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

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: IV430015RO
ANDIAMO REALTY LLC	
PETITIONER	RENT ADMINISTRATOR'S DOCKET NO.: HP430126OM

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal against an order issued on September 16, 2020 by the Rent Administrator concerning the housing accommodations known as 500 W 165th Street, New York, NY 10032, which granted the owner's application for a rent increase based on the installation of major capital improvements (MCIs), to wit: gas repiping test and gas repiping. In granting the owner's MCI application, the Rent Administrator determined the approved rent increase based on the provisions of the Housing Stability and Tenant Protection Act of 2019 (HSTPA).

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

The owner-petitioner requests a reversal of the order and claims, in substance, that because the subject MCI application was filed in April 2019, prior to the June 2019 enactment of the Housing Stability and Tenant Protection Act (HSTPA), the application of HSTPA to the MCI application was impermissibly retroactive; that the retroactive application of HSTPA to the MCI application violates the owner's due process right and substantially reduced the amount of rent increases the owner is entitled to receive under the law in effect when the MCI application was filed; that HSTPA Part K does not provide for retroactive application of its provisions, and that the New York Court of Appeals in Regina Metropolitan Co., LLC v. DHCR held that changes to rent overcharge calculations in the HSTPA may not be applied retroactively and must be governed by pre-HSTPA law; and that had the Rent Administrator issued an order prior to June 14, 2019 enactment of HSTPA the MCI increases would undoubtedly have been based on the pre-HSTPA law.

The Housing Stability and Tenant Protection Act of 2019 (HSTPA) reformed several important aspects of New York's framework of rent laws, including the MCI rent increase application process at issue herein. In pertinent part, Part K of HSTPA amended the MCI-related sections of the Rent Stabilization Law (New York City Administrative Code § 26-501, et seq.) and the City Rent & Rehabilitation Law (New York City Administrative Code § 26-401, et seq.)—New York laws governing rent stabilized and rent controlled apartments located in New York City—by introducing new changes into both statutes, effective "immediately".

The Commissioner finds no error of law or fact in the Rent Administrator's determination of the owner's MCI application below.

The MCI proceeding at issue began when the owner filed the subject MCI application with DHCR in April 2019, seeking approval of a rent increase for the building's rent regulated apartments. As stated above, Part K of HSTPA took effect immediately on June 14, 2019 while the subject MCI application was still pending, making the changes contained in the HSTPA provisions, including the provisions of Park K applicable to the owner's the MCI application. Accordingly, the Rent Administrator determined the owner's MCI application pursuant to the provisions of HSTPA, including the provisions of Part K of the HSTPA which requires that approval MCI costs shall be subject to the reasonable cost schedule, that any MCI rent increases shall be collectible only prospectively and be amortized over twelve years, that the increases shall be limited to a 2% yearly cap, and that the increases shall be temporary and shall be removed thirty years from its effective date.

The owner does not dispute or seek to amend the MCI costs approved by the Rent Administrator but argues in the instant appeal proceeding that applying Part K of HSTPA's MCI-related amendments to the pending MCI application below had an unconstitutional retroactive effect, and substantially reduced the amount of MCI rent increase it (owner) would have received under the pre-HSTPA law in effect when the MCI application was filed.

The owner cites the 2020 New York Court of Appeals decision, Regina Metropolitan Co., LLC v. DHCR, 35 N.Y.3d 332 (2020), in support of this claim. In Regina, the Court of Appeals held that certain overcharge calculation provisions amended by Part F of HSTPA increased an owner's financial liability for past illegal conduct and, therefore, could not be applied by DHCR retroactively to pending overcharge proceedings. However, the Court expressly limited its review of HSTPA to specific overcharge amendments found within Part F. As noted above—a separate section of HSTPA, Part K, relates to MCI proceedings. The owner-petitioner herein seeks to analogize the Regina Court's narrow finding on Part F to the subject MCI proceeding by claiming that Part K had the same or similar unconstitutional retroactive effects on the owner below.

After reviewing the owner's claim, the Commissioner finds that no such unconstitutional retroactive effect occurred in the proceeding below.

In Regina, the Court of Appeals used a three-part analysis derived from the U.S. Supreme Court case of Landgraf v. USI Film Prods, 511 US 244 (1994), to determine whether or not Part F of HSTPA had an impermissible retroactive effect. The court stated that—absent clear legislative intent to the contrary—a new statute should not be applied to events preceding its enactment if "(1) it would impair rights a party possessed when he acted, (2) increase a party's liability for past conduct, or (3) impose new duties with respect to transactions already completed, thus impacting 'substantive' rights. On the other hand, a statute that affects only 'the propriety of prospective relief'. . .has no potentially problematic retroactive effect even when the liability arises from past conduct." 35 N.Y.3d at 365 (citations omitted).

In the instant proceeding, the owner-petitioner has failed to show that any such impermissible retroactive effects occurred below. On the contrary, as merely an applicant for a potential MCI rent increase still pending approval from the Rent Administrator, the subject owner did not: (1) possess a legal right to an MCI rent increase; (2) bear any increase in liability for past conduct as a result of the MCI amendments enacted by HSTPA; or (3) have any new duties imposed on them with respect to transactions already completed, in that the owner's duties under the already-executed MCI contract remained unchanged.

The Commissioner notes that the same analogy between the overcharge and MCI sections of HSTPA was reviewed by the U.S. District Court for the Southern District of New York in Building and Realty Inst. Of Westchester & Putnam Counties, Inc. v. New York, 2021 U.S. Dist. LEXIS 174535. As in the instant

proceeding, the District Court reasoned in BRI that Regina's conclusions on the overcharge provisions of should not be extended to the MCI provisions of Part K. Specifically, the court stated that "the MCI changes in the HSTPA make it so that 'increases shall be collectible prospectively' and thus [do not result in] impermissibly retroactive legislation." 2021 US Dist. LEXIS 174535, at *69 n.25.

Similarly, the Queens County Supreme Court recently stated in Richmond Hill 108 LLC v. DHCR, Sup Ct, Queens County, Oct. 6, 2022, Leverett, J., index No. 728474/2021, that "[an owner's] MCI application filed prior to the passage of HSTPA did not entitle [the owner] to an automatic rent increase . . . [t]he change in the MCI formula had only prospective effect which have been found to be constitutionally permissible." Richmond Hill at 5, 6. The court also upheld DHCR's assessment that Part K of HSTPA was meant to apply to pending MCI applications, stating: "[DHCR's] application of Part K was consistent with the statutory construction and language of the legislature to apply HSTPA to MCI proceeding pending at the time of enactment." Id. at 5.

Regarding the claim that it is not the legislative intent to apply the provisions Part K of HSTPA to pending MCI application, a review of Part K of the HSTPA reveals that the application of the MCI amendments to the owner's pending MCI rent increase request was clearly mandated by the text of the statute, as the legislature was explicit in its intent to apply the MCI amendments immediately upon enactment of the new law in June 2019. Section 18 of Part K specifically states, in connection with the MCI amendments, that "This act shall take effect immediately[.]" In contrast, separate sections of the HSTPA state that certain amendments shall only apply to new proceedings commenced after the HSTPA went into effect. Part M, for example, which includes amendments related to leases and lease renewals, states that "This act shall take effect immediately and shall apply to actions and proceedings commenced on or after such effective date [. . .]." The omission of this phrase from Part K is presumed to be intentional and purposeful; if the legislature had meant for the new MCI rules to apply only to MCI applications filed on or after the HSTPA's June 14, 2019 effective date, the language found in Part M would have been employed in § Section 18 of Part K.

The claim that the owner has been "penalized" by an undue agency delay in processing the application, and that pre-HSTPA law should therefore be applied in this case, is also without merit. The courts have determined that "administrative delay will not defeat the agency, absent a showing that the delay was willful or a result of negligence." Estate of Goldman v. DHCR, 706 N.Y.S.2d 381, 382 (1st Dept. 2000). The petitioner in the proceeding at hand has not shown that the Administrator's delay in processing the application was willful or the result of negligence.

For the reasons stated above, the Commissioner finds that the MCI amendments contained in Part K of the HSTPA—including the new provision for calculation of MCI rent increases were not unjustly retroactive and were properly applied to the owner's pending MCI application during the proceeding below. As a result, the Commissioner finds no error in the Rent Administrator's order.

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

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

ISSUED: APR 13 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
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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.: KQ110006RT

RENT ADMINISTRATOR'S DOCKET NO.: JU110002OM

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely refiled an administrative appeal against an order issued on February 22, 2022 by the Rent Administrator concerning the housing accommodations known as 41-46 50th Street, Queens, NY, which granted the owner's application for a rent increase based on the installation of a major capital improvement (MCI), to wit: new windows.

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

The tenant-petitioner, who resides in apartment [redacted] of the subject premises, requests a reversal of the order and alleges: (1) no evidence was provided to support the expiration of the useful life of the prior windows; (2) no evidence was provided to support the need to replace all windows, as opposed to remedying any defects; and (3) in the event that the useful life of the prior windows did not expire, a waiver was required from this agency, and tenant-petitioner was unable to verify if such waiver was granted.

A review of the record below shows that, on September 21, 2021, the tenant-petitioner was served with a "*Notice to Tenant of MCI Rent Increase Application*," and given an opportunity to comment on the MCI rent increase request. The record shows that on November 18, 2021, a tenant of apartment [redacted], identified as [redacted], objected to the application "for other reasons" and requested an additional 60 days to obtain representation and respond to the Notice. Thereafter, neither [redacted] nor the tenant-petitioner, submitted specific reasons for objecting to the MCI application, nor was additional correspondence, information, or documentation submitted. Therefore, the record reflects that the tenant-petitioner did not submit an answer to the MCI application while the MCI application was pending before the Rent Administrator. Fundamental principles of the administrative appeal process and applicable sections of the Rent Stabilization

Code prohibit a party from raising issues on appeal which were not raised below. Accordingly, the Commissioner is constrained to foreclose consideration of the issues raised by the petitioner in this appeal proceeding.

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

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

ISSUED: APR 25 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
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.: KO430001RT, KO430024RO

[redacted] and [redacted] Tenants
&
206 WEST 104 ST. LLC, Owner

PETITIONERS

RENT ADMINISTRATOR'S DOCKET NO.: GU430033OM

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ORDER AND OPINION DENYING PETITIONS FOR ADMINISTRATIVE REVIEW

The petitioners timely filed Petitions for Administrative Review (PARs) against an order issued on January 31, 2022 by the Rent Administrator concerning the housing accommodations known as 200-206 West 104th Street, New York, NY, which granted the owner's application for a rent increase based on the installation of a major capital improvement (MCI), to wit: elevator upgrading. In partially granting the owner's MCI application, the Rent Administrator applied all amendments to the MCI program that went into effect on June 14, 2019 pursuant to the Housing Stability and Tenant Protection Act of 2019 (HSTPA), including an updated amortization rate; new provisions related to the collectability of MCI rent increases; and the application of the Reasonable Cost Schedule published by DHCR in accordance with HSTPA.

The Commissioner notes that the above-referenced tenants and owner of the subject premises filed PARs regarding the same MCI. The Commissioner deems it appropriate to consolidate these petitions for a uniform disposition since they pertain to the same order and involve common issues of law and fact.

