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

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IN THE MATTER OF THE ADMINISTRATIVE APPEALS OF	ADMINISTRATIVE REVIEW DOCKET NOS. KQ410023RT KQ410017RO
[redacted] (Tenant) David Ellis Real Estate, L.P. (Owner)	RENT ADMINISTRATOR'S DOCKET NO. HM410022RP
	VARIOUS TENANTS

PETITIONERS

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ORDER AND OPINION DENYING PETITIONS FOR ADMINISTRATIVE REVIEW

The above-named tenant and owner both filed timely petitions for administrative review (PARs) of an Order issued on April 14, 2022, by a Rent Administrator (RA) concerning the housing accommodation known as 19 East 16th Street, Apartment [redacted], New York, NY 10003, wherein the RA found that the premises are subject to rent stabilization, and that the owner must therefore offer the tenant a rent stabilized renewal lease. Because the tenant's and owner's PARs address the same RA's Order and the same facts and law, they have been consolidated for disposition herein.

In his PAR, the tenant alleges that the RA's Order at issue must be modified to set the stabilized rent for the apartment and to determine an overcharge; that this Agency has treated this proceeding as an overcharge proceeding for more than a year, as shown by Notices from this Agency requesting submissions to the Overcharge Unit, by Agency stamps indicating "Overcharge", by the fact that overcharge arguments and arguments about fraud were made in the underlying matter, by the fact that the owner never objected to overcharge arguments made by the tenant, by Judge Lobis' reference to overcharge in her decision remanding the matter, by the fact that the remanded proceeding was deemed by this Agency to be an "Overcharge/Lease violation", by the fact that the tenant made submissions entitled "Overcharge", and by the fact that this Agency has never stated that the matter is not an overcharge case after

treating it as an overcharge case; that fraudulent deregulation requires setting the rent by using the default formula or by using the last reliable registered rent and freezing that rent; and that overcharges, treble damages, and attorney's fees should be refunded to the tenant.

The tenant filed an amended PAR, additionally alleging that the RA found that the complaint initiating this proceeding cannot be processed as an overcharge because an overcharge form was not filed; that this finding elevates form over substance and is inconsistent with the underlying record in which there are multiple references to an overcharge complaint made by the Agency itself, in which the complaint was processed by the Overcharge Bureau, in which the tenant made arguments regarding overcharge while the owner did not argue at any point that the complaint could or should not be processed as an overcharge proceeding, and in which DHCR has treated the proceeding as an overcharge from the beginning; that the fact that the tenant did not provide a complete rental history for the years at issue does not change the fact that DHCR processed the complaint as an overcharge proceeding; that, when the owner alleged substantial rehabilitation, this Agency requested more information, and it should have likewise requested the rental history from the tenant necessary to process his overcharge issues; and that it is arbitrary and capricious to treat the owner and tenant differently, giving the owner the opportunity to make its case while not affording the tenant the same consideration.

Finally, the tenant alleges that it is Agency practice to ask for invoices to prove attorney's fees, and that it is arbitrary to request such invoices in some cases and not in others; that the owner engaged in a fraudulent scheme to deregulate the apartment, as shown by its claiming substantial rehabilitation of the premises which never occurred; that, despite numerous requests from DHCR for proof of such rehabilitation, the owner did not provide such proof; that the owner placed alleged relatives in the tenant's apartment, and in other apartments in the premises, so as to set unlawful rents upon their vacaturs and thereby unlawfully deregulate the apartment(s) at issue; and that, given this evidence of fraud, the RA's Order should be modified to set the base date rent by using the default formula, or in the alternative by using the last reliable registered rent of $312.00 per month, to award the tenant overcharges, and to award the tenant treble damages and attorney's fees.

The owner filed a response, alleging that the tenant filed a

complaint requesting an order directing the owner to issue a rent stabilized lease, which was exactly what was issued in this case; that the complaint and complaint form filed by the tenant are limited to this issue; that two PAR Orders in analogous cases denied the appeals of the tenants in those cases in which overcharges were requested, finding that the relief was limited to the direction that stabilized leases be given them; that it is only fair that such proceedings, including the instant proceeding, be limited to the scope of the complaint, which is the scope of notice given the owner; that the owner was not on notice of overcharge issues, such as how to calculate the rent or potential treble damage penalties, by the filing of the lease renewal complaint initiating this proceeding; that it would be prejudicial to subject the owner to overcharge claims when it has not been properly notified of such claims at any time during the instant proceeding; that, simply because the same Unit at DHCR processes lease violation and overcharge proceedings does not "prove" that the instant matter is an overcharge proceeding; that the use of the boilerplate phrase "in order to process your overcharge complaint" in an Agency Request for Information does not transform the lease renewal complaint into an overcharge complaint; that the use of this language was simply error by the Agency case processor; and that the owner did not waive any objection, as it has never been notified that an overcharge complaint has been filed.

