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

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

21 West 106 Partners, LLC

PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO JT410024RO

RENT ADMINISTRATOR S DOCKET NO GR410021RV

COMPLAINANT [redacted]

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On August 5, 2021, the owner filed a timely petition for administrative review (PAR) of an order issued on July 2, 2021 by the Rent Administrator (RA) concerning the housing accommodation known as apartment [redacted] at 21 West 106th Street, New York, NY 10025

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 this PAR

RA Proceedings

On June 6, 2018, the tenant of record ([redacted]) c/o of her granddaughter ([redacted]) filed a lease violation complaint alleging, generally, that the owner refused to give her a 2 year lease and that the legal tenant has been staying in the subject apartment since 1960

In answer, the owner denied the allegations, and otherwise asserted that the tenant has been offered a renewal lease and that a fully executed copy of the lease was provided

On March 20, 2019, [redacted] submitted a complaint in which she reported that her grandmother died on October 26, 2018, that she is claiming succession to the subject apartment, and that she submitted documents to support her claim

The supplemental complaint was served on the owner on September 1, 2020

The owner responded that the succession claim is being litigated in court in a holdover proceeding which was commenced April 25, 2019, that the granddaughter is being represented by attorneys with the Northern Manhattan Improvement Corp Legal Services, and that therefore

the proceeding before the RA should be dismissed/terminated

The RA issued the order under review finding that the owner must offer [redacted] a lease on the same terms and conditions as the expiring lease

PAR Proceedings

The petitioner alleges that the RA gave no basis for his decision, that the RA order made no findings of fact, and that the RA should have dismissed or terminated the succession claim because that claim is being litigated in court

The tenant submitted an answer claiming that the RA's order should stand and the owner submitted a reply stating that the RA order should be revoked in view of the court's jurisdiction

Commissioner s Determination

Having reviewed the record, the Commissioner denies the PAR

Pursuant to RSC §2523 5(b), a family member has the right to a renewal lease or protection from eviction if he or she resided in the subject apartment as his/her primary residence for two years immediately prior to the permanent departure of the primary tenant

The evidentiary record supports [redacted] succession rights A death certificate shows that the tenant of record, her grandmother died on October 26, 2018 The Last Will and Testament of the tenant of record refers to the complainant as her granddaughter, as do SCRIE applications of the grandmother dating back to 2015 [redacted] submitted employment records from 2010 listing the subject apartment as her address as well as utility records for the subject apartment dating back to 2016 listing [redacted] on the bills This evidence was part of the record considered by the RA

The Commissioner rejects the owner's contention that the RA's order is invalid given that the issue of succession was being litigated in court Both DHCR and the courts have concurrent jurisdiction on lease matters and matters of succession Here, the initial DHCR proceeding was commenced on June 6, 2018 and the supplemental complaint asserting succession rights was filed on March 20, 2019 which was before the court proceeding commenced on April 25, 2019 Furthermore, there was no court order staying the agency proceeding even after the owner was served with the supplemental complaint on September 1, 2020 As such, there was no prohibition to the RA issuing his order while the court action was pending

THEREFORE, in accordance with the relevant 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

OCT 04 2001

WOODY PASCAL
Deputy Commissioner

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

Right to Court Appeal

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

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

There is no other method of appeal

STATE OF NEW YORK
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JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO JU410006RO
Nathan Obstfeld	RENT ADMINISTRATOR'S DOCKET NO 1T410053RV
PETITIONER	TENANT [redacted]

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a timely petition for administrative review (PAR) of an order issued on August 19, 2021 by the Rent Administrator (RA) concerning the housing accommodation known as apartment [redacted] at 509 West 134th Street, New York, New York, which found that the owner failed to respond to the tenant's lease violation complaint and directed the owner to offer a renewal lease to the tenant

On PAR, the owner contends that it sent the lease to the tenant on February 17, 2021, and enclosed proof of mailing The owner contends that after it did not receive the lease back, the owner sent the tenant a follow-up letter dated May 25, 2021, a copy of which was enclosed

The PAR is denied

The record indicates that on August 27, 2020, the tenant filed an online lease violation complaint stating that the owner refuses to renew her lease and that her last written lease ended on May 31, 2011 DHCR served the complaint upon the owner at the mailing address listed by the owner in DHCR records, to wit Dela Realty [redacted] and to the managing agent of the premises Palladium Management Group which was also identified by the owner's filings with DHCR As noted, the owner failed to respond

The Commissioner will not consider the owner's evidence that it offered a renewal lease in February and again in May 2021 because such evidence was not offered in the proceeding below Under Rent Stabilization Code §2529 6, PAR review shall be limited to facts or evidence before the RA The owner has not offered a reasonable excuse for failing to respond to the complaint served by the RA The Commissioner notes that the basis of this scope of review provision of the Code is twofold First, it promotes administrative efficiency in that it mandates that the parties to a dispute set forth all their arguments and supporting evidence to the initial administrative fact-finder, in this case the RA Second, it prevents the manufacturing of evidence after the parties have had a chance to see the initial administrative determination

PAR Docket Number JU410006RO

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

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

ISSUED
OCT 04 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 APPEAL OF

[redacted]

PETITIONER

ADMINISTRATIVE REVIEW
DOCKET NO JT410020RT

RENT ADMINISTRATOR'S
DOCKET NO IT410045RV

OWNER West Fifth Avenue Realty, LP

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The tenant filed a timely petition for administrative review (PAR) of an order issued on July 16, 2021 by the Rent Administrator (RA) concerning the housing accommodation known as apartment [redacted] at 2 West 129th Street, New York, NY 10027

The Commissioner has reviewed the evidence in the record and has considered that portion of the record relevant to the issues raised by the tenant's PAR

On August 19, 2020, the tenant filed a lease violation complaint stating that the owner failed to furnish a signed copy of her new renewal lease

In reply, the owner furnished a copy of a lease commencing on October 1, 2020 signed by both the owner and the court-appointed guardian for the tenant

The tenant's guardian's attorney submitted a letter dated June 23, 2021, acknowledging among other things, that the guardian fully executed the renewal lease on behalf of the tenant

The RA found that the owner complied with the tenant's lease complaint and that any rent dispute would be handled in the pending rent overcharge proceeding

On PAR, the tenant asserts that she has not had communication with the owner or his attorney for several years, that she is challenging the Article 81 (guardian) proceeding, that she has not had a valid lease since 2008, and that she is being harassed by the owner and other tenants

The petitioner has not set forth any basis to revoke or modify the RA's order and the

PAR Docket Number JT410020RT

PAR is hereby denied

On March 27, 2012, the Supreme Court of the State of New York appointed a guardian over the body, person and affairs of the petitioner The owner properly sent the lease renewal to the guardian who executed it on behalf of the petitioner This resolved the lease violation complaint herein as there is a valid lease from October 1, 2020 September 30, 2022

The issue of alleged improper guardianship is not within the Commissioner's purview and any alleged harassment claims are outside the scope of this lease violation appeal

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

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

ISSUED

OCT 19 2021

WOODY PASCAL
Deputy Commissioner

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

Right to Court Appeal

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There is no other method of appeal.

