June 6, 2005 submission before the DHCR argued that the tenants' own engineer, Leonard Herzog, had acknowledged that the subject building contained its own boiler room well after the base date, that is to say, Mr. Herzog indicated that the prior owner in 1985 filed an application proposing replacement of a gas-fired boiler and the installation of two hot water heaters in an "existing boiler room." The owner further noted that its October 17, 2007 submission before the DHCR included the Zimmerman affidavit sworn to on September 10, 2007, which set forth the conclusion that the facilities of the subject building were "overwhelmingly separate" from those of the other building based on Mr. Zimmerman's on-site

visits, investigation and research. The owner further noted that its February 12, 2008 submission before the DHCR pointed out that the separate nature of the two buildings is reflected by the relevant neighborhood diagram set forth in the Manhattan Land Book (1955, G.W. Bromley & Co., Inc.) and by the copies of relevant Inspection cards ("I-cards") for subject building and the adjacent building, issued by one of DHCR's predecessor agencies. The owner lastly noted that it submitted computer printouts from the vendors show that the two buildings have been billed separately for electricity and for water / sewer usage.

Under cover of DHCR's letter dated August 31, 2010, a copy of the DHCR's May 16, 2002 inspection report was served on the owner's attorney for comment.

In a responsive letter dated October 4, 2010, owner's counsel contended that the language of the May 16, 2002 inspection report indicates that it was not conducted impartially but instead based on *ex parte* evidence, *ie.* tenant photographs. This report, according to the owner, lacked probative value for the additional reasons cited as: 1) the inspector's finding that the remnant apparatus were heating pipes was conclusory and without supporting evidence, 2) the mere existence of remnant apparatus would not establish that the buildings had in fact shared a heating system especially in the absence on a finding by the inspector on the age of the pipes, 3) the inspector's statement in the report, about the pipe at the subject building continuing into the basement of the other building, presented a mere possibility and did not establish the existence of a shared heating system, 4) even if there was a shared heating system, such circumstance would not be dispositive as to the overall HMD issue but would only be one factor to consider, and 5) the tenant photographs themselves contain labels (e.g., "pipes cut here") which do not disclose the source of the information.

The owner's attorney filed a letter dated April 18, 2011 to dispute certain findings made in the Deputy Commissioner's January 13, 2009 Order and Opinion as relate to the common initial construction/completion dates for the two buildings, the construction of the two buildings pursuant to a single permit, and the prior conveyances of the two buildings by a single deed. The owner's attorney presented New York City OASIS (Open Accessible Space Information System) maps which indicate that the subject building was constructed in 1900 on a lot (#25) containing 1,941 square feet, and that the 11 1/2 building was constructed in 1911 on a lot (#24) containing 3,167 feet. This evidence, in the owner's attorney's view, demonstrates that the construction of the two buildings was not commenced and completed concurrently. Also submitted are two deeds evidencing the conveyance of title of 11 West 84th Street and 11 1/2 West 84th Street to the owner-petitioner in January 2004 – the owner notes that each deed sets forth different metes and bounds description as to each building.

Under cover of a DHCR letter dated May 5, 2011, a copy of an inspection card ("I-card"), prepared in March 1939 by the New York City Department of Housing and Buildings, was served on owner's counsel for comment. The Division pointed out that this particular I-card appears to reflect the existence of one boiler located at 11 1/2 West 84th Street for use in both buildings back in the 1930s.

In a responsive letter dated June 24, 2011, owner's counsel contended that the 1939 inspection card should not be found relevant to the instant proceeding because the condition set forth therein was in effect prior to the relevant base date. Counsel further argued that the Division's own inspections conducted on March 14, 2001, March 22, 2001 and April 18, 2002 found that each building had its own heating system; that the mere existence of remnants of cut and capped steam and water piping does not warrant the conclusion of a shared heating system at one time, or as of the base date or thereafter; that even if there was a shared heating system in place at one time, the courts have specifically ruled that where no other structural or mechanical systems between the two buildings exist, a shared heating plant and common ownership, by themselves, will not support HMD status; and that, since there is "overwhelming evidence" of separate facilities and systems between the two buildings, the existence of a common heating plant, even when accompanied by other indicia of commonality, is insufficient to establish HMD status. The owner's counsel lists what it has deemed to be compelling countervailing factors in support of non-commonality, as follows: the buildings are said to be completely separate, the buildings were constructed eleven years apart and under different permits; the buildings were conveyed by separate deeds; the buildings have separate metes and bounds descriptions; the subject building shares a party wall with a third building at 9 West 84th Street while the 11 1/2 building does not share a party wall at all; the buildings have the following separate features: roofs, chimneys, basements, entrance doors, water mains and water/sewer usage, billing for electricity going back to 1929, gas connections, lighting systems, and bell/buzzer systems.