The tenant then filed a response to the owner's submission, repeating allegations made on PAR, and further alleging that the owner was in fact on notice that the tenant was claiming rent overcharge, as he submitted a spreadsheet of rent payments provided by the owner itself; that the owner has not indicated how it would have responded differently if it had "known" that the tenant was seeking a refund of illegal rents he was charged; that, if DHCR does not make a determination of the proper legal rent, the owner will be unable to provide the tenant with a proper renewal lease, as ordered by the RA; that the owner's reliance on the two above-referenced PAR Orders is unpersuasive, as neither decision involves a situation such as the instant case in which the Agency recognized the complaint as both a lease violation and an overcharge complaint; that neither of these PAR decisions precludes the Agency from processing a lease renewal complaint as an overcharge complaint; that, contrary to the owner's allegation, the instant proceeding has multiple documents stamped "overcharge unit", which means that there is a unit that handles overcharge complaints and said unit processed the complaint herein; and that the matter must be remanded to determine the legal rent and the amount of the overcharges.

In its PAR, the owner alleges that the Order at issue incorrectly concludes that the premises is stabilized; that the apartment is not stabilized because the tenant moved in after the J-51 tax benefits had expired and the premises were not stabilized prior to inception of those benefits; that the premises were stabilized solely as a result of the J-51 benefits; that, therefore, any tenant taking occupancy after expiration of those benefits was and is not stabilized; that the Order at issue does not address this fact; that the certificate of occupancy (CO) issued in 1978 for both the subject building and for [redacted] refers to "Alt No. 1157/73", which is the substantial rehabilitation that resulted in the J-51 benefits being granted and in the premises becoming subject to stabilization; that the Conciliation Appeals Board (CAB) issued a decision referring to this work, and holding that post-benefit tenants in such premises are not stabilized; that the subject premises is included in this holding as it appears on the same CO as [redacted], shares the same Alt No., and shares all the same systems which were replaced under said Alt No.; that this Alt No. was the substantial rehabilitation that required temporary stabilization, and applies to the subject premises as well as to [redacted] as they share the same systems, all of which were replaced pursuant to said rehabilitation; that old tax lot 13 does not exist in the Department of Finance (DOF) records, which is clear proof that any J-51 benefits applied to both buildings; and that the DOF determined an assessed valuation for both buildings under tax lot 17, which the CAB has already ruled received the J-51 benefits.

The owner further alleges that the J-51 Certificate of Approval shows that the benefits resulted from a change of the premises from an SRO building as set forth in the 1921 CO to a class A residential building; that the subject building went through the same process as the neighboring [redacted] building, as mentioned in the CAB decision; that both buildings went through the same process because they are both set forth on the J-51 Certificate of Approval; that both buildings are set forth in the CO, which was issued under the Alteration filing at DOB which was the work forming the basis of the J-51; that both buildings were converted to Class A occupancy, both received the same J-51 Certificate of Approval, both are set forth on the same CO, and both were to become exempt from stabilization upon expiration of the J-51 benefits as they both only became subject to stabilization because of those benefits; and that the work, as confirmed by the CAB Order, was sufficient to make both buildings exempt from stabilization, except for the J-51 benefits.

The owner also alleges that the tenant has not offered any evidence or argument rebutting the CAB decision finding substantial rehabilitation for [redacted] and all other buildings that were included in the work in question, rebutting the fact that tax lot 17 received J-51 benefits for the substantial rehabilitation, or rebutting the fact that both [redacted] and 19 East 16th Street (the premises at issue herein) are situated on tax lot 17; that the tenant has not shown that the benefits did not expire prior to his occupancy; that, therefore, the unrebutted evidence of record shows that the premises were only made subject to stabilization following a substantial rehabilitation, because of the receipt of J-51 tax benefits, and that said benefits and rent stabilization expired prior to the tenant's occupancy; that the challenged Order does not address high rent vacancy deregulation of the apartment as an alternate basis for deregulation should the premises somehow be found subject to stabilization; that the first rent charged after a long owner occupancy, as attested to by the owner's brother-in-law, was $1,920.00 per month pursuant to the "[redacted] tenancy" (prior tenant), which is uncontested; that, therefore, the legal rent for the next tenant, the complainant herein, was above the $2,000.00 per month threshold for deregulation at that time; that the vacancy rent for the complainant was above that threshold, and the apartment was therefore deregulated (citing PAR Order HR410026RT); and that, under the applicable provisions of the Rent Stabilization Law and Code, the owner was allowed to charge the first tenant after owner occupancy an agreed upon first rent (citing PAR Order HP210028RT).

Finally, the owner alleges that there was a succession of family members in the apartment over 12 years, none of whom paid rent, as conceded by the tenant below; that the tenant's allegation that family members of the owner were moved to other units at [redacted] to deregulate those units is unsupported by facts; that the owner did not need to do this because, pursuant to the CAB decision issued in 1982, those units, and all units in the premises, were made subject to stabilization solely due to receipt of J-51 tax benefits; that said decision found that units [redacted], [redacted], [redacted] and [redacted] were some of the units at issue in the CAB Order, which confirmed that deregulation would occur upon expiration of the J-51 benefits; that the owner did not need to establish owner-occupancy of these units, as they became deregulated after June 30, 1991, just like the subject apartment; and that the owner clearly used apartment [redacted] for family members for 12 years, and the first rent following vacatur of the last family member warranted a first rent, which legitimately supported a high rent vacancy deregulation upon occupancy of the

next tenant.