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

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO JT410025RT

[redacted]

RENT ADMINISTRATOR'S
DOCKET NO GR410016RV

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OWNER 910 Riverside, LLC

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On August 6, 2021, the tenant filed a timely petition for administrative review (PAR) of a Rent Administrator's (RA) order issued on July 2, 2021 concerning the housing accommodation 910 Riverside Drive, [redacted] New York, NY

On June 6, 2018, the tenant filed a lease violation complaint alleging that she moved into the subject apartment on June 1 2015 under a written one-year lease expiring on May 31, 2016 at $2,100 00 monthly rent, that the owner refuses to offer a renewal lease on the same terms and conditions as the expiring lease, and that the June 1, 2018 renewal lease which was offered contains an improper rent The tenant provided copies of her June 1, 2015 vacancy lease with a monthly rent of $2,509 40 (less a $409 40 credit) and a $2,100 00 monthly payable rent, copies of apartment registrations indicating that the owner registered $2,600 00 as the legal regulated rent in 2016, her June 1, 2016 renewal lease wherein the tenant chose a two-year lease with a $2,559 59 rent (less a $409 40 credit) and a $2,150 19 (2% increase) monthly payable rent, copies of checks indicating tenant's actual rent paid, and a copy of a renewal lease to commence June 1, 2018 which was unsigned and which no longer included the rent credit and had a payable rent of $2,591 58 (one year) and $2,610 78 (two year) The tenant also attached a copy of a vacancy lease rider provided by the owner in 2018 which the tenant argued was generated on a 2006 form and not the currently accepted 2014 Rider, and which did not adequately inform her of her rights under rent stabilization and which did not adequately explain the rent increases upon her taking occupancy in 2015

In answer, the owner asserted that the 2015 lease listed the monthly legal regulated rent of $2,509 40, that the "credit" served as a preferential rent, that this lease and the next renewal stated both a legal regulated and preferential rent, and that the owner could discontinue the preferential rent on the June 1, 2018 renewal lease

The tenant replied that the "rent credit" is not a preferential rent, that the preferential rent and the legal regulated rent must be clearly articulated in the lease, that the owner failed to register a preferential rent and did not register the correct legal regulated rent, and that the owner failed to offer proper lease riders explaining any rent increases

The RA found that the owner properly preserved the legal regulated rent in the vacancy lease and the first renewal lease, that the tenant was paying a lower preferential rent, that the owner could discontinue offering the preferential rent on the June 1, 2018 renewal lease, and that the owner sent the tenant the riders which she requested The tenant's complaint was denied

On PAR, the tenant contends that the RA misapplied the law on preferential rents, that the preferential rent was not clearly articulated in either the vacancy lease or the first renewal lease, that the owner did not register the preferential rent in 2016 or 2017, and that the owner failed to timely provide a proper vacancy lease rider

Having reviewed the record, the Commissioner denies the PAR

Pursuant to Rent Stabilization Code §2521 2(b), the legal regulated rent shall be set forth in the vacancy or renewal lease pursuant to which the preferential rent is charged RSC §2521 2(a) states that where the amount of rent charged is less than the legal regulated rent, such rent shall be known as a preferential rent Given that the owner preserved the higher legal regulated rent in both the vacancy lease and the first renewal lease, it is axiomatic that the lower rent charged was a preferential rent It did not have to be specifically called preferential It is self-evident that the "rent credit" lead to a preferential rent The credit had no other practical meaning Under DHCR Fact Sheet #40, an owner is allowed to terminate a preferential rent upon the next renewal period and charge the legal regulated rent along with applicable guideline increases

The fact that the owner failed to register the preferential rent does not invalidate it given the preferential rent was stated in the signed leases in evidence The fact that the owner may have registered an incorrect legal regulated rent in 2016 also does not affect the preferential rent issue presented in this case Moreover the failure to offer a timely vacancy lease rider does not invalidate the preferential rent If the tenant contests the legality of the higher rent claimed she may file a rent overcharge complaint

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

PAR Docket Number JT410025RT

ORDERED, that the petition for administrative review be, and the same hereby is, denied, and that the RA's order is affirmed

ISSUED

OCT 19 2021

WOODY PASCAL
Deputy Commissioner

State of New York
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Gertz Plaza 92 31 Union Hall Street
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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
92 31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted]

PETITIONER

ADMINISTRATIVE REVIEW
DOCKET NO JS110010RT

RENT ADMINISTRATOR'S
DOCKET NO HV110072RV

SUBJECT PREMISES
[redacted]
21 39 27th Street
Astoria, NY 11105

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The tenant filed a timely petition for administrative review (PAR) of an order issued on June 8 2021 by the Rent Administrator (RA) which granted the tenant s lease violation complaint

The complaint was filed on October 28 2019 alleging that only the tenant s name should be on the renewal lease and that his wife s name [redacted] should be removed since they have been divorced and she has not been living in the apartment since 2009

The owner answered that a notarized move out' letter from [redacted] is required to remove her name from the lease The owner submitted a copy of the renewal lease with only the tenant s name listed

On March 2 2020 the tenant submitted a copy of the notarized letter from [redacted] stating that she moved out of the apartment and that the tenant, [redacted] be the sole leaseholder The tenant added that his daughter, [redacted] should also be on the lease but later the tenant withdrew this request

The RA found that the tenant received a renewal lease with his name on it after the filing of the complaint and directed the owner to remove [redacted] name on the lease renewal

On PAR, the tenant contends that the owner has overcharged him, because when he signed the renewal lease, he had no time to read it properly and the owner allegedly told him that there will be no rent increases

PAR Docket Number JS110010RT

The owner opposes the tenant's PAR and states that a Court order under Index Number 53895/17 dated March 2 2018 settled any rent overcharge issues The owner attached a copy of the Housing Judge s decision

In reply the tenant reiterated his previous allegations, that the owner forced him to accept the renewal lease which included rent increases that the owner would scare him about his pending immigration status, and that the building superintendent had been tampering with and delaying delivery of his mail

Having reviewed the record the Commissioner denies the PAR

The sole issue presented by the tenant s complaint was that of a lease violation This issue (i e removing the ex wife s name from the renewal lease) was resolved in the tenant s favor The tenant may not raise issues of alleged rent overcharge in this proceeding

Based on the foregoing, the tenant has not raised any basis to modify or revoke the RA s order concerning the lease violation issue which was in all respects correct when issued

The tenant may file a rent overcharge complaint with the agency if the facts so warrant

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

ORDERED that the petition for administrative review be, and the same hereby is, denied 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
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Office of Rent Administration
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There is no other method of appeal.

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JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO JR410040RT
[redacted] PETITIONER	RENT ADMINISTRATOR S DOCKET NO HW410007RV

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The tenant filed a timely petition for administrative review (PAR) of an order issued on May 7, 2021 by the Rent Administrator (RA) concerning the housing accommodation known as apartment [redacted] at 128 2nd Avenue, New York, NY 10003

In the order under review, the RA found that the issues in this proceeding have been resolved in a court of competent jurisdiction under Index Number LT 058416/18

On PAR, the tenant contends that the issues in the Holdover Proceeding (Index Number LT 058416/18), including apartment violations, are still open and being investigated The petitioner attached copies of a Case Summary of Index Number LT-058416/18 letters and emails between the tenant and his legal representative, correspondence from the owner s attorney the March 8, 2021 Decision/Order under Index Number LT 058416/18, violation reports from the NYC Department of Buildings (DOB) and Department of Housing Preservation and Development (HPD), photos of defective conditions in the apartment and arrears rent payments and assistance as shown in letters from the Human Resources Administration (HRA) of the NYC Department of Social Services

The owner opposed the PAR asserting that it is untimely and that the RA s findings are correct

The PAR is herein denied

First, the Commissioner finds that the tenant s PAR was timely filed because the RA order was issued on May 7, 2021 and the PAR was post-marked June 1, 2021, which is within the 35 day timeframe under the law

PAR Docket Number JR410040RT

Contrary to the tenant s contention the Civil Court Decision/Order under Index Number LT-058416/18 has never been appealed and is final In that order the owner was awarded a final judgment of possession, subject to the provisions of the COVID 19 Emergency Evictions and Foreclosure Prevention Act The Court rejected the tenant's argument that he is entitled to relief from his failure to make the use and occupancy payments as set forth in a December 11 2019 order of the same Index Number The Court also rejected the tenant's warranty of habitability defenses

The RA was correct in finding that the Court order resolved the issue of this lease violation complaint by awarding possession of the apartment to the owner

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

ORDERED that the petition for administrative review be, and the same hereby is, denied, 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
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If there is no other method of appeal

STATE OF NEW YORK
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92 31 UNION HALL STREET
JAMAICA NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted]
PETITIONER

ADMINISTRATIVE REVIEW
DOCKET NO JU410014RT

RENT ADMINISTRATOR S
DOCKET NO IX410007RV

OWNER Assoc [redacted] c/o Broadwell Mgmt Corp

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-named tenant filed a timely petition for administrative review (PAR) of an order issued on August 26, 2021 by the Rent Administrator (RA) concerning the housing accommodation in the premises known as apartment [redacted] at 125 East 87th Street New York New York