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

The tenant-petitioners assert on appeal, in substance, that the entire elevator was not replaced, and thus the MCI should not have been granted. The tenant-petitioners claim that the floor of the elevator cab was not replaced; the outer elevator doors on all seven (7) floors were not replaced; and the elevator doors do not align with the inner doors because they were not replaced.

In response to the tenant-petitioners, the owner asserted that the elevator upgrading in the subject premises warranted an MCI rent increase, and the tenants' services claims were not a bar to the grant of the MCI.

In addition, the owner filed its own appeal of the MCI rent increase order. The owner-petitioner, represented by counsel, requests a modification of the order, claiming that because the subject MCI application was submitted in September 2018 prior to the enactment of HSTPA, a grant of the subject application based on the language of the new statute, specifically the Reasonable Cost Schedule, was impermissibly retroactive. The owner-petitioner asserts that the impermissible retroactive application of HSTPA violated the owner-petitioner's right to due process under the federal and state constitutions.

It is the established position of the Division that upgrading of a building's elevators to include new controllers and selectors, or an electronic dispatch overlay system, constitutes a major capital improvement for which a rent increase may be warranted. A review of the record in the instant proceeding shows that the owner complied with all requirements for an MCI rent increase for an elevator upgrade. The Commissioner notes that the installation of new elevator cabs is not required for an elevator upgrade to qualify for an MCI rent increase. The Commissioner also notes that issues related to the outer doors of the elevators are not a basis for revoking the MCI increase.

Here, because the owner properly substantiated the MCI application with submission of the requisite supporting documentation, including copies of the contract, contractor's affirmation and cancelled checks evincing payment for an elevator upgrade, the Rent Administrator did not err in granting the MCI rent increase. It should also be noted that, on February 1, 2018, the NYC Department of Buildings (DOB) signed off on the elevator work at issue, which supports a finding that the elevator was in proper working order following the completion of the elevator upgrade. As to any problems concerning the elevator's operation due to a lack of proper ongoing maintenance, the tenants of the subject premises may file with this agency Applications for Rent Reduction Based upon Decreased Services, if conditions so warrant.

As for the owner-petitioner's claims, HSTPA reformed several important aspects of New York's framework of rent laws, including the MCI rent increase application process at issue herein. In pertinent part, Part K of HSTPA amended the MCI-related sections of the Rent Stabilization Law (New York City Administrative Code § 26-501, et seq.) and the City Rent & Rehabilitation Law (New York City Administrative Code § 26-401, et seq.), – New York laws governing rent-stabilized and rent-controlled apartments located in New York City.

The owner cites a 2020 New York Court of Appeals decision, Regina Metropolitan Co., LLC v. DHCR, 35 N.Y.3d 332 (2020), in which the Court held that certain overcharge calculation provisions amended by Part F of HSTPA increased an owner's financial liability for past illegal conduct and, therefore, could not be applied by DHCR retroactively to pending overcharge proceedings. However, the Court expressly limited its review of HSTPA to specific overcharge amendments found within Part F. As noted above – a separate section of HSTPA, Part K, relates to MCI proceedings. The owner-petitioner herein seeks to analogize the Regina Court's narrow finding on Part F to the subject MCI proceeding by claiming that Part K had the same or similar unconstitutional retroactive effects on the owner below.

After reviewing the owner-petitioner's claim, however, the Commissioner finds that no such unconstitutional retroactive effect occurred in the proceeding below.

In Regina, the Court of Appeals used a three-part analysis derived from the U.S. Supreme Court case of Landgraf v. USI Film Prods, 511 US 244 (1994), to determine whether or not Part F of HSTPA had an impermissible retroactive effect. The court stated that – absent clear legislative intent to the contrary –a new statute should not be applied to events preceding its enactment if "(1) it would impair rights a party possessed when he acted, (2) increase a party's liability for past conduct, or (3) impose new duties with respect to transactions already completed." 35 N.Y.3d at 365.

In the instant proceeding, the owner-petitioner failed to show that any such impermissible retroactive effects occurred below. On the contrary, as merely an applicant for a potential MCI rent increase still pending approval from the Rent Administrator, the subject owner did not: (1) possess a legal right to an MCI rent increase; (2) bear any increase in liability for past conduct as a result of the MCI amendments enacted by HSTPA; or (3) have any new duties imposed on them with respect to transactions already completed, in that the owner's duties under the already-executed MCI contract remained unchanged.

The Commissioner notes that a similar analogy between the overcharge and MCI sections of HSTPA was recently reviewed by the U.S. District Court for the Southern District of New York in Building and Realty Inst. of Westchester & Putnam Counties, Inc. (BRI) v. New York, 2021 U.S. Dist. LEXIS 174535. As in the instant proceeding, the District Court reasoned in BRI that Regina's conclusions on the overcharge provisions of Part F should not be extended to the MCI provisions of Part K. Specifically, the court stated that "the MCI changes in the HSTPA make it so that 'increases shall be collectible prospectively' and thus [do not] result in impermissibly retroactive legislation", since "a statute that affects only 'the propriety of prospective relief' has no potentially problematic retroactive effect [...]." 2021 US Dist. LEXIS 174535, at *69 n.25.

Similarly, the Queens County Supreme Court recently stated in Richmond Hill 108 LLC v. DHCR, Sup Ct, Queens County, Oct. 6, 2022, Leverett, J., Index No. 728474/2021, that "[an owner's] MCI application filed prior to the passage of HSTPA did not entitle [the owner] to an automatic rent increase... [t]he change in the MCI formula had only prospective effects which have been found to be constitutionally permissible." Richmond Hill at 5, 6. The court also upheld DHCR's assessment that Part K of HSTPA was meant to apply to pending MCI applications, stating: "[DHCR's] application of Part K was consistent with the statutory construction and language of the legislature to apply HSTPA to MCI proceeding pending at the time of enactment." Id. at 5.

For the reasons stated above, the Commissioner finds that the MCI amendments contained in Part K of the HSTPA—including the requirement that the Division create a Reasonable Cost Schedule—were not unjustly retroactive as they applied to the owner's pending MCI application.

The Division's Reasonable Cost Schedule was also properly applied to the owner's claimed MCI costs during the proceeding below. The Commissioner notes that the Division allows owners to seek waivers of the Reasonable Cost Schedule. Such waiver applications must demonstrate that the claimed MCI costs underlying are either: (1) not identified in the Reasonable Cost Schedule or are necessarily and appropriately priced higher than those costs listed in the Reasonable Cost Schedule; or (2) use of the Schedule will cause an undue hardship, and the use of alternative procedures are appropriate to the interests of the owner, the tenants, and the public. See 9 NYCRR § 2522.11. In either case, the waiver application must demonstrate that the costs of the improvement were accurate and reasonable under the circumstances.

The owner in the instant case failed to submit a waiver request regarding the Reasonable Cost Schedule in response to DHCR requests for such waiver during the proceeding below (the owner instead maintained that such requests for a waiver were unconstitutional for the same retroactivity reasons already denied by the Commissioner above). As a result, the Commissioner finds no error in the Rent Administrator's decision to grant the MCI increase for the work performed at the subject premises limited to the costs listed for elevator upgrades in the Division's Reasonable Cost Schedule.

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

ORDERED, that these petitions be denied and that the Rent Administrator's order be affirmed.

ISSUED:
APR 26 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
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Right to Court Appeal

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There is no other method of appeal.

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO.: FU630011RT

VARIOUS TENANTS OF 1005 JEROME AVENUE; [redacted]

RENT ADMINISTRATOR'S DOCKET NO.: DR630101OM

PETITIONERS

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioners timely filed administrative appeals against an order issued on August 17, 2017, by the Rent Administrator concerning the housing accommodations known as 1005 Jerome Avenue, Bronx, NY, which granted the owner's application for a rent increase based on the installation of major capital improvements (MCIs), to wit: re-piping and building-wide kitchen & bathroom modernization.[1]

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

The tenant-petitioners, a group of various tenants from the subject premises represented by counsel, request a reversal of the order and claim, in substance, that the Rent Administrator erred in granting the MCI rent increase because the tenants did not consent to the improvements in their apartments. The tenants also state that the Rent Administrator should have exempted apartment [redacted] from the rent increase as no improvements were completed in that unit, despite the tenant's willingness to provide access.

In addition, the tenant-petitioner from apartment [redacted] filed a separate individual appeal raising several complaints as to the condition of the new bathroom and kitchen in her apartment. The tenant also states that "repairs/renovations" to correct the abovementioned issues are "still in

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[1] The Commissioner notes that prior to the enactment of the Housing Stability and Tenant Protection Act (HSTPA) of 2019, it was the Division's policy that a building-wide kitchen and bathroom modernization project qualified as an MCI. After the enactment of HSTPA such building-wide kitchen and bathroom modernizations no longer qualify as MCIs. The subject MCI rent increase order based, in part, on a building-wide kitchen and bathroom modernization project was issued prior to the enactment of HSTPA.

process." The tenant also states that the permanent increase of $151.50 is over the allowable 6% increase based on her monthly rent.

The owner responds and states in substance that the tenant of [redacted] consistently denied access for repairs to address the abovementioned kitchen and bathroom issues. Similarly, the owner responds that the tenant of apartment [redacted] consistently denied access to the owner's agents for the purpose of completing the kitchen & bathroom modernization MCI, and that multiple attempts at gaining access were made by the contractor, the site manager and the superintendent.

It is the established position of the Division that failure to provide access does not exempt a tenant from paying a rent increase for an MCI. Accord: Docket No. KI430108RT. Regarding the condition of apartments [redacted] and [redacted] the record shows that a DHCR inspection was conducted on January 5 and January 6, 2017. Defects related to the MCI were found in multiple apartments, including [redacted] As for apt. [redacted] the inspection report stated that the unit's kitchen and bathroom had not been renovated. In response to the inspection report, the owner submitted work orders signed by several tenants of the building and photographs evidencing that the conditions reported by the inspector in the various apartments had been corrected. The owner also submitted its own report ("corrections report") to document the progress of correcting issues cited in the DHCR inspection. The owner noted that the tenant [redacted] did not allow access to the apartment. Similarly, the owner stated in substance that it had made numerous attempts to access [redacted] that access was not provided for the installation of the bathroom grab bars. In both cases the owner states it would continue with further attempts to access the apartments for the purpose of performing or correcting the MCI work.

The record also shows that the owner supported the abovementioned statements with copies of certified letters sent to the tenants of both [redacted] and [redacted] requesting access on specific dates and advising the tenants to contact the owner if alternative arrangements were needed to complete the work. The Commissioner therefore finds that the owner substantiated its attempts to access apartments [redacted] and [redacted] for the purpose of performing or correcting the subject kitchen and bathroom modernization MCI. The petitioners, however, have failed to substantiate their opposing claims that access was in fact granted or that no workers appeared. Accordingly, the Commissioner finds that the Rent Administrator was correct in not exempting apartments [redacted] and [redacted] from the rent increase. The Commissioner further notes that the tenants of [redacted] and [redacted] are still entitled to request that the kitchen and bathroom modernizations be completed in their apartments, since the tenants are paying for them all the same. Accord: Commissioner's Docket No. KI430108RT.