The tenant answered the owner's PAR, alleging that he has established that his apartment was rent regulated prior to the owner obtaining a J-51 tax benefit; that the owner has repeated that the building was substantially rehabilitated and therefore not subject to rent stabilization without offering any substantive evidence to support its claim; that the owner relies on a J-51 certification as evidence that the subject building was converted from an SRO to a class "A" multiple dwelling and therefore must have been substantially rehabilitated; that the J-51 certification includes a box that is to be checked when there is a conversion from an SRO to a class "A" multiple dwelling, and that box is not checked on the J-51 certification at issue; that the tenant has submitted a copy of a 1970 Certificate of Occupancy (C of O) which specifically refers to the subject building as a Class "A" multiple dwelling; and that the owner has never refuted this evidence or other evidence showing that the building had been rent-controlled.

The tenant further alleges that, contrary to the owner's assertion, it is not entitled to a first rent after a temporary exemption because the first tenant after such exemption was not offered a rent stabilized lease (citing Gordon); that the owner's allegation that relatives were placed in apartments at [redacted] shows there was no fraudulent scheme to deregulate because the apartments were deregulated upon expiration of the J-51 tax benefit is belied by the fact that those apartments were registered as temporarily exempt long after expiration of the J-51 benefits; that evidence strongly demonstrates a fraudulent scheme to deregulate the subject apartment, other apartments in the subject building, and possibly apartments in [redacted] as well; and that DHCR must therefore fully investigate the rental history of both buildings to determine the proper regulatory status of all apartments in both buildings.

The owner responded to the tenant's answer, alleging that the Certificate of Eligibility for J-51 benefits supports the owner's contentions in that it sets forth that the address for the building receiving the benefits was [redacted], a/k/a 19-23 East 16th Street, which is prima facie proof that 19 East 16th Street received the benefits; that the CAB decision confirms that those benefits were the result of substantial rehabilitation; that this document and the CAB decision, ignored by the tenant, make it clear that the premises were substantially rehabilitated and therefore warrant exemption from rent regulation; that the owner used the

apartment for relatives both during the J-51 benefit period and after expiration of those benefits; that the registration submitted by tenant shows a temporary exemption as early as April 1, 1990, while the benefits did not expire until June 30, 1991; and that only when a rent paying tenant took occupancy was there an event that triggered deregulation of the apartment, and an exit registration was then filed pursuant to such deregulation.

The owner also alleges that, prior to such event, registration was required; that the owner did not waive any rights by virtue of such registration, as stabilization cannot be created by waiver or by registration; that the owner registered the apartment as temporarily exempt from 1990 to 2001 because no rent paying tenant resided in the unit until the "[redacted] tenancy"; that, while Gordon may have prevented the "[redacted] tenancy" from being considered deregulated, it did not prevent the owner from charging a first rent to the [redacted], no matter the type of lease used; that the "[redacted] tenancy" occurred years before the Gordon decision overturned years of DHCR practice and precedent holding that a first rent (following a long-term owner occupancy) that was higher than the deregulation threshold deregulated the unit; that, even if Gordon means that the [redacted] were not deregulated, the vacancy rent increase when the [redacted] vacated would have resulted in a rent above the threshold for deregulation, so the subject tenant would have been deregulated anyway; and that, therefore, either by virtue of the substantial rehabilitation, or by virtue of the high rent vacancy deregulation, the apartment is not stabilized.

The owner then made another submission in which it repeats prior allegations, and additionally alleges that PAR Order JR410033RT held that, even though the first tenancy after temporary exemption in that case should have had a stabilized lease, the subsequent tenancy was at a rent higher than the threshold for deregulation and the apartment in that case was therefore deregulated upon said subsequent vacancy; that said PAR Order states that there was industry-wide confusion at that time during which DHCR was allowing owners and tenants to set first rents following temporary exemption, even if such rents were not set forth in a stabilized lease, as long as the rent agreed upon was less than the threshold for deregulation; and that said PAR Order further established that the registration from 1999 to 2004 in that case was prima facie proof of the temporary exempt status of the apartment in that case during that time, which entitled the owner to a first rent upon termination of such exemption in 2004.

The owner also alleges that the instant case is exactly like the case addressed by PAR Order JR410033RT because the unit in the instant case was registered as temporarily exempt from 1990 to 2001, then it was leased to the [redacted] at a rent of $1,920.00 per month, an amount under the threshold for deregulation and which rent was not subject to challenge following the long-term exemption, then the unit was leased to the complainant at a legal rent above the threshold for deregulation; that, as in proceeding JR410033RT, the owner herein was just following agency and industry understanding and policy in treating the "[redacted] tenancy" as deregulated, but was in any even entitled to charge a first rent of $1,920.00 per month to the [redacted]; that like proceeding JR410033RT, the owner thereafter leased the unit to the complainant, and, with the applicable vacancy rent increase, the legal rent exceeded the threshold for deregulation; and that the instant proceeding must follow the precedent of proceeding JR410033RT and find that the complainant's tenancy deregulated the apartment.