The tenant filed a lease violation complaint on December 3, 2020 alleging that the owner sent her an untimely renewal lease which was to commence July 1 2020

The owner answered that 68 lease renewals, including the complaining tenant s lease, were mailed out on March 13 2020

The tenant requested a corrected lease to begin October 15 2020 with the appropriate guideline increases The tenant claimed hardship because of unemployment and the Covid 19 pandemic, that she has been a good tenant for 11 years and that she has to take a loan to pay her rent

In the order under review, RA denied the tenant s application because the owner submitted proof of mailing indicating that the renewal lease was mailed in a timely manner The RA advised the tenant to sign the lease and return it to the owner for execution

On PAR the tenant contends that just because properly mailed correspondence is presumed to be received by the addressee and just because a mailing that is not returned by the USPS is presumed to have been delivered, does not mean that mail was in fact delivered It was at the height of the pandemic in the summer of 2020, and other possibilities arise such as wrong building wrong addressee, or the addressee could have been out of town Moreover, she alleges to have also received other people s mail by mistake, and that the leasing agent has not

responded to her inquiries about the owner s late offer to renew

Having reviewed the record, the Commissioner denies the PAR

Sections 2522 5(b)(1) and 2523 of the Rent Stabilization Code (RSC) require an owner to offer a tenant in writing the option of a one or two year renewal lease Such offer shall be made not more than 150 days prior to the end of the tenant s lease term and may be served on the tenant by mail or personal delivery The tenant s acceptance of such offer must be returned to the owner either by mail or personal delivery within 60 days RSC Section 2523 5(c) states this option to select renewal is either the date the renewal lease would have commenced had the owner timely proffered the renewal lease on the appropriate form or the first rent payment date occurring no less than 90 days after the date that the owner offered the lease

The owner offered a copy of the page from its USPS Service Certificate of Mailing book which is stamped 'received ' includes the postmark with date of receipt, and was signed by the Postmaster on March 13, 2020 indicating that the tenant's renewal lease was one of six items accepted by the USPS on that date As such, the Commissioner finds that the owner timely tendered the tenant her renewal lease on March 13 2020 and it could properly commence on July 1 2020 in accordance with the RSC The tenant has offered no basis to support her position that the mail was not delivered or that she otherwise did not receive the renewal lease in a timely manner There is no basis to amend the lease commencement date to October 15 2020 and the RA correctly directed the tenant to execute and return the renewal lease commencing July 1 2020

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

ORDERED, that the petition for administrative review be and the same hereby is, denied 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 court 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/executive-orders. No additional time can or will be given for preparing your papers, please see 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 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 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 suggested that you consult legal counsel.

There is no other period of appeal.

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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO JS410041RO
XENORA TRAIL LIMITED	RENT ADMINISTRATOR S DOCKET NO IM410024RV
PETITIONER	TENANTS [redacted]

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a timely petition for administrative review (PAR) of an order issued on June 22 2021 by the Rent Administrator (RA) concerning the housing accommodation in the premises known as apartment [redacted] at 101 West 78th Street New York New York

In the order under review the RA stated that the tenants filed a lease violation complaint alleging that the owner refuses to give them a renewal lease on the same terms and conditions as were contained in the expiring lease The tenants also alleged that the owner was adding maintenance and property taxes to the legal regulated rent (LRR)

The agency served the complaint on the owner on January 15 2020 and on May 13, 2021 The owner did not answer Because the owner failed to refute the tenants complaint and because the record shows that the owner's renewal lease offer dated December 26, 2019 is not a valid offer given that the LRR increased from $996 28 to $2,807 79 the RA directed the owner to offer to the tenant a renewal lease

On PAR 'the owner contends that the RA's order should be vacated because it is based on a false information that the subject apartment was the tenants' principal residence The owner stated that it had good cause for not answering the complaint because it has been gathering evidence of the tenants' actual primary residence Attached is a copy of the tax assessor s property card for the tenants principal residence at [redacted] which is a 2 bedroom 2 bath single family home Also attached is copy of the envelopes in which their rent monthly check was sent to the owner and the corresponding USPS tracking information for each envelope Although the return address on each envelope s mailing label is intended to believe that it was sent from 101 West 78th Street USPS records show that it was in fact sent from [redacted] the tenants' principal residence

Having reviewed the record, the Commissioner is of the opinion that this PAR should be

denied and that the RA s order should be affirmed

The Commissioner need not consider the owner s arguments and submissions on PAR because the owner did not respond to the tenants complaint Under Rent Stabilization Code (RSC) §2529 6, PAR review shall be limited to facts or evidence before the RA unless there is a reasonable excuse for failing to set forth such evidence in the record below Here the owner has offered no such reasonable excuse The Commissioner notes that the basis of scope of review is twofold First, scope of review promotes administrative efficiency in that it mandates that the parties to a dispute set forth all their arguments and supporting evidence to the initial administrative fact finder, in this case the RA Second scope of review prevents the manufacturing of evidence after the parties have had a chance to see the initial administrative determination

The record indicates on January 15 2020 and on May 13 2021 the agency served the complaint on the owner at its correct address listed in DHCR records and at the address listed in a change of ownership notice filed with the agency As such, the RA gave the owner ample opportunity to answer the complaint

Furthermore, the mere allegation of non primary residence does not stay processing a lease violation complaint, absent a pending court proceeding in which the owner alleges same and seeks possession of the premises on such grounds

Accordingly RA s order was in all respects correct when issued, thus, directing the owner to offer to the tenants a renewal lease

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

ORDERED, that the petition for administrative review be and the same hereby is denied, 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.nyhcr.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/executive-orders. 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 (DHCR)
OFFICE OF RENT ADMINISTRATION
GERTZ PLAZA
92-31 UNION HALL STREET
JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted]
PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO JO410001RT

RENT ADMINISTRATOR'S DOCKET NO IO410054RV

-- - - -- -- -- - - - - - -- - X OWNER 44th Street Development, LLC

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The tenant filed a petition for administrative review (PAR) of an order issued on January 22, 2021 by the Rent Administrator (RA) concerning the housing accommodation known as apartment [redacted] at 550 West 45th Street, New York NY 10036

The tenant had originally complained that the owner failed to offer a renewal lease on the same terms and conditions as the expiring lease and had taken away a utility credit which was part of his original lease term

The owner responded by providing a copy of the federal Regulatory Agreement, dated June 29 2011 between the owner and the federal Department of Housing Preservation and Development (HPD) and the Inclusionary Regulatory Agreement between the owner and 45 Street HDFC and the New York State Housing Finance Agency The owner asserted that the subject apartment is a one bedroom Low Income Housing Tax Credit (LIHTC) unit leased to households with an income less than 50% of the Area Medium Income (AMI) which is the NYC area median gross income determined by the US Department of Housing and Urban Development (HUD) The collectible and legal regulated rents were established pursuant to the Regulatory Agreement Pursuant to the Regulatory Agreement, if the tenant was paying their own utility costs, the owner was required to deduct a ' utility allowance" from the gross rent to determine the net maximum rent the LIHTC tenant could be charged HPD annually publishes a chart that shows the maximum LIHTC net rents after utility allowances have been applied The owner stated that the initial rent established for the unit was $928 per month, with a monthly utility allowance of $72 00 per month The owner argued that since the tenant was paying $786 99 per month, which is below the maximum net allowable rent, the unit complied with the Regulatory Agreement The owner argued that any additional 'utility credit" in the initial lease

- and subsequent renewal leases that was applied to the legal rent was never intended as a permanent credit The owner asserted that it continues to deduct the annual utility allowance as determined by HPD from the legal rent for the unit, that any additional utility credit was not intended as permanent, and that the owner will continue the tenant's preferential rent

By an order issued on January 22, 2021, RA terminated the proceeding because the premises is owned by the Housing Development Fund Corporation (HDFC) and is subject to a federal Regulatory Agreement and is not subject to DHCR jurisdiction

On PAR, the tenant asserts that DHCR has jurisdiction to rule on this lease violation matter, as it has in other cases involving tenants in the subject building