As to the petitioners' contention that the Rent Administrator did not serve the owner's Corrections Report to tenants' counsel for an opportunity to rebut the owner's claims, the evidence of the record indicates that the petition from tenant's counsel is date stamped September 21, 2017, and that subsequent to the filing date, tenants' counsel made a FOIL request, which included copies of the Corrections Report and it was granted and satisfied by its mailing to the Legal Aid Society in the Bronx, New York on November 1, 2017. The record indicates that the petitioners have not forwarded any complaint or response to the Division after the receipt of the FOIL request. Therefore, the Commissioner finds that while the agency had remedied the due process error alleged by the tenants, the tenants have not given this agency any reason, either in its PAR, or after

the receipt of the documents, to warrant a reconsideration of the Administrator's order. Accord: Docket No. SB410043RT.

As for the remaining issues raised in the tenants' appeals, the claim that the owner did not obtain the consent of the tenants to renovate their apartments is without merit. There is no requirement that an owner obtain the prior consent of tenants for an MCI-eligible installation to qualify for a rent increase. Accord: Commissioner's Docket No. GM610008RT. Additionally, the petitioners' contention that written consent is a requirement for certain Individual Apartment Improvements (IAIs) has no bearing on the subject MCI proceeding.

The tenant-petitioner of apt. [redacted] also claims that the rent increase approved in the Rent Administrator's order violates Division policy because it exceeds 6% of her rent. The Commissioner notes that prior to the enaction of HSTPA in June 2019, the Division's 6% limitation policy referred to the collectability of the rent increase from rent stabilized apartments, not the amount of the increase itself. Accordingly, the Commissioner finds that the subject MCI order issued by the Rent Administrator in 2017 did not violate Division policy. However, the Commissioner notes that the following language from HSTPA has modified the collectability provisions related to MCI increases, which may impact the collection of the subject MCI increase from certain tenants:

> Pursuant to Section 26-511.1(a)(8) of the Rent Stabilization Law and to Section 26-405.1(a)(8) of the New York City Rent and Rehabilitation Law, the collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the laws, *for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved.*

Finally, the Commissioner notes that the tenant-petitioner of [redacted]'s complaints about the conditions of her kitchen and bathroom—including claims that that the grab bars in the bathroom were not replaced; that her personal property was damaged and destroyed during the renovations; that the water delivered to the bathroom runs cold; that the bathroom door was improperly installed; that the bathroom saddle is causing a tripping hazard; that the kitchen window security gate remains broken; that the kitchen backsplash was not replaced; and that the wall and kitchen cabinets have not been replaced—do not warrant a revocation or modification of the Rent Administrator's order, given the abovementioned finding that the tenant failed to allow access during the owner's attempts to correct all kitchen and bathroom MCI defects discovered during DHCR's January 2017 inspection.

However, this order and opinion is issued without prejudice to the tenants' rights to file with this Division an application for rent reduction based on the owner's failure to maintain building-wide and/or individual apartment services, if the facts so warrant.

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

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

ISSUED: MAY 2 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
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

[redacted]

PETITIONER

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ADMINISTRATIVE REVIEW DOCKET NO.: GM410009RT

RENT ADMINISTRATOR'S DOCKET NO.: FR410034OM

ORDER AND OPINION DENYING PETITIONS FOR ADMINISTRATIVE REVIEW

The petitioners timely filed administrative appeals against an order issued on December 5, 2017, by the Rent Administrator concerning the housing accommodations known as 131 West 80th Street, New York, NY, which granted the owner's application for a rent increase based on the installation of a major capital improvement (MCI), to wit: building wide bathroom and kitchen modernization.[1]

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

The Commissioner deems it appropriate to consolidate these petitions for a uniform disposition since they pertain to the same order and involve common issues of law and fact. The petitioner-tenant of apartment [redacted] requests a reversal and claims in substance that the renovations were not necessary; that no improvements were made to their apartment, and they should therefore be exempt from the rent increase; that the owner did not obtain written consent for the individual apartment improvement; and that the useful life of the prior kitchen and bathroom upgrading had not yet expired. The petitioner-tenant of apartment [redacted] represented by counsel, initially requested a reversal and claimed that they did not decline to have the improvements made to the subject apartment, they instead declined to relocate while the work was performed. However, the record of the instant appeal proceeding shows that the tenant of apartment [redacted] has since entered into an agreement with the owner that resulted in the completion of the subject bathroom and kitchen renovations in apartment [redacted].

[1] The Commissioner notes that prior to the enactment of the Housing Stability and Tenant Protection Act (HSTPA) of 2019, it was the Division's policy that a building-wide kitchen and bathroom modernization project qualified as an MCI. After the enactment of HSTPA such building-wide kitchen and bathroom modernizations no longer qualify as MCIs. The subject MCI rent increase order based on a building-wide kitchen and bathroom modernization project was issued prior to the enactment of HSTPA.

The owner responds and states, in essence, that the tenant of [redacted] denied access because she did not need or want the renovations, and that many attempts were made to contact the tenant of [redacted] during the MCI project and proceeding below. Regarding apartment [redacted], the owner states that work has been completed in apartment [redacted] as of July 15, 2018 and that the Rent Administrator's MCI Order should be modified to include the additional cost of said improvements.

The Commissioner denies the request brought by both the owner and tenant-petitioner of apartment [redacted] to add individual costs incurred at apartment [redacted] in 2018 (after to the MCI order was already issued) to the subject MCI rent increase. An owner is not permitted to charge or collect more than the legally regulated rent based on supplemental MCI costs that were not otherwise submitted to the Rent Administrator for review and approval in an MCI proceeding, regardless of whether or not the parties involved have agreed to such additional increase.

As for the tenant-petitioner of [redacted]'s claim that she did not give written consent for the individual apartment improvements, pursuant to the Rent Stabilization Code (RSC) and well-established law there is no requirement that an owner obtain the prior consent of tenants in order to perform an MCI or qualify for an MCI rent increase. Accord: Docket Nos.: GT630025RT and GM610008RT. To further clarify, the improvements were performed as part of a building-wide MCI and not as Individual Apartment Improvements (IAIs), and therefore did not require the written consent of tenants in occupancy at the time for the owner to qualify for a rent increase. The tenant's claim that she did not consent to the installation thus raises no basis for revoking the Rent Administrator's order.

As for the tenant of [redacted]'s claim that she declined to have MCI work performed in her apartment because the prior installation was in good condition, and that therefore [redacted] should be exempt from the increase, the Commissioner notes that there is no MCI rent increase exemption for a tenant who declines to have the improvements performed in their apartment. Accord: Docket No. DP430034RT.

The tenant of [redacted]'s related claim that the useful life of prior kitchen and bathroom upgrades at the premises had not yet expired is also without merit. DHCR records show that there has not been a rent increase previously granted for kitchen and bathroom modernization at the building, therefore the useful life requirement for the MCI bathroom and kitchen modernization was not violated.

Finally, if the facts still warrant, the tenant of apartment [redacted] may request that the kitchen and bathroom modernizations be completed in her apartment since the tenant is paying for the improvement all the same. Accord: Commissioner's Docket No. KI430108RT.

Pursuant to Section 26-511.1(a)(8) of the Rent Stabilization Law and to Section 26-405.1(a)(8) of the City Rent and Rehabilitation Law, the collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the laws, for any

renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012, and before June 16, 2019, shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved.

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

ORDERED, that these petitions be denied and that the Rent Administrator's Order be affirmed.

ISSUED: MAY 2 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
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.: JV430045RT**
[redacted]	
PETITIONER	**RENT ADMINISTRATOR'S DOCKET NO.: IM430016OM**

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely refiled an administrative appeal against an order issued on August 20, 2021 by the Rent Administrator concerning the housing accommodations known as 42 Market Street, a/k/a 124 Madison Street, New York, NY, (the "Subject Premises") which granted the owner's application for a rent increase based on the installation of major capital improvements (MCIs), to wit: gas and water re-piping.

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

The tenant-petitioner, who resides in apartment [redacted] of the Subject Premises, requests a modification of the order, and alleges that no MCI related work was done in her apartment.

A review of the record below shows that, on December 30, 2020, the tenant-petitioner was re-served with a "*Notice to Tenant of MCI Rent Increase Application*," and given an opportunity to comment on the MCI rent increase request. The record reflects that the tenant-petitioner did not submit an answer to the MCI application while the MCI application was pending before the Rent Administrator. Fundamental principles of the administrative appeal process and applicable sections of the Rent Stabilization Code prohibit a party from raising issues on appeal which were not raised below. Accordingly, the Commissioner is constrained to foreclose consideration of the issues raised by the petitioner in this appeal proceeding.

This Order and Opinion is issued without prejudice to the tenant's rights to file reduction in service complaints with the Division, if the facts so warrant.

THEREFORE, in accordance with the relevant Rent Regulatory Laws and Regulations, it is ORDERED, that this petition be denied and that the Rent Administrator's order be affirmed.

ISSUED: MAY 10 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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There is no other method of appeal.

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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted]

PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO.: KX210003RT

RENT ADMINISTRATOR'S DOCKET NO.: KO210018OM

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal against an order issued on October 27, 2022 by the Rent Administrator concerning the housing accommodations known as 2101 Bay Ridge Parkway, Brooklyn, NY (the "Subject Premises"), which granted the owner's application for a rent increase based on the installation of major capital improvements (MCIs), to wit: elevator upgrading; a new roof; exterior/façade restoration; and a sidewalk shed.

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

The tenant-petitioner, who resides in apartment [redacted] of the Subject Premises, requests a modification of the order and alleges that the order incorrectly calculates the number of rooms in his apartment. Specifically, petitioner claims that there are two (2) rooms in his apartment, whereas the order asserts that apartment [redacted] consists of three (3) rooms.

A review of the record below shows that, on April 13, 2022, the tenant-petitioner was served with a "*Notice to Tenant of MCI Rent Increase Application*," and given an opportunity to comment on the MCI rent increase request. The record reflects that the tenant-petitioner did not submit an answer or raise any objections to the MCI application while the MCI application was pending before the Rent Administrator. Fundamental principles of the administrative appeal process and applicable sections of the Rent Stabilization Code prohibit a party from raising issues on appeal which were not raised below. Accordingly, the Commissioner is constrained to foreclose consideration of the issue raised in this appeal proceeding.

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

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

ISSUED: MAY 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

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There is no other method of appeal.

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

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IN THE MATTER OF THE ADMINISTRATIVE APPEALS OF

[redacted]

ADMINISTRATIVE REVIEW DOCKET NO.: JU430012RT

RENT ADMINISTRATOR'S DOCKET NO.: HO430105OM

PETITIONERS

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ORDER AND OPINION DENYING PETITIONS FOR ADMINISTRATIVE REVIEW

The petitioners timely filed administrative appeals against an order issued on August 6, 2021 by the Rent Administrator concerning the housing accommodations known as 11½ West 84th Street, New York, New York which granted the owner's application for a temporary rent increase based on the installation of a major capital improvement (MCI), to wit: exterior restoration.

The petitioners claim, in substance, that the approved rent increase is greater than the legal limited amount; that the Administrator's order does not acknowledge the objections to the MCI raised by the tenants and states erroneous facts regarding the scope of the MCI work and the tenants' submissions; that the timeline for the start and completion of the MCI work was inaccurately stated in the application, and the work was completed more than two years before the application was filed. Petitioner [redacted] raises a separate claim of a denial of due process, in that the Administrator's order was issued before the petitioner had been given an opportunity to review the MCI application pursuant to a FOIL request. The Commissioner having reviewed the petitioners' appeals and any and all supporting documentation, any and all statements made by affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioners' appeals do not have merit and should be denied.