The tenant replied to the owner's submissions, alleging that he filed a FOIL request and obtained letters submitted by the owner on August 10, 2022 and September 1, 2022 that were not forwarded to his attorney; that no submission of any party should be considered unless forwarded to the opposing party for review; that the letters at issue only repeat prior arguments while citing the wrong rental history; that the owner's August 10, 2022 letter cites to a rent history that is not the history of the subject apartment but is, rather, the history for the adjacent building; that said incorrect history is to support the owner's argument about an alleged temporary exemption; that the owner's comments have no relation to the rent history of the subject apartment, which was stabilized prior to the J-51 benefits and therefore remained stabilized after expiration of those benefits; and that the owner's reliance on irrelevant and inapplicable rent history renders its entire submission invalid.

The Commissioner, having reviewed the entire record of both proceedings, finds that both PARs must be denied.

Regarding the tenant's PAR, it is noted that the RA's Order that is the subject of the instant PARs was the result of a remand to the RA by the Commissioner on February 5, 2019, under PAR Order Docket Number GU410005RP. Said PAR Order was the result of an Order of the Supreme Court, NY County, issued on November 28, 2016, which Order remanded the matter to this Agency "for development of

a record and further consideration of the rent stabilization status of 19 East 16th Street." The scope of the instant proceeding is therefore confined to the "development of a record and further consideration of the rent stabilization status of 19 East 16th Street." Accordingly, the only issue herein is the rent stabilization status of the apartment, as mandated by the Supreme Court Order and issues of rent overcharge or of attorney's fees may not be addressed in this proceeding. Moreover, the original complaint filed herein was one for lease violation and the RA order that is the subject of this PAR specifically noted that the tenant could file a rent overcharge complaint, which, to date, the tenant has not done.

Regarding the owner's PAR, a review of the record shows that apartments in the subject building were subject to rent control in the 1950s, while a DOB document, dated December 1, 1970, states that the subject building has six "Class "A"…(6 Apts.)".' The J-51 benefits referred to by the owner were approved by Certificate of Approval dated April 30, 1979, and while said Certificate does reference the subject building, as correctly pointed out by the tenant, said Certificate has boxes under "Type of Improvement", and only the box for "Commercial to "A" Alteration" is filled in, while the box stating ""SRO" to "A" Alteration" is not filled in and therefore does not apply. Accordingly, the owner's allegation that there was a substantial rehabilitation of the subject premises, converting SROs and/or lofts to Class "A" apartments, and that such conversion was a substantial rehabilitation warranting deregulation of the subject building, is not persuasive and any rehabilitation was from commercial to residential and did not affect the pre-existing regulated apartments.

While the CAB decision referenced by the owner does find that a rehabilitation that changed the status of housing accommodations took place in [redacted], it is clear from the above-referenced documentation/evidence that such rehabilitation did not occur in the subject building. Further, there is nothing in the record to show that any J-51 benefits were granted as a condition of any rehabilitation. Rather, the CAB decision shows that [redacted] became rent-regulated pursuant to receipt of such benefits, and, while the subject building appears to have also received such benefits, it was subject to rent regulation prior to receipt of the J-51 benefits for the reasons set forth above. Accordingly, the apartment at issue was regulated prior to receipt of the J-51 benefits, the building in which the apartment is located was not rehabilitated in a way that would warrant

deregulation of the building or of its apartments, and the subject apartment therefore remained rent-regulated after expiration of the J-51 benefits (as found by the RA's Order at issue).

The owner argues that, even if the apartment has not been deregulated on any other basis, it has been deregulated by virtue of high rent vacancy deregulation. The owner alleges that the apartment "was registered as TE (Temporarily Exempt) from 1990-2001", that the unit was then rented to the [redacted] "at a rent of $1920", and that the apartment was subsequently "leased to the complainant, and the rent increase from the "[redacted] tenancy" brought the legal rent to an amount more than the then deregulation threshold of $2000." However, a review of the record reveals that the apartment was registered as occupied by [redacted] from 1984 until 1992, was then registered as "J-51 Expired" in 1993 and was not registered thereafter because it was an "Exempt Apartment - Reg Not Required".

The record also reveals that [redacted], the prior managing agent for the owner, swore out an affidavit attesting that the apartment was owner-occupied until July 28, 2005, after which the owner offered [redacted] and [redacted] a non-stabilized lease at a monthly rent of $2,000.00 per month. The record also contains a fully executed copy of said lease setting forth a rent of $2,000.00 per month. Further, said lease states, in clause 40, that the premises are "...not subject to the provisions of Rent Stabilization Law (sic) or any other Regulations or Control...". According to the owner's allegations, the next tenancy was the tenancy of the complainant. The record contains no lease after the above-referenced [redacted] lease until the lease signed by the complainant and the owner, which lease began September 1, 2008, was at a rent of $2,206.00 per month, and which included the same clause 40 as the above-referenced [redacted] lease stating that the premises are not subject to rent regulation.