The owner opposed the PAR arguing that the PAR was untimely because it was filed more than 35 days after the issuance date of the RA s order and that DHCR has no jurisdiction over rents established by HPD

Having reviewed the record, the Commissioner finds that the PAR should be denied

The Commissioner finds that the PAR was timely having been received by the agency on Monday, March 1 2021, which assumes it was properly mailed on or before the 35th day, i e Friday, February 26, 2021 The Commissioner finds this a reasonable result given the effects of the Covid-19 pandemic on the USPS and this agency's receipt of and processing of mail

On the merits the subject apartment is part of the Gotham West Apartments Project, a complex of four residential buildings containing mixed moderate, low income and other affordable housing units The collectible and legal regulated rents for the all apartments in the complex, including the subject apartment, were established pursuant to a federal Regulatory Agreement between the owner and 45 Street HDFC, the New York State Housing Finance Agency and HPD, which implements the federal median income and guidelines of HUD and HDFC The initial rent for the subject apartment was based on the tenant's income and whether the tenant qualified for a ' utility allowance" was determined by HPD and revised annually in accordance with the guidelines of the federal agencies

Based on the foregoing the Commissioner finds that the subject apartment's legal and collectible rent is governed by HPD under the federal Regulatory Agreement and is not under DHCR jurisdiction Moreover, the Regulatory Agreement addressed the issue of the utility allowance which is revised yearly by HPD As such, the contention that the owner impermissibly removed a 'utility credit" from the rent in a recent renewal lease is not subject to DHCR determination The lease term complained of is intrinsically tied to the rent amount and whether the apartment qualified for a utility credit is determined by HPD, both issues that DHCR may not determine The fact that the owner filed annual registrations with DHCR and gave tenants rent stabilized leases, as required by the Regulatory Agreement, does not confer jurisdiction over the

rent and the utility credit unto DHCR

It is noted that identical PAR determinations within the same complex as the subject apartment were issued under Docket Numbers IS410005RT, IS410006RT, IS410007RT, IT410008RT, and IT410014RT, and which are final agency determinations

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

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

ISSUED
NOV 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

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There is no other method of appeal

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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO JU910035RO
COLLAGE INTERNATIONAL DEVELOPMENT GROUP	RENT ADMINISTRATOR S DOCKET NO JM910015RV
PETITIONER	TENANT [redacted]

ORDER AND OPINION TERMINATING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal (PAR) against an order issued on August 11, 2021 by the Rent Administrator (RA) concerning the housing accommodation known as apartment [redacted] at 185 Riverdale Avenue, Yonkers New York 10705

The Commissioner finds that the PAR should be terminated because the owner, by counsel, in a letter dated October 28, 2021, stated that the owner has withdrawn the PAR because the tenant permanently vacated the subject apartment

THEREFORE in accordance with the relevant sections of the Emergency Tenant Protection Regulations it is

ORDERED, that the matter is hereby terminated

ISSUED
NOV 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

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There is no other method of appeal.

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

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO JV610010RT

[redacted]

RENT ADMINISTRATOR S
DOCKET NO HX610049RV

PETITIONER

Owner VYSE 179 LLC

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The tenant filed a timely petition for administrative review (PAR) of an order issued on September 28, 2021 by the Rent Administrator (RA) concerning the housing accommodation in the premises known as apartment [redacted] at 951 East 179th Street, Bronx, New York 10460

On or about December 6, 2019, the tenant filed a lease violation complaint alleging that the owner offered her a renewal lease which does not recognize her preferential rent Attached to the complaint was a copy of an unsigned renewal lease commencing January 1 2020 which had legal regulated rents of $3,060 69 for a one year and $3,090 85 for two years, and that the tenant would pay $2,030 00 for a one year renewal and $2,050 00 for a two-year renewal The tenant also annexed a copy of a renewal lease commencing January 1, 2019, signed only by her which had preferential rents of $1,444 56 for one year and $1,474 27 for a two year renewal

The owner interposed an answer stating that the tenant had last signed a lease renewal (copy attached) beginning January 1, 2019 for one year at a preferential rent of $1,800 00 per month, that in September 2019 the owner offered a lease to begin January 1 2020 (this copy had preferential rents of $1,827 and $1,845), but the tenant refused to sign the lease and a holdover proceeding was commenced on July 30, 2020 for failure to renew, and that beside that issue, the tenant has a balance of $33,739 00 based on the last renewal of $1,800 00 monthly preferential rent

On May 3, 2021, June 7, 2021 and June 22, 2021, DHCR served the tenant with requests for additional information including asking her to address the owner s answer and provide updates on the holdover proceeding and whether the renewal lease was signed The notices also informed both the tenant and the owner that the owner's failure to offer a renewal lease is the only issue under consideration and that any rent dispute would not be addressed in this docket

PAR Docket Number JV610010RT

On June 21, 2021, DHCR received a response from the owner stating that the holdover proceeding is halted as the tenant filed for COVID hardship and that the tenant has not executed the renewal lease

The tenant did not respond to DHCR notices

The RA issued this order under appeal which found that the tenant has failed to submit information/evidence necessary to process the case as requested on May 3 2021 June 7, 2021 and June 22, 2021 Accordingly, the RA terminated the proceeding

On PAR, the tenant contends that she had been traveling until late June 2021 and did not see her mail, that she also had issues with her telephone, that after fixing her telephone she contacted counsel who drafted and mailed a response to DHCR, that she now attaches copies of the renewal lease and documents relating to the holdover proceeding, that she wants to sign a new lease but she disputes what her monthly rent is, and that she has a defense to the holdover proceeding in that she has been overcharged She indicates that her initial 2019 renewal lease had preferential rents of $1,444 56/$1,474 27 which she signed However, six months later the owner offered a new renewal for the same term raising the preferential rent to $2,000 per month which she refused to sign The owner then offered another renewal for the same term for $1,800 per month, which she felt pressured to sign She believes the preferential rent increases are overcharges which she hopes will be determined in the non-payment proceeding in Court

Having reviewed the record the Commissioner denies this PAR

There is no evidence that the tenant attempted in person, or by counsel, to respond to the DHCR notices Given the record in the underlying proceeding it was reasonable for the RA to therefore terminate the complaint based on the owner s answer and the tenant s failure to respond to the notices

Based on the termination, the agency has not imposed any negative determination against the tenant in terms of the propriety of the renewal lease offer or the rent The Commissioner notes that any rent dispute will be decided in the Court, at which time the tenant can raise the issue of whether the owner improperly attempted to increase the amount of the preferential rent in the January 1 2020 renewal lease offer and whether the payment of $1,800 per month beginning that lease term constituted an overcharge

PAR Docket Number JV610010RT

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

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

ISSUED

NOV 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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There is no other method of appeal

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

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO JS110007RO
Deegan Cloverdale Company, LLC PETITIONER	RENT ADMINISTRATOR'S DOCKET NO GT110017RV
	COMPLAINANT [redacted]

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a timely petition for administrative review (PAR) of an order issued on June 3, 2021 by the Rent Administrator (RA) concerning the housing accommodation known as apartment [redacted] located at 224-65 64th Avenue, Queens, NY 11364

On August 6, 2018, the complainant ([redacted]) filed a lease violation complaint alleging that the renewal lease offered by the owner is incorrect because he is the first successor to the tenant of record Attached to the complaint are copies of the unsigned copies of the Offer to Tenant to Renew beginning October 1, 2018, with explanations of the rent increase and garage increase, a copy of the last lease signed on July 28, 2016, a Certificate of Live Birth of [redacted], whose mother is named [redacted] and his father named [redacted] and a Death Transcript of [redacted] Also included is a letter from the Queens Community Civic Corporation, Inc (QCC), explaining his case for first succession to his mother s apartment This letter states, in relevant parts

> "the mother and father moved into the apartment as husband and wife in 1972 The apartment was rent stabilized and not rent controlled They had 3 children who lived with them, [redacted] was one of them The wife never left but always lived there as the spouse The husband died in 1984 and his wife was then given the lease in her name She was not a successor under the succession rules but as a spouse entitled to have the lease automatically placed in her name upon her husband's death She had as much right to be considered a primary tenant as did her husband and as such under the law even if her name did not appear on the lease The wife died July 2, 2017 and the son [redacted] who lived there continuously since 1972 is now the first successor to the lease as a member of the immediate family