On remand, the attorney for one of the tenants at the subject buildings (Gary Goldsmith) filed submissions with DHCR which, in substance, urge that the order under review should be affirmed as correct.

Decision on Remand

Upon consideration of the entire evidence of record, the Deputy Commissioner is of the opinion that the owner's PAR should be denied.

The title insurance report submitted by various tenants with their March 7, 1997 answer indicated that the construction of the subject building and the other building were commenced on the same date, January 2, 1892, and were completed on the same date, June 30, 1892. The title insurance report further indicated that the construction of both buildings was approved by the then applicable city building agency under a common permit identified under NB 1517/1891. The Deputy Commissioner will point out that the aforementioned report was based upon the title insurance company's review of the records of the applicable governmental agency. The owner, on the other hand, does not state that its allegation that the two buildings were constructed separately and during different time periods was based upon a review of the applicable government records. Thus the Deputy Commissioner finds, based upon the preponderance of the evidence, that the construction of the two buildings was commenced and completed at the same time and pursuant to a common building permit.

The owner's reference to the OASIS maps and the building construction dates for the two buildings is noted. The pages on which the relevant maps are found however specify that the listed year of construction is merely an "estimate" and for this reason, the Deputy Commissioner finds that the information fails to override that contained in the title insurance report.

Based upon the record, the Deputy Commissioner finds that on or after the applicable base date of July 1, 1974, the subject building and the other building have had a long history of common ownership and common management, and that the relevant buildings had been conveyed by a single deed with a single metes and bounds description. The report from First New York Title and Abstract, Ltd. supplied with the tenants' answer of March 7, 1997 showed that both 11 West 84th Street and 11 ½ West 84th Street had been conveyed as a single building known as "11 – 11 ½ West 84th Street" from April 1934 through May 1986.

The DHCR's May 16, 2002 inspection report indicated that the subject building and the other building had shared one heating system. The inspector's observation in this regard is corroborated by the I-card for the subject building dated May 16, 1939, such card having been prepared by the former government agency known as the New York City Department of Housing and Buildings. This I-card reflects that the subject building obtained its heat from the boiler located at 11 ½ West 84th Street.

Contrary to the owner's assertions, the inspector on May 16, 2002 did not base his reported observations merely on the photographs provided by the tenant. The inspector reported: "After reviewing the five photos provided to the inspector, I found that there are remnants of steam pipes and hot water pipes that have been cut and capped connecting both buildings. There is an approximate four-foot cut and capped pipe in the cellar of 11 ½ West 84th Street would have been continued into the basement of 11 West 84th Street. The unused steam and water pipe connecting both buildings is in evidence; it is located on the north side of the buildings."

The letter of the tenants' architect, Leonard Herczeg, dated February 19, 2002 also addressed the issue of the shared boiler: In this letter, Mr. Herczeg reported, in pertinent part:

> Ms. [redacted] indicated she has been living at 11 ½ since 1959. She reports she remembers that the two buildings had one heating system. She didn't remember exactly when the new system was installed for 11 but says she thinks it was in the 1980s.

Tenant [redacted] stated, in his answer dated July 20, 2000 in the proceeding under NJ420039RP, stated: "I moved into 11 West 84th Street in 1979. At that time the building had no boiler or furnace. Heat and hot water were supplied from heating system in 11 ½ West 84th - ... Heat and hot water were supplied to 11 West 84th in this manner until the mid 1980s – when a boiler & a boiler room were put into 11 West 84th Street.".

Tenant [redacted], in her answer dated July 21, 2000 in the proceeding under NJ420039RP, stated: "When I moved to 11 West 84th Street, Apt. 4, in July of 1974, I was not aware that we shared a boiler with 11 ½ W.84 until that winter, when we were freezing. I believe in the mid to late 1980s, Mr. [redacted] installed our own boiler."

The above evidence taken as a whole supports the conclusion that the subject building and the other building had shared a single heating system. The owner has the burden of proving when the shared heating system of the two buildings was separated but did not meet this burden. Numerous tenants on the other hand have alleged, based on their personal observations and knowledge, that the common heating system became separated sometime in the 1980s, well after 1974. Accordingly, the Deputy Commissioner finds that the Rent Administrator properly held that the two buildings were serviced by a common heating system on or about the July 1, 1974 base date.