Accordingly, while the allegation of the owner, as supported by the [redacted] affidavit, is that the premises were temporarily exempt due to owner-occupancy, the registration history does not support this statement. Nonetheless, even if there was a temporary exemption due to owner-occupancy, and the owner had a right under then applicable Rent Stabilization Code §2526.1(a)(3)(iii) to a first rent after such exemption ended, that first rent had to be a rent-stabilized rent, as set forth in the RSC and as conceded by the owner. Here, the first rent after the alleged temporary exemption was not a rent stabilized rent, was pursuant to an

explicitly unregulated lease, and was in fact at a rent that met the then threshold of $2,000.00 per month for high rent vacancy deregulation (contrary to the owner's allegation that said rent was $1,920.00 per month and therefore under said threshold). It is therefore established that the first rent of the subsequent tenant, the complainant herein, was not a rent-stabilized rent, was pursuant to an explicitly unregulated lease, and was at a rent that was over the threshold for deregulation. Pursuant to AEJ 534 E. 88th v NYSDHCR, 150 NYS3d 92 (1st Dept. 2021), when a previously temporary exempted "apartment was never properly treated by any owner as rent-stabilized, it could not have been removed from rent-stabilization based on high-rent vacancy deregulation." In the instant case, the subject apartment was never treated by the owner as rent-stabilized after the alleged temporary exemption, as explained above, so it could not have been high rent vacancy deregulated.

PAR Order JR410033RT, cited by the owner, states that, at certain times of industry-wide confusion around the issue of setting rents and high rent deregulation after a temporary exemption, "this Agency was allowing owner and tenants to set first rents after temporary exemptions even if such rents were not set forth in a rent stabilized lease, as long as such agreed upon rent was less than the threshold for deregulation, which it was in [that] case." PAR Order JR410033RT found that the rent of the tenant after the tenant who paid such first rent (meaning the tenant after the tenant who took occupancy immediately after the exemption) was over the then threshold and therefore the apartment was deregulated when such second tenant took occupancy in that case. In the instant case, however, the record shows that the first tenant after the alleged temporary exemption paid a rent that met the then threshold for deregulation, which is different from the facts in JR410033RT in which subsequent deregulation was allowed because the first agreed upon rent after the exemption in that case was less than the threshold for deregulation. Therefore, even if there was a temporary exemption prior to the "[redacted] tenancy" because the apartment was never treated as rent stabilized thereafter, pursuant to AEJ, it could not be deregulated, and PAR Order JR410033RT does not apply.

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

ORDERED, that the petitions for administrative review are denied.

ISSUED:

JAN 18 2023

WOODY PASCAL
Deputy Commissioner

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

Right to Court Appeal

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

There is no other method of appeal.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL (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 REVIE
DOCKET NO.: KV410041RT

RENT ADMINISTRATOR'S
DOCKET NO: KP410046RV

OWNER: Ponte Equities Inc.

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ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

The above-named tenant filed a timely petition for administrative review (PAR) of an order issued on September 26, 2022 by the Rent Administrator (RA) concerning the housing accommodation in the premises known as apartment [redacted] at 49 Beach Street, New York, NY 10013.

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 April 20, 2022, the tenant filed a lease violation complaint stating that he is currently paying a preferential rent (PR) of $861.01 per month; that he questioned the claimed Legal Regulated Rent (LRR) of $1,644.07 per month on his fully executed one-year lease which began May 1, 2021; that he is questioning now the offered lease to begin May 1, 2022, with the LRR of $1,668.73 for a one year renewal; and that under the Housing Stability and Tenant Protection Act (HSTPA) of June 14, 2019, his monthly (PR) of $861.01 should be permanent.

In answer, the owner asserted that the parties reached a settlement in Civil Court in 2010 wherein each side was represented by counsel; that the tenant relocated to the subject apartment pursuant to said stipulation; that the Court stipulation set the LRR; that the tenant would initially pay a PR of $550.00 per month beginning May 1, 2010; that said PR was subject to annual guideline increases; that, in addition, said PR was subject to $200.00 incremental increases until the LRR was achieved; that once the LRR and PR had reached the same amount the tenant would pay the LRR; that the Stipulation of Settlement was an arm's length transaction; that the current renewal lease offer to the tenant merely abides by what the tenant and his lawyer agreed to in a comprehensive settlement; and that while the HSTPA was enacted in 2019, the parties rights and obligations were set in this 2010 Court Settlement.

In the order under review, the RA found that the issues involved have been resolved in a court of competent jurisdiction.

On PAR, the tenant contends that his PR must continue as per HSTPA; that under W. Side Marquis v. De Jourdan, 2022 NYLJ Lexis 898 (Civ Ct., New York County 2022), HSTPA supersedes the stipulation of settlement; and that the stipulation is void because increases to his PR can only be set forth by the NYC Rent Guidelines Board.