Mr [redacted] later submitted copies of his driver's licenses from 2002 2018 and tax returns from 2015 2017

In answer, petitioner denied that the complainant had succession rights, and asserted that the primary tenant of record in the lease was the complainant's father, that there is no proof that the complainant and his mother have primary residence in the subject apartment, that the complainant cannot be a successor (first or second) because his mother was not originally in the lease, and the copies of the birth and death certificate are unclear and vague, for example, mentioning [redacted] (one of the siblings) as residing in the apartment when in fact he does not live there

The RA found that the complainant is entitled to succession rights in the subject apartment and garage and that petitioner must offer a renewal lease on the same terms and conditions as the expiring lease

On PAR, petitioner contends that complainant failed to establish his relationship to [redacted] and his residency in the apartment, that complainant failed to specify the date that [redacted] vacated the apartment so the relevant co-residency period for succession can be established, that the apartment is part of a cooperative and became exempt from rent regulation once the non-purchasing tenant [redacted] vacated, that complainant provided no proof of [redacted] residence in the apartment for any period, that the death certificate does not establish when Clara vacated the apartment, and that the complainant filled out two tenant questionnaire forms in 2016 and 2014 which do not list [redacted] as residing in the apartment

Having reviewed the record, the Commissioner denies the PAR

Under Rent Stabilization Code (RSC) §2523 5(b)(1)(a), " if an offer is made to the tenant and such tenant has permanently vacated the housing accommodation, any member of such tenant's family shall be entitled to be named as tenant on the renewal lease " A family member has the right to a renewal lease or protection from eviction if he or she resided with the tenant as a primary resident in the apartment for two (2) years immediately prior to the death of, or permanent departure, from the apartment by the tenant

Here, despite the petitioner's assertions to the contrary, the evidence supports succession rights for [redacted] The evidence establishes that he was born the son of [redacted] and [redacted] and that the family moved into the subject apartment in 1972 There is no evidence that [redacted] ever left the apartment and when her husband died in 1984, [redacted] became the primary tenant of the subject apartment regardless of whether she was ever on the original lease Moreover, there is a renewal lease in [redacted] name in 2016 and the petitioner has registered [redacted] as the tenant of record from 1989 through 2019 The death certificate indicates that [redacted] died on July 2, 2017, thereby vacating the apartment, and [redacted] driver's license and income tax returns prove that he resided in the subject apartment for two

years prior to this mother's death

The petitioner did not raise the issue of jurisdiction in the proceeding before the RA Even if petitioner could raise such issue for the first time on PAR, it has presented no evidence that the subject apartment is no longer rent regulated or that it is a cooperative apartment that left rent regulation upon the death of [redacted]

THEREFORE, in accordance with the relevant 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

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 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 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 Numb and the documents received by the court i e Notice of Petition Petition and other efiled 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 18th Floor New York NY 10005 Since Article 78 proceedings take place in the Supreme Court id is able that you consult legal counsel

There is no other method of appeal

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

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: JV410012RO
112 Suffolk St. Apt. Corp.	RENT ADMINISTRATOR'S DOCKET NO: IQ410004RV
	TENANT: [redacted]

----------X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The owner filed a timely petition for administrative review (PAR) of an order issued on August 31, 2021 by the Rent Administrator (RA) concerning the housing accommodation known as apartment [redacted] at 112 Suffolk St., New York, N.Y.

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 this PAR.

On May 7, 2020, the tenant filed a lease violation complaint alleging that the owner failed to offer a renewal lease. The owner interposed an answer stating that the tenant is not entitled to a renewal lease since she caused a fire that destroyed the apartment and that this matter is currently the subject of litigation pending in the Civil Court of New York County.

The RA issued an Order Directing a Lease Renewal. The RA relied on DHCR order HT410234S which entitled the tenant to a renewal lease while the apartment remains uninhabitable.

On PAR, the owner contends that the tenant already had a renewal lease, making the order unnecessary; that the tenant was not intentionally refused a lease renewal in June 2020 but that the owner's counsel at the time was unaware of the order under Docket Number HT410234S; and that the parties already settled this matter in court.

Having reviewed the record, the Commissioner is of the opinion that this PAR should be denied, and that the RA's order should be affirmed.

Given the information that was before the RA, he correctly ordered the owner to provide a lease renewal based on the former agency order. The owner did not advise the RA of the Court settlement in November 2020 or that a renewal lease was signed as part of the settlement. PAR

review may only be limited to the record before the RA and no new evidence will be considered absent a reasonable excuse for failing to present such evidence to the RA. *See* Rent Stabilization Code §2529.6. The delay in Court proceedings did not prevent the owner from advising the agency of the settlement, which occurred months before the RA order was issued.

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

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

ISSUED:

NOV 23 2021

WOODY PASCAL
Deputy Commissioner

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

X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

[redacted],

ADMINISTRATIVE REVIEW
DOCKET NO.: JU410048RT

RENT ADMINISTRATOR'S
DOCKET NO.: HU410093RV

OWNER: TAI WAH TRADING
GROUP INC.

PETITIONER X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

Petitioner tenant timely filed an administrative appeal (PAR) against an order issued on September 2, 2021, by the Rent Administrator (RA) concerning the housing accommodation known as Apt. [redacted] located 168 Elizabeth Street, New York, New York, 10012 which denied the tenant's lease violation application and terminated the proceeding.

On August 8, 2010, the tenant took occupancy of the subject apartment pursuant to a one-year lease at a rent of $1,900.00 per month.

On or about September 30, 2019, the tenant filed a lease violation complaint alleging that "the owner refuses to renew my lease."

On December 15, 2019, the owner answered the complaint. The owner asserted that "the tenancy is exempt from Rent Regulation since the commencement of respondent's tenancy on August 8, 2010 and therefore, the tenant is not entitled to a lease renewal"; that the apartment registration statement demonstrates that the last registered rent was $1,946.80 as of April 1, 2010, which represents a 3% increase, pursuant to Rent Guidelines Board Order #41, above the April 1, 2009 registered rent of $1,890.10; that the tenancy of [redacted] commenced on August 8, 2010 pursuant to a one (1) year lease, therefore, the applicable vacancy allowance, based on Rent Guidelines Board Order #41, was 17%; that applying this vacancy allowance to the last registered rent, the

new legal rent reached $2,277.76, well over the $2,000.00 deregulation threshold ("DRT") in effect at the time; that even if the vacancy allowance was applied to the prior 2009 registered rent of $1,890.10, the legal rent would have been $2,211.47, also above the applicable DRT; and that based on the foregoing, the apartment became exempt from rent regulation at the commencement of [redacted]'s tenancy.

On March 3, 2020, tenant's counsel interposed correspondence stating that "it remains [redacted]'s position that she is in fact the legal rent stabilized tenant of the subject premises due to the fact that the subject apartment was not properly deregulated"; that "at no point in time was the apartment above the legal threshold for legal, high rent deregulation"; that "a review of the rent registration for the subject premises clearly shows that, on or about June 22, 2009, the landlord incorrectly increased the rent from One Thousand Forty-One Dollars and Ninety Three Cents ($1,141,93) to One Thousand Eight Hundred Ninety Dollars and Ten Cents ($1,890.00)"; that "upon information and belief, the increase was based on alleged improvements, which never occurred at the subject premises"; that "to date, the landlord has not provided any proof of these alleged improvements or any justification for said increase"; that "thereafter, as shown in the rent registration statement, in 2010, the landlord once again increased the rent to One Thousand Nine Hundred Forty-Six Dollars and Eighty Cents ($1,946.80), as a vacancy lease, even though the same tenants were still in occupancy"; that "thereafter, at the time [redacted] took occupancy of the subject premises in August 2010, there was no basis for the landlord to claim that the apartment was deregulated"; that "in 1987, the landlord improperly raised the rent for the subject apartment without any legal justification, from Two-Hundred and Twenty-Five Dollars ($225.00) per month to Nine-Hundred and Fifty Dollars ($950.00), which is shown on the rent registration of the subject apartment"; that "thereafter, all subsequent rent increases were based on this incorrect amount"; that "for the reasons set forth herein, the legal regulated rent for the subject apartment must be recalculated and [redacted] is entitled to the return of any rent overcharge in the amount of treble damages"; and that "[redacted] is also entitled to a two-year rent stabilized renewal lease as the apartment was never properly deregulated and remains rent stabilized."