The Rent Administrator properly determined the qualifying scope of the improvement and the amount of the approved costs and the rent increase. Although the petitioners correctly point out that the collection of any MCI rent increase may not exceed two percent of the rent set forth in the schedule of gross rents in any year, the Administrator's order clearly states, in Section V, that the rent increase is subject to this limit on collectability. It is noted that the two percent limitation applies only to the amount of rent increase which can actually be collected by the owner, and it is not a limit on the amount of rent increase that may be approved and granted, which is determined according to the computation shown in Section IV of the Administrator's order.

There is no basis to conclude that the Administrator failed to give due consideration to all responses and documentation submitted by the tenants; it is standard procedure for the Administrator's order to state a

generalized description of objections to the MCI raised by the tenants. It is noted that, contrary to the argument raised by the petitioners, the information forwarded to the tenants by the Administrator on March 15, 2021, contained a complete copy of the owner's September 4, 2020 submission, as received. As to the alleged errors in the facts stated in the Administrator's order, the reference to a "tenants' representative" (plural) even though in actuality only one tenant was represented by counsel is not a material error which effects the outcome of the proceeding and as mentioned above all the tenants' responses were reviewed by the Rent Administrator. The statement that "no further response was received" refers to the letter from Manhattan Legal Services received on April 2, 2021 and is accurate as written. The Administrator's description of the exterior restoration work as having been performed "over the entire front facade" is accurate under the facts of this case. The record shows that the subject building is a designated landmark, and that the entire scope of work on the front facade, including any work done on the first floor, was necessary in order to obtain the required Landmarks Commission approval of the completed project.

The petitioners' claim that the application was not filed within two years of completing the MCI work is unsupported by the record. It is noted that the Google image-capture photos submitted by the petitioners on appeal were not submitted during the proceeding before the Administrator, and this evidence is thus beyond the scope of review in this proceeding. It has been long standing DHCR policy that, for the purpose of determining the two-year limitation, the completion date of the installation is the date at which, as evidence by the documentation in the record, the MCI-qualifying work has actually been completed. In the case at hand, the documentation in the record, which includes copies of checks and bank statements evidencing payments to the contractor which performed the exterior restoration work, supports a finding that work on the exterior surfaces was ongoing up to the October 2017 completion date stated in the application. Contrary to the petitioners' claim, the removal of the scaffolding does not, in and of itself, document that restoration work on the exterior walls had been fully completed. As to the claim that the start date of the exterior work was inaccurately stated in the application, any such inaccuracy would have no effect on the outcome of the proceeding (the work, as performed, would still qualify as an MCI) and therefore would not constitute a material error warranting a revocation of the MCI.

Petitioner [redacted]'s claim of a denial of due process is without merit. The record shows that, by letter dated March 31, 2021, the petitioner requested through counsel a ninety-day extension of time to raise objections to the MCI pending receipt of a full copy of the MCI application pursuant to a FOIL request. As noted in the Administrator's order, no further response was received from the tenant, even to request an additional extension of time, prior to the issuance of the Administrator's order more than 120 days after the tenant's initial response. While the petitioner argues on appeal that the requested copy of the MCI application had not been received before issuance of the Administrator's order, the petitioner acknowledges that a full copy of the MCI application was received on September 3, 2021. Thus, any failure of due process which may have occurred in terms of providing the petitioner with an opportunity to object to the MCI application has been rectified by the fact that the petitioner has had an opportunity to do so on appeal yet has not, at any time during the pendency of this appeal proceeding, raised any substantive objections to the owner's MCI application.

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

ORDERED, that these petitions be denied and that the Rent Administrator's order be affirmed.

ISSUED: MAY 19 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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There is no other method of appeal.

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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted]

PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO.: KV110020RT

RENT ADMINISTRATOR'S DOCKET NO.: JO110023OM

OLAD: 004251

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal against an order issued on September 16, 2022 by the Rent Administrator concerning the housing accommodations known as 72-45 to 72-49 153rd Street, Flushing, NY, which granted the owner's application for a rent increase based on the installation of a major capital improvement (MCI), to wit: gas re-piping.

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

The tenant-petitioner requests a reversal of the order and claims in substance that the cost for the gas re-piping was inflated; that because the cancelled checks for payment of the work do not reference the address of the subject building, the funds thereof could have been used for the owner's other properties; that the improvement was performed without a New York City Department of Buildings ("DOB") permit or inspection; that the owner did not apply for a reasonable cost waiver and did not solicit at least three bidders to perform the work; that the Rent Administrator should have investigated the tenant's allegation of an identity of interest between the building's owner, Kew Gardens Hills LLC, the building's managing agent, A&E Real Estate Holdings, LLC, and a third entity, JW Development Holdings, LLC; that the prior gas piping had not outlived its useful life; that the total room count is inaccurate; that subject apartment [redacted] should have been included in the DHCR inspection conducted during the proceeding below; that the owner has not addressed all pending hazardous and immediately hazardous violations; and that the owner has a pattern or practice of inflating and/or misrepresenting the costs of improvements (citing to two currently pending court proceedings). The petitioner also requests documentation on Local Law 152 of 2016 and asks that an agency hearing be conducted on the matters and issues raised herein.

The petitioner first alleges that the installation's claimed cost of $165,621.00 was inflated. The Commissioner finds this claim to be unsupported by the record. DHCR policy states that in order to substantiate claimed MCI costs, an owner filing for an MCI rent increase must provide proof of such costs with all forms of documentation that are available to the owner, including: signed contract agreements and change orders; cancelled checks with related bank statements showing negotiation contemporaneous with the completion of the work or proof of electronic payment; copies of negotiated bank checks and/or

negotiated money orders made payable to the contractor; invoice receipts marked paid in full contemporaneous with the completion of the work; and/or a contractor's affidavit indicating that the installation was completed and paid in full. *See* Operational Bulletin 2017-1, Revised (January 8, 2020) – "Major Capital Improvements: Confirmation of Costs/Payments."

The record shows that the owner properly substantiated all claimed MCI costs during the proceeding below by submitting copies of a March 2018 contract proposal describing the job location as "Kew Gardens… 72-45 153rd Street & 72-49 153rd Street" and the work to be performed as "Gas Repipe" at a total proposed cost of $168,000, as well as cancelled checks with related bank statements contemporaneous with the completion of the work and equal to the sum of the contracted cost ($168,000.00). The owner also explained below that only $165,621.00 of the total $168,000.00 installation cost was submitted to DHCR for review because the owner was "not applying for the following costs: $2,379.00 in [ineligible] permit/filing fees." As such, the tenant's allegation that the cost for the gas re-piping MCI was inflated is not sufficient to refute the documentary evidence submitted by the owner to substantiate the costs.

The related claim that cancelled checks do not reference the subject building and the funds thereof could have been used for the owner's other properties is also without merit. As shown above, the documentation submitted by the owner—including a contract stating that the MCI work will be performed at the subject building, 72-45 153rd Street & 72-49 153rd Street—is sufficient to indicate that the installation took place at the subject building. Furthermore, a review of the DOB permit application for the subject MCI work (DOB Job No. 421636279) submitted as part of the owner's MCI application below indicates that the MCI contractor was permitted to perform the subject gas re-piping installation at 72-45 to 72-49 153rd Street, Queens, NY. The fact that the cancelled checks themselves do not reference the subject building's address therefore does not warrant a revocation or modification of the Rent Administrator's order.

As for the claim that the gas re-piping work was done without a DOB permit and inspection, the evidence shows that the DOB application associated with the MCI work noted above, Job No. 421636279, was approved on 5/21/2018. Moreover, the record shows a DOB Letter of Completion stating that the work was completed and signed-off on 9/07/2020, after an inspection performed by a registered architect, and as such the Commissioner finds this claim without merit.

The tenant claims that the owner failed to apply for a reasonable cost waiver and did not solicit at least three bidders to perform the work. Pursuant to Operational Bulletin 2021-1, which applies to the installation performed below,[1] the reasonable cost limit for the subject gas piping MCI is $10,100.00 per dwelling unit. With 24 units in the building, absent a waiver the owner was limited to a total approved MCI amount of $242,400.00 for the subject installation. The Commissioner therefore finds that the Rent Administrator correctly determined that the eligible-MCI amount of $165,256.00 for the subject installation was reasonable without a reasonable cost schedule waiver from the owner. For the same reason, there was no requirement for the owner to solicit at least three bidders for the work, which is only required by MCI proceedings as an element of the above-mentioned reasonable cost schedule waiver process.

[1] The Commissioner notes that a subsequent Reasonable Cost Schedule promulgated by DHCR in "Update No. 1 to Operational Bulletin 2021-1" (issued January 4, 2022) does not apply to the instant MCI installation. Said updated schedule applies only to those installations "that commenced on/or after January 1, 2022 for items that appeared in the previous cost schedule" or "[f]or improvements or installations that appear on [the updated 2022] cost schedule for the first time." The subject MCI installation commenced in 2018 and involved an item (*new gas piping*) that can be found on the prior Schedule. Operational Bulletin 2021-1 therefore applies.

The tenant's claim that the Administrator failed to investigate the tenant's allegation of identity of interest between building owner Kew Gardens Hills LLC ("KGH") and/or managing agent A&E Real Estate Holdings, LLC ("A&E"), and a third entity involved in the MCI, JW Development Holdings, LLC ("JW"), is unsupported by the record. The Commissioner notes that the tenant-petitioner raised the same identity of interest claim in an earlier DHCR PAR proceeding, Docket No. HM110001RT (2020), wherein the Division held that:

> The petitioner's claim that the Administrator should have investigated the tenant's allegation of a conflict of interest between the owner and JW Development Holdings LLC ("JW") is unsupported by the record. While it is not in dispute that JW is an affiliate of Kew Gardens Hills LLC (the owner of the subject premises), and there is in fact an identity of interest between these two entities, the record does not support the petitioner's assertion that JW acted in the capacity of a general contractor with regard to the work at issue in this proceeding. There is no evidence of a contract between Kew Gardens Hills and JW in which JW agrees to serve as a general contractor for compensation, nor is there evidence of payments to JW for the provision of such services. The record instead supports a finding that JW executed contracts for the MCI work with individual contractors and signed payment checks to those contractors as an affiliate arm of and in the capacity of the owner. In view of the evidence which was on record before the Administrator, the Commissioner finds no error by the Administrator in granting the MCI without investigating the alleged conflict of interest raised by the petitioner.

The tenant-petitioner subsequently appealed the above decision to the New York Supreme Court, Queens County (Index No. 708074/2021). The court upheld DHCR's order, stating in pertinent part that an "identity of interest between owner and its construction arm does not mandate a denial of MCI increases" and agreeing with DHCR's determination that there was "no evidence of self-dealing on the record."

The same was true of the proceeding below: the record does not support the tenant's assertion that JW acted in the capacity of a general contractor with regard to the subject gas repiping work, as there is no evidence of a contract between KGH and JW in which JW agrees to serve as a general contractor for compensation, nor is there evidence of payments to JW for the provision of such services. The record instead supports a finding that JW executed the contract with Henry Myers Inc. for the MCI work and signed payment checks to the contractor as an affiliate arm of and in the capacity of the owner. Moreover, it also undisputed that A&E is an affiliate of the owner with an identity of interests, however A&E is the property manager of the subject building also acting in capacity of the owner. Therefore, the Commissioner finds no error by the Administrator in granting the MCI without investigating the alleged conflicts of interest raised by the tenant.