The PAR is granted.

The Commissioner finds that pursuant to the case law cited by petitioner, HSTPA supersedes the private settlement by the parties. Under HSTPA, the owner must base future rent increases on the PR from the expiring lease.

Even were it found that the stipulation was not superseded by HSTPA, the owner was still not permitted to end the PR in the May 2022 renewal lease. Based on the expiring lease from 2021, the PR of $861.01 had not reached the level of the LRR ($1,644.07), and therefore the owner could not yet charge the tenant the LRR as per the stipulation.

The RA order is revoked, and the owner must offer a renewal lease which includes the PR of $861.01 plus applicable guideline increases. The LRR may also, pursuant to HSTPA, be preserved and increased in future renewal leases, but not charged to the tenant.

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

ISSUED:
JAN 23 2023

WOODY PASCAL
Deputy Commissioner

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

Right to Court Appeal

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

There is no other method of appeal.

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

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: KU610013RT
[redacted]	RENT ADMINISTRATOR'S DOCKET NO: IR610020RV
PETITIONER	OWNER: Livingston Management

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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 12, 2022 by the Rent Administrator (RA) concerning the housing accommodation in the premises known as apartment [redacted] at 1260 Leland Avenue, Bronx, NY 10472.

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

In the order under review, the RA found that on June 25, 2020, the tenant filed a lease violation complaint alleging that the owner failed to provide a signed copy of the renewal lease. The owner responded that an executed copy of the renewal lease was mailed to the tenant, who acknowledged receipt of the lease. The RA terminated the proceeding and noted that the tenant has an open rent overcharge complaint under Docket Number HV610081R.

On PAR, the tenant contends that she did not receive the fully executed renewal lease until August 10, 2022 which is beyond the 30-day time-frame required by the regulations. She contends that she filed other lease violation complaints in 2022.

The PAR is denied.

The renewal lease at issue was dated March 1, 2020 with a commencement date of July 1, 2020. The lease was executed by the tenant on April 28, 2020 and by the owner on June 22, 2020. A copy of the USPS Certificate of Mailing shows that the owner sent the executed lease to the tenant on July 2, 2020. Given that the only issue in this case was whether the owner furnished the fully executed lease, the RA correctly concluded that it had been sent. The tenant's contention that the lease was not mailed until August 2020 - - and by implication that the rent increase should not start until sometime thereafter - - is an issue of possible overcharge and will

be addressed in that proceeding which is pending.

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

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

ISSUED:

JAN 31 2023

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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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

SJR 16,966

ADMINISTRATIVE REVIEW
DOCKET NO.:KV410003RP

[redacted]

RENT ADMINISTRATOR'S
DOCKET NO: ES410086RV

PETITIONER

OWNER : 559 WEST 156 BCR, LLC

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ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

The above-named tenant filed a petition for administrative review (PAR) of an order issued by the Rent Administrator (RA) on August 17, 2018 concerning the premises 559 West 156th Street, [redacted] New York, New York.

On August 1, 2016, the tenant filed a lease violation complaint which was assigned Docket Number ES410086RV. The tenant alleged that she moved into the subject apartment with her parents in 2007 and that the owner was refusing to offer her and her father a renewal lease following expiration of the previous lease they signed from July 1, 2014 to June 30, 2016.

The owner answered that the parents voluntarily entered into an agreement to change apartments and that the subject apartment was not rent-controlled.

In reply, the tenant stated that she and her parents moved from a rent-controlled unit into the subject apartment on October 1, 2007 pursuant to an agreement and an initial lease. The agreement provided that the parents were moving from a rent-controlled unit into a free market apartment in consideration of a $4,300 cash payment and a guaranteed monthly rent of $541 for their entire tenancy. The tenant asserted that her parent's rent-controlled status should carry over from the previous apartment pursuant to Capone v. Weaver, 6 N.Y.2d 307 (1959) and that she has a right to succeed to the apartment following the death of her father in 2016 (her mother previously died in 2014). The tenant asserted that she is disabled and meets the one-year co-occupancy requirement for a disabled person as evidenced by the July 1, 2014 lease extension

and her father's death in 2016. The tenant further asserted that the agreement was not wholly voluntary; that the parents did not understand that they would be losing their rent-controlled rights; and that the owner benefitted by moving the parents to a smaller apartment and then converting the old apartment to a doctor's office and then back to an apartment with a rent above the deregulation threshold. In sum, the tenant argues that the agreement benefitted the landlord to the detriment of the parents and was not wholly voluntary.

The RA issued an order terminating the proceeding upon finding that the subject apartment is not under the Rent Stabilization Code (RSC) and that the parents voluntarily vacated their apartment 2007 and had not retained their previous rent-controlled status into the current apartment.

The tenant filed a PAR which was originally docketed under Docket Number GU410036RT. On PAR, the tenant contends that the subject apartment is rent-controlled because her parents did not voluntarily move from their former rent-controlled unit and that said move benefitted the owner. The tenant relies on Capone and a similar line of cases.