On March 10, 2020, the agency served tenants correspondence dated March 3, 2020 on owner's counsel and requested that the owner "submit evidence of the basis for your claimed lawful deregulation of the apartment."

On August 20, 2020, owner's counsel responded to the tenant's correspondence dated March 3, 2020, and the agency's March 10, 2020, Request for Additional Information/Evidence by asserting that based on the recent decision by the Court of Appeals in Regina Metro. Co., LLC v. New York State Div. of Housing & Community Renewal, 35 NY3d 332 (2020), it is unquestionably clear that the tenancy is exempt from Rent Regulation since the commencement of respondent's tenancy on August 8, 2010 and therefore, the tenant is not entitled to a lease renewal; that the owner has previously provided the apartment registration which supports the subject apartments lawful deregulation; that the apartment registration demonstrates that the last registered rent as of April 1, 2010 was $1,946.80, which represents a 3% increase, pursuant to Rent Guidelines Board ("RGB") Order #41, above the April 1, 2009 registered rent of $1,890.10; that therefore, as of April 1, 2010, the apartment was still Rent Stabilized; that since the tenancy of [redacted] commenced on August 8, 2010 pursuant to a one (1) year lease, the application of the lawful vacancy allowance of 17%, based on RGB Order #41, to the last registered rent, resulted in a new legal rent of $2,277.76, well over the $2,000.00 DRT in effect at the time; that application of the authorized vacancy allowance resulted in the natural deregulation of the subject apartment upon the commencement of [redacted]'s tenancy pursuant to the Court of Appeals holding in Altman v. 285 W. Fourth LLC, 31 N.Y.3d 178, 75 N.Y.S.3d 465, 99 N.E.3d 858 (2018)(vacancy allowance applied to last registered rent deregulated apartment).

The owner further asserts that as a result of the New York Court of Appeals recent decision in Matter of Regina Metro. Co., LLC, the tenant's attorney's arguments have been rendered without merit; that tenant's counsel suggests that the rent increase from 2008 to 2009 was "incorrect", without producing any evidence to support such a self-serving conclusory allegation; that examination of the rent prior to the deregulation event of the tenant's vacancy lease in August 2010 is barred by Matter of Regina Metro. Co., LLC; that as set forth in Breen v. 330 E. 50th Partners, L.P., 61 N.Y.S.3d 902, 903 (1st Dept. 2017), citing Matter of Grimm v. State of N.Y. Div. of Hous. & Cmty. Renewal, 15 N.Y.3d 358, 367, 912 N. Y.S.2d 491, 938 N.E.2d 924 (2010), a mere

"sizeable increase in the apartment rent between 1990 and 1991" is not evidence to establish a fraudulent scheme to deregulate the apartment, necessary to allow examination of the rent history beyond the deregulation event; that since the apartment was continually registered as rent stabilized for the years leading up to the deregulation the tenant herein cannot establish that there was a fraudulent scheme to deregulate the unit or evade the rent laws required to go beyond the last registered rent (citations omitted); that the deregulation was due to application of the vacancy allowance at the commencement of the tenancy pursuant to Altman v. 285 W. Fourth LLC; that tenant's Counsel's argument that the rent from April 2009 to April 2010 increased from $1,890.10 to $1946.80 as a vacancy lease, even though the same tenants were still in occupancy is a dishonest argument; that as previously noted, while the 2010 registration seemingly mistakenly identifies the February 2010 lease as a "vac/lease", the actual increase taken was the 3% renewal increase in effect from October 1, 2009 through September 30, 2010 per RGB Order #41 ($1890.10 + 3% = $1946.80); that since the actual increase was proper, any error in labeling the lease is irrelevant and has no effect; that tenant's counsels assertion that the increase taken in 1987 is improper lacks merit. See Matter of Regina Metro Co., LLC; and that since the applicable vacancy increase of 17% (RGB Order #41) when applied to the last registered rent of $1,946.80 resulted in a new legal rent of $2,277.76, well over the deregulation threshold of $2000.00 in effect at the time, the apartment became exempt from rent regulation, as a matter of law; that as such, [redacted] is not entitled to a renewal lease. See Altman v. 285 W. Fourth LLC.

On September 2, 2021, the RA issued an Order denying the tenant's application and terminating the proceeding. The RA found that the evidence of record shows that the apartment was deregulated before the date on which the complainant took occupancy, and that the complainant is not entitled to a renewal lease since the subject apartment is not subject to rent regulation.

On PAR, petitioner asserts the RA's Order should be reversed in its entirety; that the RA erred in finding that the petitioner is not entitled to a renewal lease in accordance with rent regulation; that petitioner is the legal rent stabilized tenant of the subject premises due to the fact that the subject apartment was improperly deregulated on or about June 22, 2009; that, pursuant to Matter of St. Nicholas 184 Holding LLC v. New York State Div. of Hous. & Community Renewal, 872 N.Y.S.2d 693 (N.Y. Sup. Ct. 2008), any claimed individual apartment

improvements (IAIs) must be supported by at least one of the following: (a) cancelled checks contemporaneous with the completion of the work or (b) invoice receipt marked paid in full contemporaneous with the completion of the work or (c) signed contract agreement or (d) contractor's affidavit indicating that the installation was completed and paid in full; that the owner failed to provide documentation to support the alleged work; that the owner didn't even discuss the work that was allegedly completed in the subject apartment to warrant high rent deregulation; that the only documentation that the owner provided was the rent history which is a self-serving document; that the owner asserts that the apartment rent increased from $1,141.93 to $1,890.10 as of June 22, 2009; that this is an increase of $748.17; that in 1987 the owner improperly and possibly fraudulently raised the rent without any legal justification from $225.00 per month to $950.00; that this was an increase of $725.00; that hereafter, all subsequent rent increases were based on this incorrect and possibly fraudulent amount; and that the RA order should be reversed because the owner failed to provide any documents that demonstrate that work was completed in the subject apartment in 2009 to warrant high rent deregulation.

On October 20, 2021, the owner opposed the PAR by arguing that the tenant ignores applicable law starting with Matter of Regina Metro Co. LLC; that instead, without any basis whatsoever, the tenant seeks to challenge a rent increase that occurred over 34 years ago in 1987, as well as a rent increase that occurred in 2009, more than 10 years before the tenant's lease renewal complaint was filed, neither of which were deregulating events; that since neither increase resulted in deregulation and since both increases are long beyond the four (4) year statute of limitations, then neither event is subject to challenge or review pursuant to the Matter of Regina Metro Co. LLC; that the tenant's argument that the owner did not provide IAI evidence is an irrelevant "red herring" designed to distract; that, in fact, the diversionary argument presented by the tenant is designed to inflame by falsely suggesting the owner had to prove that in 2009 it made an IAI increase of $748.17; that the tenant's arguments deliberately inflates the increase by ignoring the 10-year longevity allowance of $68.52 applicable at the time plus the authorized vacancy allowance of $182.71 in February 2009; that here, the application of the authorized vacancy allowance at the commencement of [redacted]'s tenancy resulted in the natural deregulation of the apartment pursuant to Altman v. 285 W. Fourth LLC; that the last registered rent as of April 1, 2010 was $1,946.80; and that the tenancy of [redacted] resulted in a new legal

rent of $2,277.76, well over the $2,000.00 deregulation threshold ($1,946.80 + 17% vacancy increase = $2,277.76).