Based upon the physical inspections of the subject premises conducted in March 2001, and the pictures provided by the tenants, the Deputy Commissioner finds that the two buildings share numerous features, that is: the buildings have an identical front façade, and although this facade contains a solid line between the two buildings such line is negligible in comparison with the remainder of the façade; the buildings have an uninterrupted cornice above the first floor; and the buildings share a common rear yard. Based upon the physical inspection conducted on January 19, 2007, the Deputy Commissioner finds that the roofs on the front portion of the two buildings have a common / uninterrupted parapet wall; that the roofs of the two buildings have a common wall which is approximately twenty feet from the front of the buildings, and then forks out, creating an air shaft between the two buildings; and, that the two buildings have a common chimney. These inspectorial findings are accorded great weight, sufficient to override those corresponding findings set forth in the Zimmerman affidavit.

In examining the issue of whether the subject building had common electrical usage/metering with the other building, the Deputy Commissioner notes that in the subject owner's February 12, 2008 reply submission included computer printouts from Con Edison showing the subject building's and the other building's electrical usage and costs from December 2004 to December 2006. However, the owner did not submit any evidence showing that the service vendor's records for the two buildings do not go back earlier than 2004; in particular, no statement from Con Edison was presented to that effect. Nor did the owner submit a statement detailing its attempt(s) to fully comply with the DHCR's November 20, 2006 request for electric service billing records. On the whole, the Deputy Commissioner finds that the subject owner has not complied with the part of the DHCR's November 20, 2006 notice pertaining to the following: "You are directed to submit to the rent agency evidence showing how the subject building was billed for heat and electricity as of July 1, 1974 (or if the applicable utilities do not maintain records going back to that date, then as of the earliest date on record). Such evidence must show whether the heat and electricity usage were billed for the subject building only, or billed for the subject building and for another building combined."[4]

[4] The billing records from December 2004 are of limited probative value in any event due to the self-serving nature of such evidence, as the owner-petitioner acquired the building in January 2004. Further, it must be noted that the owner-petitioner acquired the building with full knowledge of the pendency of this proceeding and as such it should have made a full and complete inquiry with the predecessor owner about the existence of billing records and related proofs with respect to electricity, water/sewer and natural gas. The record does not contain proof of such due diligence.

As the subject owner has the burden of proving that the subject building had separate electric meters as of the Rent Stabilization base date, and as the subject owner has not complied with DHCR's notice directing the owner to submit evidence pertaining to that issue, the Deputy Commissioner deems it appropriate to find that the subject building and the other building shared electric meters as of the base date. Alternatively, if the subject owner had received evidence from Con Edison showing how the two relevant buildings were billed prior to 2004, and if the subject owner had failed to submit such evidence to the DHCR, the Deputy Commissioner would deem such failure as proof that such evidence would not have supported the owner's allegation of separate electric meters as of the applicable base date.

To the extent the Zimmerman affidavit is not contradicted by the DHCR's inspection findings or by other credible evidence, it is accepted that there are elements of non-commonality in this case. There is no issue, for example, that the two buildings contain separate entrances, separate bell buzzer systems, and separate basements. The New York Court of Appeals has held that the standard in determining whether a premises constitutes a horizontal multiple dwelling pursuant to the applicable section of the Rent Stabilization Law and Code is whether there were sufficient indicia of common facilities and common ownership, management and operation to warrant treating the premises as an integrated unit and multiple dwelling subject to regulation (*Matter of Salvati v. Eimicke*, 72 N.Y.2d 784, 537 N.Y.S.2d 344 (1988). Based upon the record, the Deputy Commissioner finds that at least until the two building's single heating system was divided into two systems on or some years after the base date, the overall indicia of commonality and other relevant factors discussed above outweighed the indicia of separateness, sufficient to warrant a finding that the subject building was part of a HMD consisting of six or more housing accommodations.

Accordingly, the Rent Administrator's determination that the subject building is covered under the jurisdiction of the Rent Stabilization Law and Code should not be disturbed.

THEREFORE, based on all applicable provisions of the New York City Rent Stabilization Law and Code, it is

ORDERED, that the petition for administrative review be, and the same hereby is, denied, after court remit; and that the Rent Administrator's October 29, 2002 order be, and the same hereby is, affirmed.

ISSUED: DEC 17 2021

WOODY PASCAL
Deputy Commissioner

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

Right to Court Appeal

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

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

There is no other method of appeal.