The owner opposed the PAR, and the tenant filed a reply both of which were considered by the Commissioner.

The PAR was denied on July 12, 2019.

Thereafter, the tenant challenged the PAR order in an article 78 proceeding in New York Supreme Court. On March 9, 2020, Justice Carol R. Edmead issued a Decision and Order remitting the matter to DHCR for further proceedings.

On October 6, 2022, DHCR served the parties' respective counsel with Notice of Proceeding to Reconsider Order under new Docket Number KV410003RP.

Having reconsidered the record upon court remit, the Deputy Commissioner now grants the PAR.

Under both RSC §2520.13 and New York City Rent Control Regulation §2200.15, an agreement to waive the tenant's rights under rent regulation is void unless it is based on a negotiated settlement between the parties, with the approval of DHCR or a court or where a tenant is represented by counsel. Outside of these narrow confines, courts have consistently disallowed a tenant's waiver of regulatory rights. Here, there is no evidence that the agreement was part of a settlement, that the parents were represented by counsel or that the agreement was approved by this agency or a court of competent jurisdiction. Under these circumstances, the Commissioner finds that

any claimed waiver by the parents of their rights and protections under the rent control laws are void.

Moreover, the Capone case requires that the agency conduct a factual inquiry into the circumstances of a tenant's surrender of a rent-controlled apartment for an unregulated one. Admittedly, the Commissioner made no such factual inquiry in the original PAR order and relied solely on the terms of the 2007 Agreement. The facts in this matter demonstrate that the surrender of the rent-controlled unit was not wholly voluntary, and that the owner benefitted from the parents' move. Indeed, the transfer came at the request of the owner that the parents move to a smaller apartment on a higher floor. The tenant asserted, which assertion was not disputed, that the owner then converted the former rent-controlled unit to a doctor's office and then back to an apartment with a rent that exceeded the deregulation threshold. This increase in rent and the subsequent deregulation of a former rent-controlled apartment represents a direct benefit to the owner which resulted from the parents' moving. Furthermore, there is no evidence that the agreement herein sufficiently informed the parents of the rent-control rights that they were forsaking or the implications that moving into a "free-market apartment" had for themselves or family members. See 91 Real Estate Assoc. LLC v. Eskin, 999 N.Y.S.2d 882 (NY App. Term 1st Dept. 2014)(landlord's failure to adduce any competent countervailing proof as to the cause or circumstances surrounding tenant's relocation results in tenant's rent-stabilized status transferring to the new apartment). The Appellate Term concluded that there was no distinction between rent stabilization and rent control involving intra-building relocations such as the one herein. See also Fuentes v. Morningside Twin Co., N.Y.L.J., 4/12/2000, p.29, c.2 (Sup. Ct. NY Co. 2000).

Based on the foregoing, the Commissioner finds that tenant's parents retained their rights as rent-controlled tenants into the subject apartment. Moreover, given the unchallenged evidence that the tenant, as a disabled person, resided with her father one year prior to his death (as is also evidenced by her name on the two-year lease extension from July 1, 2014 to June 30, 2016), the Commissioner finds that she has succession rights to the subject rent-controlled apartment. The rent for said apartment should be based on $541 per month.1

1 Based on a review of DHCR records and orders, the owner's applications for rent-controlled Maximum Based Rent (MBR) increases for 2016-2017 (DR422308BR), 2018-2019 (FR422218BR) and 2020-2021 (HR421337BR) were denied.

THEREFORE, in accordance with the relevant rent regulation laws and regulations, it is

ORDERED, that the petition for administrative review be, and the same hereby is, granted, and that the Rent Administrator's order be, and the same hereby is, revoked.

ISSUED:

FEB 08 2013

WOODY PASCAL

Deputy Commissioner

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

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: KV210002RT
[redacted]	RENT ADMINISTRATOR'S DOCKET NO: KO210089RV
PETITIONER	OWNER: DRIGBY CORP.

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

Petitioner timely refiled a petition for administrative review (PAR) of an order issued on July 12, 2022 by the Rent Administrator (RA) concerning the housing accommodation known as apartment [redacted] at 853 Driggs Ave., Brooklyn, NY 11211

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

On or about March 30, 2022, the petitioner filed a lease violation complaint alleging that he moved into the subject apartment on July 2, 2020 and that the owner was refusing to renew his lease which expired June 30, 2022.

The owner answered that petitioner was not the tenant of record on the expiring lease; that [redacted] was the tenant of record; that she passed away during the term of the July 2020 renewal lease; that the owner only learned of petitioner after [redacted] passed away when he informed the owner that he was the son of the tenant of record and was seeking succession rights; that the owner did not believe that petitioner even occupied the subject apartment; and that the owner reviewed the succession request and concluded that petitioner did not qualify for succession rights based on the fact that he did not reside with the tenant of record for two years before her passing. The owner asserted that it determined that petitioner maintained his primary residence in New Windsor, New York based on his driver's license, vehicle registration and voting record.