On November 11, 2021, the tenant interposed a reply asserting that the subject apartment was improperly deregulated pursuant to high rent deregulation on or about June 22, 2009; that consideration of events beyond the four-year statute of limitations is permissible if done not for the purpose of calculating a rent overcharge but rather, as here, to determine whether an apartment is regulated; that the owner must provide evidence of completed IAI work; that policy 90-10 demonstrates that it is mandatory to provide proof of any IAIs because this is how the DHCR confirms the costs for IAIs; that the owner failed to provide any documentation to demonstrate that work was completed in the subject apartment in 1987 or 2009 to warrant high rent deregulation; that the vacancy allowance was based on incorrect numbers; and that the increased rent allowed by the vacancy was based upon IAIs that never occurred.

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

As a first matter, in determining the regulatory status of an apartment, DHCR may look past the four-year lookback period to determine if the apartment was taken out of rent stabilization improperly. See Matter of Hargrove v Division of Hous. & Community Renewal, 664 N.Y.S.2d 767 (1st Dept. 1997)(DHCR's consideration of events beyond the four-year period is permissible if done not for the purpose of calculating an overcharge but rather to determine whether an apartment is regulated). Here, the deregulation in August 2010 (some nine years before the filing of the lease violation complaint) was examined and it was determined that the application of a vacancy increase to the legal regulated rent at that time legally deregulated the apartment.

Rent Stabilization Code §2526.1(a)(2) provides generally that rent overcharge complaints must be filed within four years of the first overcharge alleged and that the rent history of the housing accommodation prior to the four-year period preceding the filing of a complaint shall not be examined. Pursuant to the New York Court of Appeals in Grimm v. DHCR, 15 N.Y.3d 358, 912 N.Y.S.2d 491 (2010), and as codified under RSC §2526.1(a)(2)(iv), the agency may examine the rental history prior to the four-year base date to determine whether there was a fraudulent scheme to deregulate the apartment rendering

the base date rent unreliable if the tenant presents a colorable claim of fraud. The Commissioner finds that no such colorable claim of fraud was made in this case and there is insufficient evidence of a fraudulent scheme to deregulate the subject apartment. Petitioner's mere assertion of unexplained rent increases prior to the 2010 deregulation, without offering any proof of fraud, is insufficient to warrant an investigation into such increases. As found in Grimm and subsequent appellate case law, the mere increase in rent alone is insufficient to warrant a finding of a fraudulent scheme to deregulate an apartment. Given that the petitioner failed to set forth a colorable claim of fraud, events that predate the 2010 deregulation event are not reviewable. As such, the Commissioner finds that petitioner's contentions that the owner was required to substantiate pre-deregulation IAIs (that did not directly result in the rent surpassing the threshold) is without merit. The Commissioner notes that the petitioner did not produce any evidence to support disallowing improvements that were performed over a decade ago.

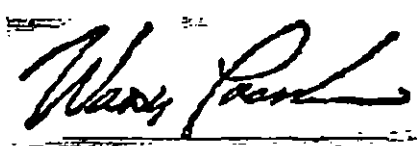
The Court of Appeals ruling in Altman v. 285 West Fourth LLC affirmed the owner's right to deregulate the subject apartment when the rent level surpassed $2,000.00 upon the 2010 vacancy.

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:

DEC 01 2021



Woody Pascal
Deputy Commissioner

State of New York
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JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE

APPEAL OF

[redacted]

PETITIONER

ADMINISTRATIVE REVIEW
DOCKET NO.: JV210049RT

RENT ADMINISTRATOR'S
DOCKET NO: IX210008RV

Owner: 917 47th., LLC/
Maimo 1 Holdings, LLC

----------X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-named tenant filed a timely petition for administrative review (PAR) of an order issued on October 5, 2021 by the Rent Administrator (RA) concerning the housing accommodation in the premises known as apartment [redacted] at 914 47th Street, Brooklyn, New York.

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 this PAR.

On December 3, 2020, the tenant filed a lease violation complaint alleging that the owner refused to offer her a renewal lease on the same terms and conditions as were contained in the expiring lease. The tenant annexed a signed renewal lease commencing March 2, 2020, which was dated November 5, 2019. The tenant stated that she received the lease on April 6, 2020 and enclosed a copy of the mailing envelope post stamped with that date.

On December 24, 2020, the owner answered that the renewal lease was mailed on time; that the tenant has not followed the previous lease in 2018 by not paying the full rent which she signed for; and that the tenant accumulated rent arrears. The owner enclosed certified proof of mailing indicating that the lease was delivered on November 8, 2019.

The RA found that the owner submitted proof of mailing which indicated that the owner offered the lease in a timely manner. The RA advised the tenant to execute the lease and return it to the owner; denied the complaint and terminated the proceeding.

On PAR, the tenant contends that she did not sign the lease because her name was missing on the lease. The lease that had both her name and her son's name on it was not received until March 1, 2020. The tenant annexed a copy of the renewal lease and Notice of Termination.

dated May 28, 2021, from the owner, stating, amongst other things, that if the tenant signs and returns the annexed lease renewal lease on or before September 30, 2021, no further action will be taken.

Having reviewed the record, the Commissioner denies this PAR.

Rent Stabilization Code §2522.5(b)(1) and §2523 require an owner to offer a tenant in writing the option of a one or two-year renewal lease. Such offer shall be made not more than 150 days prior to the end of the tenant's lease term and may be served on the tenant by mail or personal delivery. The tenant's acceptance of such offer must be returned to the owner, either by mail or personal delivery, within 60 days.

The PAR does not raise any basis to modify or revoke the RA's order which complied with the above cited law. The owner herein did timely offer the tenant a lease renewal to begin March 2, 2020. The tenant's allegation that she did not sign the lease because her name and her son's name were not on the lease is belied by copies of leases showing both names. Moreover, the owner submitted proof of mailing of the lease. As such, the RA correctly determined that the owner offered a timely lease renewal, which the tenant failed to execute and return to the owner.

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

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

ISSUED:

DEC 01 2021

WOODY PASCAL
Deputy Commissioner

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

----------X

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted]

PETITIONERS

----------X

ADMINISTRATIVE REVIEW
DOCKET NO.: JR910034RT

RENT ADMINISTRATOR'S
DOCKET NO: HP910010RK

OWNER: 100 Highland Assoc. LLC/
Alma Realty Co.

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-named tenants filed a timely petition for administrative review (PAR) of an order issued on June 11, 2021 by the Rent Administrator (RA) concerning the housing accommodation known as apartment [redacted] at 102 Highland Avenue, Yonkers, NY 10705.

The RA had reconsidered a proceeding under Docket Number GX910008RV which order was issued on March 28, 2019 and found that the tenants' lease violation complaint was granted on default. The reopening was due to the fact that the owner's counsel had submitted an answer to the complaint on March 15, 2019, which the RA failed to consider. Notice of Proceeding to Reconsider the Order was served on the owner and the tenants on April 26, 2019, and the case was assigned Docket Number HP910010RK.

Upon reopening, the RA considered the owner's response which alleged that the apartment is not subject to the Emergency Tenant Protection Act (ETPA) and therefore not under the jurisdiction of this agency based on the fact that it had been converted to a cooperative on September 18, 1987. The owner offered the Cooperative Offering Plan filed on January 2, 1987 and a notice declaring the plan effective September 18, 1987. The RA found that the subject apartment was part of the offering plan and that complainant had taken occupancy subsequent to the date that the plan was declared effective. Therefore, pursuant to ETPA §8625a(14)(i), the apartment was not subject to rent regulation.

On PAR, the tenant [redacted] contends that prior to her husband [redacted]'s death on February 13, 2021, he had resided in the subject apartment before July 7, 1993, and therefore the

apartment is subject to the ETPA. The tenant annexed a copy of a bank statement for [redacted] listing the subject apartment as his address from 1989; copies of DHCR orders granting prior lease violation complaints filed in 2009, 2017 and 2019; copies of cashed checks dated February 2021 to June 2021 for rent for the apartment and parking space; and copies of ETPA leases and apartment registrations. Additionally, tenant [redacted] states that, on February 1, 2019, she and her husband were present for a harassment hearing at DHCR offices and that her husband offered to purchase the apartment. She states now that she is willing to buy the apartment.