The tenant also claims that the gas piping had not outlived its useful life, citing Docket No. RI110108OM (2004). It is noted that the MCI increase granted under Docket No. RI110108OM was issued for the installation of a new boiler/burner and does not factor into the useful life of gas piping. A review of DHCR records indicates that the owner has not received, and the tenants have not had to pay, an MCI rent increase for a gas repiping installation prior to the herein installation. The useful life claim is therefore without merit.

Regarding the tenant's claim that apartment [redacted] should have been part of the agency room count-related inspection conducted on 8/26/2022, it is long established policy that it is within the Administrator's proper scope of discretion and authority to determine what apartments or areas of the building should be subject to agency inspection, and to deem the record adequate in determining the tenants' claims based upon the submissions from all parties and the inspection report. Accord: Docket No.: NF430075RT.

Here, the Commissioner finds that it was proper for the Administrator to request an inspection of apartment [redacted] and forgo an inspection of [redacted] in determining below that all C line units contained 3 rooms. The Commissioner also notes that DHCR had previously inspected and determined the room count of [redacted] to be 3 rooms in GM110024OM (2018), and the diagram of [redacted] submitted by the tenant below showed no

indication that unit had since been altered in a manner which would have resulted in a lower room count. As such, an inspection of [redacted] during the proceeding below was not necessary.

As for tenant's claim that the subject building's room count is inaccurate in that the F line units are identical to the abovementioned C line and therefore should contain 3 rooms and not 4, the record shows that the issue regarding the F line was not raised during the proceeding below, and it is therefore beyond the scope of review in this proceeding. Fundamental principles of the administrative review process and Section 2529.6 of the Rent Stabilization Code prohibit a party from raising an issue on appeal which was not raised below. The tenant's claim regarding the F line room counts therefore may not be considered on appeal.

The claim that the owner has not addressed the HPD and DOB violations in apartment [redacted] is belied by the record. The RSC prohibits temporary MCI increases for buildings with outstanding hazardous or immediately hazardous violations of the Uniform Fire Prevention and Building Code (Uniform Code), NYC Fire Code, or NYC Building and Housing Maintenance Codes. The record indicates that on September 13, 2022, the Rent Administrator reviewed the DOB and HPD databases for any outstanding hazardous or immediately hazardous violations and found that one immediately hazardous Class "1" Violation (Environmental Control Board (ECB) Violation No.: 39048909H) remained on the DOB database and two Class "B" violations (Nos.: 14744779/7591775 & 14744782/7591775) remained unresolved on the HPD database. Said violations all related to issues within apartment [redacted]

The record also shows that during the proceeding below, the owner sent multiple letters to the tenant requesting access to [redacted] to cure the above-mentioned violations. Each letter was sent at least eight days prior to the proposed access date. The tenant confirmed receipt of these access requests, which were dated 3/11/2022, 3/29/2022, 5/13/2022 and 5/26/2022. Additionally, the Rent Administrator mailed a notice to the tenant below advising that "failure to provide access will not exempt you from the rent increase."

The tenant responded to the 3/29/2022 request and arranged for access on 4/08/2022. On 4/13/2022, the tenant confirmed that workers appeared, but stated that he denied access because they did not have a "scope of work list." As for the 5/13/2022 access request, on 5/23/2022 the tenant indicated that he could not respond because ECB Violation No.: 39048909H was not enclosed with the request. Lastly, the tenant's response to the owner's 5/26/2022 request, dated 5/31/2022 stated, "This is the last time the Tenant is responding to your generic, bogus...intimidation letter and your provocation about this issue" and also, "Tenant is warning the [management] not to lecture [him] about his obligations, because Tenant will not be involved [with] your fraudulent way of doing business." In light of the above facts, the Commissioner finds that the Rent Administrator's authorization of the rent increase while violations existed in apt. [redacted] was not arbitrary nor capricious, and was not an abuse of discretion. Based on the communications from the tenant to the owner and DHCR, it is clear that the tenant's refusal of access prevented the owner from addressing the ECB and HPD violations. The Commissioner therefore finds that the tenant's claim has no merit.

The tenants' allegation that 5,000 to 6,000 HPD and DOB violations exist throughout the apartment complex containing the subject premises serves no basis to modify the Rent Administrator's order. The Commissioner notes that the scope of this proceeding is limited to the subject premises, not the entire complex. Moreover, the unsubstantiated allegation that the DHCR is covering up the said 5,000 to 6,000 violations because the Rent Administrator found DOB violations in [redacted] is entirely without merit. The Commissioner notes that the Rent Administrator did not make a finding that the subject apartment contained hazardous violations as that is not within the agency's jurisdiction. Furthermore, the above facts and analysis indicate that multiple violations existed in apartment [redacted] due to the tenant's refusal to allow access to make repairs.

The tenant also claims that DHCR incorrectly determined the legal rent of apartment [redacted] in a separate DHCR proceeding, Docket No. CX110037AD (appealed by the tenant in Docket No. IU110016RT), and a related housing court case between the tenant-petitioner and current owner (L&T Index No. 53207/16). The Commissioner finds this legal rent claim to be beyond the scope of review of the instant MCI appeal. Pursuant to Section 2529.6 of the RSC, the tenant is precluded from collaterally attacking a Rent Administrator's decision that is not related to and extraneous to the underlying MCI order, Docket No. JO110023OM. Accordingly, the tenant's claims regarding to the legal rent proceeding are hereby denied as they are unrelated to the herein Rent Administrator's order.

The tenant's reliance on the currently pending cases Stafford v. A&E Real Estate Holdings, LLC, Index No. 655500/2016, and Matter of Jonathan Syllman vs. DHCR and Kew Gardens Hills LLC, Docket No. 2021-07635, to indicate that A&E and KGH, the herein owner, have a pattern of practice of inflating and or misrepresenting the costs of improvements is misplaced, in part because these cases cannot be taken under consideration by the Commissioner as they have not been fully adjudicated.

The numerous unsubstantiated allegations of fraud against the DHCR and the owner throughout the herein petition are without merit. The Commissioner finds the documentation submitted by the tenant does not contain any evidence to substantiate these allegations or support a finding that the owner and the DHCR engaged in fraudulent activity.

The tenant's request for all documentation the DHCR may have regarding Local Law 152 of 2016: *Periodic Inspection of Gas Piping Systems* is denied. While DHCR's Office of Rent Administration ("ORA") records are generally obtainable through an agency "Request for Records Access," the Commissioner notes that Local Law 152 of 2016 is not a record maintained by ORA or DHCR. The tenant is advised that he may contact the City of New York for more information, if the facts so warrant.

Finally, tenant's request for a hearing is denied. It should be pointed out that due process simply must provide a party with a full and fair opportunity to be heard on matters and issues in an administrative proceeding. Notwithstanding that a party believes questions of fact purportedly exist in the record, the granting of a DHCR hearing is discretionary and not mandated by law. The Commissioner finds that the evidence and written submissions in the record are sufficient to render an administrative decision. The record also indicates that the tenant was duly served with copies of the owner's application, participated in this proceeding, and was provided a full and fair opportunity to be heard on matters in issue.

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

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

ISSUED:

MAY 24 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
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

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ADMINISTRATIVE REVIEW DOCKET NO.: KV610023RT

RENT ADMINISTRATOR'S DOCKET NO.: KP610006OM

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely refiled an administrative appeal against an order issued on August 2, 2022 by the Rent Administrator concerning the housing accommodations known as 1491 to 1493 Watson Avenue, Bronx, NY (the "Subject Premises"), which granted the owner's application for a rent increase based on the installation of a major capital improvement (MCI), to wit: security cameras.

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

The tenant-petitioner, who resides in apartment [redacted] of the Subject Premises, requests a reversal of the order and alleges that: (1) tenants of the Subject Premises did not consent to the installation of the MCI; (2) heating services are not provided during the fall and winter months; and (3) increased rent due to the MCI will result in financial hardship for petitioner.

Petitioner asserts, as she did below, that the tenants of the Subject Premises did not consent to the MCI. Pursuant to the Rent Stabilization Code (the "RSC") and well-established law there is no requirement that an owner obtain the prior consent of tenants in order to perform an MCI or qualify for an MCI rent increase. To further clarify, the improvements were performed as part of a building-wide MCI and not as Individual Apartment Improvements ("IAIs"), and therefore did not require the consent of tenants in occupancy at the time for the owner to qualify for a rent increase. The petitioner's claim that the tenants of the Subject Premises did not consent to the installation thus raises no basis for revoking the Rent Administrator's order.

Petitioner's claim that the approved rent increase will result in financial hardship does not raise a valid ground for denying the MCI. Although the Commissioner is mindful that an authorized rent increase may prove burdensome to some tenants, in light of the applicable statutory and regulatory

provisions the Administrator's grant of an MCI rent increase which is warranted must be affirmed. It is noted that the rent increase which has been granted in this proceeding is subject to the 2% limitation on collectability set forth in Part V of the MCI order. Furthermore, a tenant who has a valid Senior Citizen Rent Increase Exemption (SCRIE) or a valid Disability Rent Increase Exemption (DRIE) is exempt from that portion of the increase which would cause the rent to exceed one third of the tenant's household monthly disposable income. A tenant who may be entitled to one of these benefits may call 311 or contact the NYC Department of Finance for further information.

As for Petitioner's claim that heating services are not provided during the fall and winter months, a review of Division records shows no indication of pending Heat/Hot Water Maintenance complaints or Decrease in Building-Wide Service(s) complaints against the building during the proceeding below. As such, the heating complaint raised herein is outside the scope of the instant MCI proceeding, which involves the installation of new security cameras. However, this Order and Opinion is issued without prejudice to the tenant's rights to file reduction in service or heat/hot water maintenance complaints with the Division, if the facts so warrant.

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

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

ISSUED: MAY 25 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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There is no other method of appeal.

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

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: KM210016RT
56 S 11TH STREET TENANTS ASSOC.	
PETITIONER	RENT ADMINISTRATOR'S DOCKET NO.: GS210075OM

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal against an order issued on December 8, 2021 by the Rent Administrator concerning the housing accommodations known as 56 S. 11th Street, Brooklyn, NY, which granted the owner's application for a rent increase based on the installation of major capital improvements (MCIs), to wit: elevator upgrading, elevator shaft steel, elevator bulkhead/roof/interior, elevator wiring and a tv/security system.

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

The tenant-petitioner requests a modification of the order and alleges that the upgrade to the building's elevator was performed without the issuance of a work permit from the New York City Department of Buildings (DOB), and that the work was contemplated by and accounted for in the alteration costs for which the owner obtained a J-51 tax abatement benefit.

It is the well-established policy of the Division that elevator upgrading, including the installation of a new controller and selector, constitutes an MCI for which a rent increase may be warranted. The owner submitted copies of the contracts, invoices, contractors' statements, an affidavit of professional certification from a registered architect, and a copy of the New York City Department of Buildings (DOB) Permit issued on November 18, 2015, for the herein elevator upgrading (NYC Device ID: 3P15211). The Commissioner notes that the DOB signed off on the elevator application on June 8, 2016, which supports a finding that the elevator was in proper working order following the completion of the elevator upgrade. As such, the Rent Administrator properly determined that the elevator upgrade qualified for an MCI rent increase and the petitioner's claim that the owner performed the installation without a DOB permit is meritless.