On May 26, 2022, DHCR requested that petitioner provide the death certificate, documents proving occupancy for two years prior to the death of the tenant of record, birth certificate, utility bills, rent checks/receipts, tax returns, school or medical records and state

photo ID.

On July 12, 2022, the RA denied the complaint and terminated the proceeding based on the petitioner's failure to provide the requested documentation to prove succession rights.

On PAR, petitioner contends that he submitted all necessary documentation by hand to DHCR on June 7, 2022. Petitioner submitted a copy of DHCR's request for information which was date stamped June 7, 2022 at 10:20am in the Office of Public Information at Gertz Plaza along with documentary evidence on succession. The documents included a Social Security Medicare Drug Plan Costs, dated April 2, 2022, addressed to petitioner at the subject apartment; a birth certificate in Spanish; death certificate of [redacted] dated January 8, 2022; Con Ed bill, dated May 31, 2022, addressed to petitioner at [redacted] postal money order dated May 3, 2022 for [redacted] in the amount of $340.52; petitioner's driver's license valid until May 7, 2025 at the address [redacted]; Health First insurance records addressed to petitioner at the subject apartment; 2009, 2020 and 2021 tax returns for petitioner with his address being the subject apartment; 2020, 2021 and 2016 W-2s addressed to petitioner at the subject apartment; a Kings County Juror questionnaire dated May 2015 for petitioner at the subject apartment; Con Ed bill, dated October 3, 2022, addressed to petitioner at the subject apartment; National Grid bill, dated July 1, 2022, addressed to petitioner at [redacted] and Chase bank records.

The owner opposed the PAR by arguing that the documents submitted do not prove succession rights.

In reply, petitioner states that he is a senior citizen who is only required to prove co-habitation for one year prior to his mother's death on January 8, 2022; that his driver' license has the address of his daughter at [redacted] because his daughter pays for the automobile insurance policy in exchange for his taking care of his three grandsons; and that the informant on the death certificate has no bearing on a succession claim.

Based on the record and all submissions, the Commissioner denies this PAR.

While the records purportedly delivered to DHCR offices by hand on June 7, 2022 were not included in the RA file, the Commissioner will consider them on PAR given that the first page was date stamped by the agency's Office of Public Information.

The evidence submitted by petitioner fails to prove that he resided with his mother in the subject apartment for one year prior to her death. The tax returns and W-2s alone do not prove the residency requirement. This is particularly the case where the petitioner's driver's license is addressed at his daughter's home in [redacted] where he admittedly cares for his grandchildren. Furthermore, the utility bills for the subject apartment are not dated one year prior to the death of petitioner's mother and some are addressed to another location ([redacted].

[redacted]. Given that no succession is proven, a renewal lease need not be offered to petitioner.

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

ISSUED:

FEB 14 2023

WOODY PASCAL
Deputy Commissioner

State of New York
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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: KX410027RO
Sierra Capital Group, LLC	RENT ADMINISTRATOR'S DOCKET NO: KT410077RV
PETITIONER	TENANT: [redacted]

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner - owner filed a timely petition for administrative review (PAR) of an order issued on December 14, 2022 by the Rent Administrator (RA) concerning the housing accommodation known as apartment [redacted] at 1906 Third Avenue, New York, NY 10029.

The RA found that on August 10, 2022, the tenant filed a lease violation complaint stating that the owner refuses to offer a renewal lease after the last lease expired on July 31, 2022; and that although DHCR served the owner with the complaint on August 25,2022, the owner failed to answer. As such, the RA directed that the owner offer the tenant a lease renewal.

On PAR, the owner contends that it sent a response in the RA matter on September 16, 2022 via USPS certified mail with tracking number 7021 1970 0000 6596 7323; that it was delivered on September 21, 2022; that the last executed lease renewal on file expired on 7/31/2020; that the lease renewal was offered to the tenant as evidenced in the tenant's complaint; that the tenant refused to sign that renewal and has crossed out the dates and entered his own dates with a lease commencing August 1, 2022; and that it has no issue in offering a lease with a commencement date of August 1, 2022, but in order to do so, the tenant should execute the previous lease from August 1, 2020 to July 31, 2022. The owner asserts that the tenant purposefully did not execute that lease because the tenant is trying to "skip" two years of rent increases.

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.

The evidentiary record does not contain an answer from the owner as alleged on PAR. The Commissioner also notes that the owner did not submit proof that the purported answer was delivered to DHCR on September 21, 2022, as alleged. Therefore, the owner's allegations raised

for the first time on PAR will not be considered under the long-standing scope of review doctrine. Under Section 2529.6 of the Rent Stabilization Code, review on PAR shall be limited to facts or evidence before the RA. Moreover, even were the allegations to be considered, the tenant's complaint had annexed a fully executed lease for the term August 1, 2020 until July 31, 2022. The tenant is cautioned not to alter the dates or percentage rent increases on any future lease offered by 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:

MAR 07 2019

WOODY PASCAL
Deputy Commissioner

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