In opposition to the PAR, the owner asserts that the building became cooperative in 1987, and as a result of the amended ETPA section, apartments rented on or after July 7, 1993, were removed from rent regulation. The owner asserts that there is no evidence that [redacted] resided in the subject apartment prior to July 7, 1993. The owner states that evidence produced at the harassment hearing suggested a different tenant was registered in the subject apartment in 1991 and 1992, and that the while the tenant's mother was registered in the unit in 1992-1993, there is no evidence to support this. The owner contended that the evidence pointed to the fact that [redacted] resided at [redacted] (an adjoining building) and did not reside with his mother before July 7, 1993. The owner states that while [redacted] made an offer to purchase the subject apartment at the time of his mother's occupancy, this made him only a "contract vendee" and did not impart a landlord-tenant relationship; that in September 1993 [redacted] sought a refund of his deposit; that a Court action brought during this time referred to him as a licensee; and that the first lease he signed in the subject apartment was in December 2000.

In reply, the tenant [redacted] stated that [redacted] had paid rent for the apartment and had been given rent stabilized leases. She also repeated the contentions raised on PAR and added that she has offered to buy the apartment.

Having reviewed the record , the Commissioner denies the PAR.

It is not disputed that the subject apartment is part of a co-op complex known as 100-110 Highland Ave, Yonkers, NY 10705, which includes the addresses of 100, 102,104, 106, 108 and 110 Highland Ave, a series of connected buildings. Under ETPA §8625(14)(i), housing accommodations contained in buildings owned as cooperatives or condominiums, which are or become vacant on or after July 7, 1993, are exempt from rent regulation. Here, the building became a Co-op effective September 18, 1987, and, as a result, apartments that became occupied on or after July 7, 1993 were not subject to rent regulation.

The Commissioner rejects the contention that [redacted] was a tenant in the subject apartment prior to July 7, 1993. Agency records and evidence brought out at the agency harassment hearing belie this contention. While there is evidence that [redacted]' mother resided in the unit, there is no evidence that he resided with her prior to July 1993, and indeed the record evidence proves that he lived in apt. [redacted] at [redacted] during the relevant period. There was never a lease in [redacted]' name for the subject apartment prior to July 1993

and he was never registered as the tenant of record prior to that time. The fact that he made an offer to purchase the apartment did not afford him tenancy rights, and even the Court referred to him as a licensee, not a tenant, during the holdover proceeding. The fact that [redacted] became the tenant of record after July 1993, was registered as such and was offered rent regulated leases does not confer rent regulation upon his tenancy when the law stated that the unit was not regulated after July 7, 1993.

As such, the Commissioner finds that the tenant failed to raise any basis to modify or revoke the RA's findings that the subject apartment was not regulated after July 7, 1993; and that the order under review was in all respects correct when issued.

THEREFORE, in accordance with the Emergency Tenant Protection Act, 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 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

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

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

There is no other method of appeal.

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

----X

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: JV410001RK
[redacted] PETITIONER	RENT ADMINISTRATOR'S DOCKET NO.: IS410058RV

----X OWNER : 44th Street Development, LLC

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The tenant filed a timely petition for administrative review (PAR) of an order issued on January 22, 2021 by the Rent Administrator (RA) concerning the housing accommodation known as [redacted] at 550 West 45th Street, New York, NY 10036.

The tenant complained that the owner had failed to offer a renewal lease on the same terms and conditions as the expiring lease and had taken away a utility credit which was part of her original lease term.

The owner responded by providing a copy of the Regulatory Agreement between the owner and the Department of Housing Preservation and Development (HPD) and the Inclusionary Regulatory Agreement between the owner and 45 Street HDFC and the New York State Housing Finance Agency, dated June 29, 2011. The owner asserted that the subject apartment is a one-bedroom Low Income Housing Tax Credit (LIHTC) unit leased to households with an income at or less than 50% of the Area Medium Income (AMI), which is the NYC area median gross income determined by the US Department of Housing and Urban Development (HUD). The collectible and legal regulated rents were established pursuant to the Regulatory Agreement. Pursuant to the Regulatory Agreement, if the tenant was paying their own utility costs, the owner was required to deduct a "utility allowance" from the gross rent to determine the net maximum rent the LIHTC tenant could be charged. HPD annually publishes a chart that shows the maximum LIHTC net rents after utility allowances have been applied. The owner stated that the initial rent established for the unit was $994 per month, with a monthly utility allowance of $72.00 resulting in a maximum net rent of $1066.00 per month. The owner argued that since the tenant was paying $761.94 per month, which is below the maximum net allowable rent, the unit complied with the Regulatory Agreement. The owner argued that any additional 'utility credit" in the initial lease - - and subsequent renewal leases - - that was applied to the legal rent was never intended as a permanent credit. The owner asserted that it continues to

deduct the annual utility allowance as determined by HPD from the legal rent for the unit; that any additional utility credit was not intended as permanent; and that the owner will continue the tenant's preferential rent.

The RA terminated the proceeding because the premises is owned by a Housing Development Fund Corporation (HDFC) and is subject to a Regulatory Agreement and not subject to the jurisdiction of DHCR.

On PAR, the tenant asserts that the owner is not an HDFC; that DHCR has jurisdiction over rent stabilized leases; that the utility credit has been deducted from the preferential rent since the inception of the tenancy; and that the owner may not discontinue such credit in a renewal lease.

The owner opposed the PAR by reasserting the contentions in its answer in the RA proceeding.

Based on the above record, the Commissioner, on September 7, 2021, denied the tenant's PAR under Docket Number JN410025RT.

On September 10, 2021, the tenant requested reconsideration of the said order asserting that she was not served with the owner's opposition to her PAR.

The Deputy Commissioner granted the tenant's request by an order issued on October 4, 2021, directing that the matter be reopened with a new docket number (herein: JV410001RK) and that the owner's opposition be served on the tenant.

On October 6, 2021, DHCR served to the owner and the tenant a Notice of Proceeding to Reconsider Deputy Commissioner's Order and Opinion.

On November 4, 2021, DHCR served the tenant with the owner's opposition to the PAR.

On November 22, 2021, the tenant filed a reply stating that the NYC Department of Housing Preservation and Development (HPD) does not establish the rent on her apartment; that any rent adjustment is only authorized by the Rent Guidelines Board; that the alleged Regulatory Agreement does not preclude the owner from using incentives to lower the rent; that DHCR, not HPD, enforces the Rent Stabilization Code (RSC); and that the HPD's Regulatory Agreement is clear in stating that the owner must abide with the RSC.

The Commissioner, upon reconsideration, and having reviewed the record, including the tenant's reply, finds that the PAR is denied.

The subject apartment is part of the Gotham West Apartments Project, a complex of four residential buildings containing mixed moderate, low income and other affordable housing units.

PAR Docket Number JV410001RK

The collectible and legal regulated rents for all apartments in the complex, including the subject apartment, were established pursuant to a series of Regulatory Agreements between the owner and 45 Street HDFC and the New York State Housing Finance Agency and HPD. The initial rent for the subject apartment was based on the tenant's income and the setting of the annual "utility allowance" for the apartment is determined by HPD.

Based on the foregoing, the Commissioner finds that the subject apartment's legal and collectible rent is governed by HPD under the Regulatory Agreement and is not under the jurisdiction of DHCR. Moreover, the Regulatory Agreement addresses the issue of the utility allowance which is revised annually by HPD. Therefore, petitioner's contention that the owner impermissibly removed a "utility credit" from the rent in a recent renewal lease is not subject to a determination by DHCR. The lease term complained of is intrinsically tied to the rent amount, an issue that DHCR may not determine. The fact that the owner filed annual registrations with DHCR and gave tenants rent stabilized leases, as required by the Regulatory Agreement, does not confer jurisdiction over the rent and the utility credit onto DHCR.

It is noted that identical PAR determinations within the same complex as the subject apartment were issued under Docket Numbers IS410005RT, IS410006RT, IS410007RT, IT410008RT, and IT410014RT, and which are final agency determinations.

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

ORDERED, that the PAR denied, and the RA order is affirmed.

ISSUED:

DEC 29 2021

WOODY PASCAL
Deputy Commissioner

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