The petitioner's claim that the owner received a J-51 tax abatement in relation the subject MCI work also has no merit. Division records do not show that the owner has been granted a J-51 tax abatement for the work at issue. However, the Commissioner notes that in the event that the owner has been granted a J-51 tax abatement for the herein MCI, the tenants will be entitled to a temporary reduction of the MCI increase and their rents will be adjusted upon notice to the Division by the agency granting the tax abatement.

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

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

ISSUED: JUN 2 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
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]

[redacted]

PETITIONER

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ADMINISTRATIVE REVIEW
DOCKET NOs.: DU410024RT
DU410018RT

RENT ADMINISTRATOR'S
DOCKET NO.: YI410029OM

ORDER AND OPINION GRANTING IN PART PETITIONS FOR ADMINISTRATIVE REVIEW

The above-named petitioners timely filed administrative appeals against an order issued on August 10, 2015 by the Rent Administrator concerning the housing accommodations known as 784 Columbus Avenue, New York, NY which granted the owner's application for a rent increase based on the installation of major capital improvements, to wit: pointing and related work, and engineering services.

The Commissioner deems it appropriate to consolidate these petitions for a uniform disposition since they pertain to the same order and involve common issues of law and fact.

The Commissioner having reviewed the petitioners' appeal and any and all supporting documentation, any and all statements made by affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioners' appeal should be granted in part.

The [redacted] (tenants) petition by counsel, claims that the MCI application, filed on 09/08/2010, was filed more than two years after the MCI was completed, not the date 10/2/08 listed on the MCI application, because the completion date should be based upon the date, 08/13/2008, the owner's engineer's certified the final inspection of façade work on a TR1 report it submitted to the New York City Department of Buildings (DOB); that the claimed façade work was non-MCI spot-pointing repairs as the contractor's statement indicates that only 3,398 square feet out of the building's 44,270 square feet façade was pointed; that the work diagram which shows that almost all of the building's façade was pointed is inconsistent with contractor's statement; that the DHCR past case Docket No. CH130226RO denied an MCI application for pointing because the owner did not submit a proper diagram for the work; that the work contract gave no details of the work to be done and the submitted drawings and specifications which identify the work are dated 6/19/2006 3 months after the work contract was signed on 3/8/2006; that there are no invoices for the work; that the façade work was of poor quality as evidenced by the continued water leaks in apartments [redacted] that Local Law 11/98 reports that the building's façade has unsafe conditions; that the New York City Environmental Control Board (ECB) violations and DOB violations were open at the time the MCI order was issued; and that some ECB violations are still open; that the owner's work orders submitted to show repairs in the apartments with water leaks are untrue; that the owner's response was not served on the tenants below; that the claimed cost of $326,100.00 for the facade work is inflated because the cost affidavit submitted to the DOB shows the cost of the work as only $237,350.00; that $150,00.00 for non-MCI sidewalk installation was included in the cost of the façade work; that the $44,88.00 cost for engineering services includes costs for work done at the other two

buildings in the complex; that there is no explanation as to how the $18,336.84 disallowed from the engineering cost was computed; and that a sales tax was included in the cost of the MCI.

In her petition, the tenant of apartment [redacted] states, that for years she has suffered from severe water leaks above the windows and on the walls of the apartment after heavy rains; that the water damaged areas have been scrapped and painted many times, but the leaks still occur.

The Rent Administrator properly determined the qualifying scope of the improvements and the amount of the approved costs and the rent increase. A review of the record shows that except for the allegation that the owner's response including the work orders were not served on the tenants, all other issues raised by the tenants in this petition were raised and properly addressed by the Rent Administrator at the proceeding below. However, any failure of due process which may have occurred because some of the owner's responses were not served on the tenants below, is rectified on appeal as the tenants have obtained all the owner's responses and have raised objections to it which will be addressed in this proceeding.

The tenants' claim that the MCI application was filed more than two years after the completion of the MCI work is without merit. Section 2522.4(a) (8) of the Rent Stabilization Code precludes a rent increase for a major capital improvement when the application is filed more than two years after the physical completion of the installation. The tenants claim that the initialing by the owner's engineer on the TR-1 report DOB job number 104505340 indicates the final inspection and completion date is 8/13/2008, however, said date is not controlling as the completion date for the pointing and other façade work. The more relevant date on the TR-1 report is the date of the certification of completed inspection which is required by the DOB and was certified by the engineer with seal on 9/24/08. Furthermore, DOB job number 104505340 façade work primarily was to correct unsafe conditions from the Local Law 11/98 reports, the record shows that there was other work completed under the job number 104505340 and additional exterior work that comprise the MCI pointing with other work that continued beyond the TR-1 report date. There is evidence in the record, including the contractor's affirmation of the completion date 10/02/2008, cancelled checks dated December 2008, and the Epstein Engineering invoices submitted with the MCI application which lists construction monitoring of on-going exterior repair, that shows the MCI pointing and other façade work was being performed after 8/13/2008. The Commissioner finds that the MCI application filed on 09/08/2010 was properly filed within two years of the completion of the MCI pointing and related improvements. Thus, it is not time barred.

The tenants' claim that the work was a non-MCI spot pointing of the building's façade is without merit. The Commissioner notes that comprehensive pointing and waterproofing as necessary on the exposed sides of the building constitutes a major capital improvement for which a rent increase may be warranted. The owner is not required to perform the work on the entire building, but rather on those areas found by the contractor to be necessary after an examination of all exposed sides of the building. A review of the record shows that the owner's MCI application includes the contractor's diagram of the building indicating where work was performed, and a signed statement from the contractor stating that all exposed sides of the building were examined prior to the pointing and waterproofing, and that based upon the examination, all necessary areas on all exposed sides of the building were pointed. Based on the foregoing, the Commissioner finds that the pointing work qualifies as MCI. The claim that the work diagram is inconsistent with the contractor's statement is without merit. The record, including the engineer's report of the building's exterior walls, the engineer's drawings and specifications show that the diagram of the subject building properly depicts the areas of the exposed walls where pointing work was performed. The tenants' claim that the contract gave no details of the work, is without merit. A review of the contract shows that it incorporates as part thereof, the engineer's drawings and specifications detailing the work of the contract. The claim that the drawings and specifications were dated 3 months after the date of the contract

is irrelevant since Article 1 of the contract makes documents, including the engineer's drawings and specifications executed before and after the date of the contract part of the contract documents.

Regarding the claim that the tenants' complaint of water leaks in apartments [redacted] is evidence of the poor quality of the MCI work, the record shows that apartment [redacted] was deregulated as of the date of the MCI application, as such the MCI rent increase does not apply to it, and that apartment [redacted] did not join and is not a party to this petition. Thus, there is no basis for any claim pertaining to the apartment in this petition. As for apartments [redacted] the Commissioner notes that the fact that 2 apartments out of the 200 apartments at the building have problems with the MCI pointing work is not sufficient grounds to conclude that the owner is not entitled to an MCI rent increase. However, the case record shows that during the proceeding below on 4/30/2014 the DHCR sent a notice requesting the owner to respond to the tenants' complaint of leaks in their apartments, and on 12/10/2014 the owner submitted work orders stating that the leaks in the apartments including apartments [redacted] have been repaired but, a DHCR inspection conducted at the premises on 8/11/2017 found evidence of water leaks with moisture condition on the walls of apartments [redacted] related to the façade pointing. Since the owner had sufficient notice and time to repair the water leaks in the tenants' apartments, and despite the owner's claim of repairs, the DHCR inspection showed apartments [redacted] continued to have water leaks related to the façade pointing after the MCI pointing work was completed, the Commissioner finds that the apartments should be permanently exempted from the rent increase for the MCI pointing and the related work.

As for the Local Law 11/98 (cycle 6 report of unsafe condition and the DOB and ECB violations), the Commissioner notes that an engineer's Local Law report is not required to be submitted with the MCI application. Furthermore, a review of the cited DOB and ECB violations reveals that none of them were an immediately hazardous violation. Hence, they did not bar the MCI rent increase under the Rent Stabilization Regulations in effect at the time the Rent Administrator's order was issued. Moreover, the record shows that the façade work performed under DOB job number 104505340 was signed-off by the DOB on 10/2/2008. Regarding the claim that the cost of the MCI installations was inflated, the record shows that the owner submitted documentation including the work proposals, the contracts, cancelled checks, and the contractor's certifications substantiating the MCI cost. The Commissioner notes under the Rent Stabilization Regulations in effect at the time the Rent Administrator's order was issued the owner was entitled to an MCI increase based on its actual costs. The claim that $150,000.00 for non-MCI sidewalk installation was included in the MCI cost is without merit. The record shows that the $150,000.00 was the cost of the sidewalk bridge installed for the MCI pointing at all the three buildings in the complex, and the contractor's work proposal submitted below shows that only $45,000.00 share of the $150,000.00 cost was allotted and included in the subject building's MCI cost. The allegation that sales tax was included in the MCI cost is unfounded. Sales tax is not an allowable MCI cost and the case record does not indicate it was included in the instant MCI cost.

Regarding the cost of engineering services, the cancelled checks for the payments and the invoices show that the approved cost was for work related only to the subject building, and the MCI order clearly states that costs unrelated to the subject building were disallowed. The record further shows that the engineering cost was reduced from the claimed $44,888.00 to $26,551.16 by the disallowance of $876.20 for reimbursements, late fees, & search for past records, $8,852.71 for invoices/costs unrelated to the building and $8,607.93 for unsubstantiated proof of payment = $18,336.84. Thus, $44,888.00 - $18,336.84 = $26,551.16 properly approved in the MCI order.

Pursuant to Section 26-511.1 (a)(8) of the Rent Stabilization Law and to Section 26-405.1 (a)(8) of the City Rent and Rehabilitation Law, the collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital

improvement increase to the legal regulated rent. Notwithstanding any other provision of the laws, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved.

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

ORDERED, that this petition be granted in part and that the Rent Administrator's order be modified to permanently exempt apartments [redacted] from the MCI rent increase and as modified the order is affirmed.

ORDERED, that the owner shall refund or credit any excess rent collected as a result of this order in 12 monthly installments to the tenants of apartments [redacted]

ISSUED: JUN 8 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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There is no other method of appeal.

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

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: GX110042RT
VARIOUS TENANTS OF 164-03 89TH AVENUE	
PETITIONER	RENT ADMINISTRATOR'S DOCKET NO.: GQ110030OM

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal against an order issued on November 26, 2018 by the Rent Administrator concerning the housing accommodations known as 164-03 89th Avenue, Jamaica, NY which granted the owner's application for a rent increase based on the installation of major capital improvements, to wit: pointing/brickwork, new roof, concrete work/railing and roof installation.

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

The tenants' petition by counsel alleges, in substance, that the useful life of the previous pointing and brickwork did not expire and the owner repeatedly lied about the useful life of the previous pointing and brickwork, and when it claimed it spent $25,000 for installation of steel railings at the parapet walls which a DHCR inspector found had not been installed; that the owner inflated the costs of the MCI items, including the pointing and brickwork item as both the claimed 29,293 square feet area of pointing and brickwork at the cost of $1,414, 500.00 were grossly overstated compared to the 2,000 square feet of pointing at $11 per square feet for a total of $22,000.00 or $15 per square feet for a total of $30,000.00 cost stated in the affidavit by the contractor filed with the NYC Department of Buildings (DOB); that the owner failed to itemize the costs for the pointing and brickwork and roofing, and failed to obtain a proper permit for the roof work; that the owner failed to provide adequate proof of payments for the MCI installations as required by DHCR Operational Bulletin No. 2017-1; that the contractor Temco Construction is also the contractor performing other installations, including pointing and brickwork for the owner at six other buildings and the checks submitted for the subject MCI could have been for any of the other buildings; that the contractor is based in Queens and the MCI work was performed in Queens but checks nos. 53977, 53979 and 54222 totaling $284,000 were cashed in New Jersey raising serious suspicion about the legitimacy of the payments; that Temco Construction's president's signature on check no. 54222 differs substantially from his purported signatures on the MCI documents; that the owner failed to submit documentation from an architect or engineer to substantiate its claim that the commercial tenants occupied only 4,106 square feet area of the subject building, citing in support a prior DHCR case with Docket no. YF410027RO; that the owner is not maintaining required services in that it (owner) discontinued maintenance of the building's only laundry room, and changed the lock on the building's entrance door without providing a sufficient number of keys to tenants, and there are currently four outstanding NYC Department of Housing, Preservation and Development (HPD) class B violations; and that the MCI rent increase is too high and would cause the tenants substantial hardship resulting in some of them being forced to move.

The tenants' claim that since the useful life of the previous pointing and brickwork did not expire the entire subject MCI application should be denied is without merit. DHCR record shows that an MCI rent increase was previously granted for pointing and waterproofing at the building under Docket no. ZG110018OM issued in 2012. The Commissioner notes that it is the established position of the Division that comprehensive pointing and waterproofing as necessary on all exposed sides of a building constitutes a major capital improvement for which a rent increase adjustment may be warranted. Moreover, a building-wide/complex-wide comprehensive exterior renovation, which may include pointing, waterproofing, masonry, parapets, lintels, cornices, etc., also constitutes an MCI. The instant case record, including the work contract and the report of DHCR inspection which includes photographs of the building on 10/24/2018 shows that the instant pointing and brickwork consists of pointing/bricks replacement in various areas as needed on all four exposed sides of the building, power washing of the building façade, replacement of parapet walls around the entire perimeter of the building, and replacement of lintels and windowsills throughout the building exterior. Therefore, the Commissioner finds that the work performed constitutes MCI exterior renovation which is different from the MCI pointing and waterproofing. The Commissioner further notes that MCI exterior renovation can be granted even if a prior MCI pointing and waterproofing was granted, provided the cost of the prior pointing and waterproofing is deducted from the cost of the exterior renovation. As the DHCR record shows that the 15 years useful life of the previous pointing and waterproofing did not expire before the installation of the instant MCI exterior renovation, the Commissioner finds that the Rent Administrator properly deducted the $64,805.50 cost of the previous pointing and waterproofing from the cost of the instant MCI exterior renovation before granting the MCI rent increase.

As for the claim that the owner lied about the useful life of the previous pointing and waterproofing and about installation of steel railings, the record shows that the Rent Administrator's determination was based on the DHCR record which shows that no prior MCI rent increase was granted for exterior renovation at the building. Also, a review of the instant MCI order shows that the $25, 000.00 claimed for the steel railings was disallowed based on the DHCR inspection which found that no steel railings were installed.

Regarding the claim that the owner grossly overstated the scope and costs of the MCI work in comparison to the scope and costs of the work listed in the DOB permit application, the Commissioner notes that the scope and costs of work listed on DOB application are estimates not final figures and are not binding. A review of the record shows that the owner properly substantiated the claimed final scope and costs of the MCI work with copies of the contract and a detailed breakdown of all contract costs, other documents, and cancelled checks evincing payment.

The claim that the owner failed to itemize the costs for the pointing and brickwork and roofing is without merit. The record shows that the owner's response below dated 08/28/2018 includes a detailed cost breakdown for the pointing and brickwork and the roofing installations. Regarding the tenants' permit complaints, the Commissioner notes that it is not a requirement for an owner to submit work permits for the subject improvements for which rent increases were allowed. It is within the jurisdiction of the DOB to issue any violations and/penalties as are warranted in instances where the proper building permits and/or licenses may not have been acquired.

The claim that the owner failed to submit adequate proof of payment as required by DHCR Operational Bulletin No. 2017-1(OB2017-1) is without merit. The Commissioner notes that OB2017-1 came into effect on January 8, 2020 after the instant MCI order was issued on 11/26/2018. Furthermore, the record shows that the owner submitted adequate documentation, including cancelled checks and contractors' affirmations substantiating the costs of the MCI items pursuant to Policy Statement 90-10 in effect at the time the MCI application was filed. The claim that the submitted checks could have been for work performed at the owner's other buildings than the subject building is without merit. The Commissioner notes that the checks are contemporaneous with completion of the MCI work at the subject building, and the contractors' affirmations indicate that the payment

checks pertain to the MCI work it (contractor) performed at the subject building. The claim that the legitimacy of the payment checks is questionable because the checks were cashed in New Jersey other than Queens New York is without merit. The Commissioner notes that there is no requirement in the Rent Stabilization Code that MCI payment checks must be cashed in the Jurisdiction where the contractor is based and/or where the MCI work was performed. The claim that the construction company president's signature on some of the payment checks differs from his signature on the MCI application and other MCI documents is without merit. The record shows that the MCI costs are supported by sufficient documents, including the cancelled checks pursuant to Policy Statement 90-10 then in effect. The Commissioner notes that the claim of irregular endorsement signature on the back of one of the cancelled checks (check no. 54222) is not sufficient to render the MCI documents, including the cancelled checks invalid.

The allegation that the owner failed to submit an architect or engineer to statement to substantiate that the building has only 4,106 total commercial square feet is without merit. The Commissioner finds that the instant case record is devoid of any evidence contrary to the submitted 4,106 commercial square feet, and further notes that in the absence of any evidence contradicting the 4, 106 commercial square footage, the owner is not required to submit an architect or engineer's statement to substantiate the square feet of the commercial space. The prior DHCR case Docket no. *YF410027RO* cited by the tenants is distinguishable and does not apply to the instant case because the record in the instant case shows that the supplement 4 – MCI Cost Allocation for Commercial Tenants submitted with the MCI application, listed five commercial tenants with their square footages totaling 4,106 square feet of commercial space. Conversely, the MCI application in the cited case did not indicate the presence of any commercial space in the building although DHCR records of prior MCIs showed the existence of commercial space, and upon DHCR's requests, the owner submitted a list of commercial tenants and "approximate" square footages warranting the DHCR to ultimately request clarification, including a true computation of square footages, prepared by an architect or engineer. In this case, the tenants have not submitted any evidence warranting DHCR request for clarification of the 4,106 of the commercial square footage submitted by the owner.

Regarding the tenants' claim that the owner is not maintaining required services, the Commissioner notes that although such failure could prevent a grant of the MCI application, the failure to maintain required services is generally best evidenced by a prior DHCR determination, i.e., an order finding a reduction in services which have not been restored. No such showing has been made in this case. The claim that there are outstanding B violations at the building is without merit. The Commissioner notes that pursuant to Section 2522.4(a)(13) of the Code, as amended in 2014, in effect at the time the MCI order was issued B class violations did not constitute a bar to MCI rent increase. Furthermore, a review of the four B violations on the printout from the NYC Dept. of Housing Preservation and Development (HPD) database submitted by the tenants on appeal shows that the four violations were issued on 09/04/2019 after instant MCI order was issued on 11/26/2018. Therefore, the Commissioner finds that the B class violations do not form a basis to disturb the Rent Administrator's order. This order is issued without prejudice to the right of the tenants to file with the Division an application for reduction in rent based on the owner's failure to maintain services, if the facts so warrant.

Regarding the tenants' complaint that the rent is too high and unaffordable, the Commissioner is not unmindful of the possibility that the rent increases may prove burdensome to some tenants, but the Agency is constrained by the applicable statutory and regulatory provisions to grant such increases as are warranted. However, the Commissioner notes that if applicable, a tenant who has a valid Senior citizen Rent Increase Exemption (SCRIE) or a valid Disability Rent Increase Exemption (DRIE) is exempt from that portion of the MCI increase which causes the rent to exceed 1/3rd of the tenant's total disposable household income. A tenant who may be entitled to one of these benefits may call 311 for further information.

PAR DOCKET NO.: GX110042RT

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

Pursuant to Section 26-511.1 (a)(8) of the Rent Stabilization Law and to Section 26-405.1 (a)(8) of the City Rent and Rehabilitation Law, the collection of any increase shall not exceed two percent in any year from the effective date of the order granting the increase over the rent set forth in the schedule of gross rents, with collectability of any dollar excess above said sum to be spread forward in similar increments and added to the rent as established or set in future years. Upon vacancy, the landlord may add any remaining balance of the temporary major capital improvement increase to the legal regulated rent. Notwithstanding any other provision of the laws, for any renewal lease commencing on or after June 14, 2019, the collection of any rent increases due to any major capital improvements approved on or after June 16, 2012 and before June 16, 2019 shall not exceed two percent in any year for any tenant in occupancy on the date the major capital improvement was approved.

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

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

ISSUED: JUN 16 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
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.: JT130022RT
[redacted]	
PETITIONER	RENT ADMINISTRATOR'S DOCKET NO.: GQ130131OM

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner timely filed an administrative appeal against an order issued on August 11, 2021, by the Rent Administrator concerning the housing accommodations known as 111-10 76th Road, Flushing, NY, which granted the owner's application for a rent increase based on the installation of temporary major capital improvements (MCIs), to wit: façade restoration, engineering fees, elevator upgrading and a new boiler/burner.

The Commissioner having reviewed the Petition for Administrative Review (PAR) and any and all supporting documentation, any and all statements made by the affected parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations finds that the petitioner's appeal does not have merit and should be denied.

The tenant-petitioner requests a modification of the order and claims in substance that the owner did not consult with the tenants before making the improvements; that the exterior restoration work was not performed in a workmanlike manner; that the scaffolding for the façade work was erected in April 2015 but not used until May 2016 and she should not have to pay for the period of time it was not used; that the work was poorly planned and performed in a piecemeal fashion; that the scaffolding was an unnecessary expense; that the prior owner did not repair the subject building's exterior and the current owner waited too long to make repairs; that the scaffolding blocked their apartment windows, darkening the rooms and obstructing air-flow for 17 months; that documentation regarding the engineer's services should be more detailed; that the elevator upgrading was performed in an unworkmanlike manner; that the elevator upgrading has reduced the cab size; that the owner likely received elevator-related insurance proceeds which were not disclosed in the MCI application and "if paid by his insurance company, that amount should be deducted from his elevator expenses"; that the elevator floor is not level with the basement floor; that the petitioner's apartment has remained cold since the installation of the new boiler/burner; that the owner attempted to inflate costs because the rent increase amount approved in the Order is less than the claimed amount in the Notice to Tenant of MCI Rent Increase Application (the

Notice); that the MCI rent increase should be reduced in the event the owner receives a tax abatement for the installations at issue; and that rent increase is not equitable to the tenants.

At the outset, the Commissioner notes that although the petitioner claims to have filed the PAR on behalf of all tenants of the subject premises, said petition did not contain the proper authorization such as signatures of tenants or a resolution from a Tenants' Association, as required by the applicable sections of the Rent Stabilization Code (RSC). The petitioner's PAR was therefore accepted as filed by the individual tenant-petitioner only.

The claim that the petitioner did not consent to the MCI work raises no basis for modifying the Order. Pursuant to the RSC and well-established law, there is no requirement for an owner to obtain the prior consent of the tenants for an MCI-eligible installation to qualify for a rent increase. Accord: Docket No. GM610008RT.

With regards to the following exterior restoration claims, is the established position of the Division that a building-wide comprehensive exterior restoration, which may include pointing, waterproofing, masonry, parapets, lintels, cornices, etc., constitutes a major capital improvement for which a rent increase may be warranted. The granting of an MCI rent increase for such work contemplates that the building façade, except for normal maintenance and repairs, will be structurally sound and watertight for the twenty-five-year useful life of an exterior restoration. A review of the record shows that the owner submitted copies of contracts, contractor's statements, and cancelled checks, all of which indicate that the owner correctly complied with the procedures for obtaining an MCI rent increase, and that the increase was properly computed based on the proven cost of the installation. The claim that the exterior restoration was not performed in a workmanlike manner is without merit as the petitioner has failed to substantiate this allegation with any documentary evidence that is contrary to the owner's submissions in the below proceeding.

Further, the petitioner claims that scaffolding for the exterior restoration was erected in April 2015 and was not used for the improvements until May 2016. The tenant further alleges that it was not necessary for the scaffolding to be up before May 2016 and therefore she should not have to pay for it prior to the start of the work. A review of the owner's application indicates that the façade work began in November 2014 with engineering inspections of the subject building's exterior. Moreover, the owner submitted New York City Department of Buildings (DOB) documentation which indicated that a sidewalk shed permit was issued in November 2014 under DOB Job No. 421053745, and a permit for the herein exterior restoration, DOB Job No. 44023714, was approved in August 2015 and signed-off on June 20, 2017. In addition, the record shows that the payments from the owner to SMS Engineering, P.C. and McFar Contractors, Inc. (McFar), are contemporaneous with the façade work which includes scaffolding. Therefore, the claim that the work had been poorly planned and performed in a piecemeal fashion is without merit. The record supports a finding that the work for which the MCI has been granted was performed as a single unified project with no extended gaps in time indicating that the work had been broken up into separate and distinct phases.

The Reasonable Cost Schedule promulgated through Operational Bulletin 2021-1[1] provides that the maximum cost of scaffolding for an MCI increase was $5,450.00 per drop. The record reflects that the owner purchased two scaffold drops at the rate of $2,475.00 per drop as per the Contract Change Order with McFar dated March 13, 2017. The Commissioner notes that the Rent Stabilization Code permits a rent increase for other necessary work performed in conjunction with and directly related to a qualifying MCI installation. Here, the scaffolding was an integral part of the MCI-qualifying façade restoration and was therefore properly included in the MCI increase. Based on the facts mentioned above, the Commissioner finds no reason to disturb the Rent Administrator's Order as the owner's expenses were well below the maximum cost for scaffolding and, the record reflects that the scaffolding was necessary and not erected prior to the commencement of the work.

With regards to the claim that the façade work was required due to prior neglect of the building, the Commissioner notes that even if true, it does not preclude an owner from qualifying for a rent increase if the installation replaced an item for which the useful life expired, which is the case in this matter.

As for the claim that light and ventilation were diminished during the performance of the façade work by the presence of scaffolding, the Commissioner notes that there is no provision in the RSC for a properly granted MCI rent increase to be reduced due to temporary conditions which may have been caused by the performance of the work, and therefore the claim is denied.

With regards to the tenant's inquiry of what the "engineering services" listed in the invoices between SMS and the owner indicate, the record shows that SMS engineering performed preparatory inspections, drawings of detailed building diagrams needed for the exterior restoration, and site visits to inspect the progress and performance of the work.

It is the well-established policy of this Division that elevator upgrading includes the installation of a new controller and selector (as was performed in this case), and constitutes an MCI for which a rent increase may be warranted. The record shows that the owner complied with all requirements for an MCI rent increase for upgrading an elevator and submitted the necessary governmental approval for the work. From the foregoing, the Commissioner finds that the rent increase was properly granted by the Rent Administrator. As to the claim that the elevator upgrading was performed in an unworkmanlike manner, the record shows that the owner submitted the necessary DOB sign-offs indicating that the installation was properly performed. Moreover, the petitioner's claim that the upgraded elevator cab has reduced in size does not warrant a disqualification as a new controller and selector were also installed. Accord: Docket No. FB410279RT. Lastly, the issue of whether proceeds for the elevator upgrading were paid by his insurance company was addressed in the below proceeding and the Rent Administrator's Order which indicates that $5,000.00 was disallowed from the owner's claimed costs.

Next, the petitioner alleges the difference between the Notice to Tenant of MCI Rent Increase Application ($35.65) and the Order's approved per room/per month temporary rent increase

[1] The Commissioner notes that Operational Bulletin 2021-1, originally issued in January 2021 was updated in January 2022 and January 2023, which changed the reasonable costs and classifications of various MCI eligible items.

($23.87) is indicative of the owner's attempt to inflate costs. To clarify, the Notice amount is not the final approved amount, it is the owner's claimed costs, and a major part of the application process is to verify those costs. As explained in the Order, the Rent Administrator disallowed costs for filing fees, fire escape repair, insurance, engineering service costs of mileage, tolls and parking, temporary heat and hot water, light fixtures, and a paint steel jacket, which accounts for the difference between the Notice and the Order. The Commissioner notes that disallowed costs are not indicative of an owner's attempt to inflate costs, rather the owner expended funds for items in connection for the work involved below, however, they are not included pursuant to the RSC, i.e., DOB filing fees, insurance payments, transportation costs, etc. The Commissioner finds this claim without merit as this unsupported allegation is insufficient to refute the documentation submitted by the owner in the below proceeding.

The petitioner's claim that the owner may have received a tax abatement for the MCI and if so, the MCI rent increase should be reduced, is without merit. Division records do not show that the owner has been granted a J-51 tax abatement. The Commissioner notes that in the event that the owner receives a J-51 tax abatement, the tenants will be entitled to a temporary reduction of the MCI increase and their rents will be adjusted upon notice to the Division by the agency granting the tax abatement.

Regarding the petitioner's assertion that the elevator floor is not level with the basement floor and that petitioner's apartment has been cold after the installation of the new boiler/burner, this order and opinion is issued without prejudice to the tenant's right to file a reduction in services complaint with the Division if the facts so warrant.

Lastly, as to the claim that the rent increase is unequitable to the tenants, the Commissioner is mindful to the possibility that an authorized rent increase may prove burdensome to some tenants. However, in light of the applicable statutory and regulatory provisions the Commissioner is constrained to affirm the Administrator's grant of an MCI rent increase which is warranted. It is noted that the rent increase which has been granted in this proceeding is subject to the limitation on collectability as indicated under Part "V" of the Rent Administrator's order stating that the collectible increase shall not exceed 2% of the rent as of May 8, 2018.

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

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

ISSUED: JUN 28 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
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Right to Court Appeal

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

There is no other method of appeal.

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

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	**ADMINISTRATIVE REVIEW DOCKET NO.:** KP410007RO
BSF INWOOD HOLDING, LLC	
PETITIONER	**RENT ADMINISTRATOR'S DOCKET NO.:** IO410020OM

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On April 7, 2022, the above named Petitioner-owner timely filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on March 9, 2022, (the "Order"), concerning the housing accommodation known as 34 Post Avenue, New York, NY, wherein the Rent Administrator denied the owner's application for a rent increase based on the installation of a major capital improvement(s), to wit: pointing and waterproofing, exterior restoration, and sidewalk shed. The owner's application was denied as a major capital improvement ("MCI") rent increase was previously granted under Docket No. PC410113OM on June 15, 2001 for exterior restoration work which had not yet exhausted its 25 years useful life.

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

In the PAR, the owner requests, by counsel, that the Order be reversed because the Rent Administrator failed to (1) address the Petitioner's request for a waiver of useful life prior to denying the MCI application; (2) offset the amount for the MCI items that did not exceed their useful life; and (3) failed to distinguish the pointing and waterproofing from the prior façade work.

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

It is the established position of the Division that a building-wide comprehensive exterior restoration, which may include pointing, waterproofing, masonry, parapets, lintels, cornices, etc., constitutes an MCI for which a rent increase adjustment may be warranted. A comprehensive building-wide exterior restoration is supposed to include all necessary pointing, waterproofing and masonry work so that when it is completed, the premises shall remain free from water seepage for a reasonable period of time so that the tenants may enjoy the benefit of the intended improvement. The granting of an MCI rent increase for such exterior restoration contemplates that the building façade, except for normal maintenance and repairs, will be structurally sound and watertight for the twenty-five (25) year useful life of an exterior restoration. Thus, an owner is prohibited from receiving an MCI rent increase for any subsequent work of a similar nature for the entire duration of the useful life of an exterior restoration, subject to the waiver provisions of the Rent Stabilization Code (the "RSC") and Operational Bulletin 90-2.

If an item to be replaced has not expired its useful life, the owner may request a waiver of the useful life, provided that such requirements for such waiver have been met. Pursuant to RSC Section 2522.4(a)(2)(i)(d),(e), where an owner wishes to request a waiver of the useful life requirement, the owner shall apply to the DHCR for such waiver prior to the commencement of the work for which they will be seeking an MCI rent increase. Notwithstanding this requirement, where the waiver requested is for an item being replaced because of an emergency, which causes the building or any part thereof to be dangerous to human life and safety or detrimental to health, an owner may apply to the DHCR for the waiver at the time they submit the MCI application.

The Agency records reveal that on March 29, 2001, the owner previously applied for an increase in rents as a result of completing an exterior MCI. On June 15, 2001, DHCR issued the MCI Rent Increase Grant under the Docket Number PC410113OM, granting the following MCI costs: (1) "exterior" in the amount of $82,633.08; (2) "consulting engineer" in the amount of $5,973.92; and (3) "asbestos" in the amount of $1,834.23.

Thereafter, on March 6, 2020, the owner again applied for an increase in rents based on costs totaling $128;600.00 for the following claimed improvements: (1) pointing and waterproofing in the amount of $96,100.00; (2) related exterior restoration in the amount of $22,500.00; and (3) related sidewalk shed in the amount of $10,000.00. A review of the record shows that the owner did not request a waiver of the useful life prior to the start of the subject work or request a waiver of useful life because of an emergency. Instead, the owner submitted with their MCI application a waiver request dated February 26, 2020 and received by the DHCR on March 6, 2020, asserting that the waiver was being requested for "pointing with related exterior work", claiming that at the time work was done approximately seventeen (17) years ago, "all defects were corrected", however, due to the location of the building, "there were new issues to correct due to deteriorating conditions from the weather over the years", and that "[a]s the previous work was beyond ordinary repairs", the owner "had to do exterior façade maintenance[1] as required by DOB regulations".

On March 9, 2022, the subject Order Denying MCI Rent Increase was issued. Based on Section 2522.4(a)(2) of the RSC, the Rent Administrator denied the application for a rent increase because an MCI rent increase was previously granted under Docket Number

[1] It is long established DHCR policy that costs for repairs and maintenance are not eligible as an MCI.

PC410113OM in 2001 for exterior work done in 2000. The Rent Administrator noted that the useful life for exterior work is 25 years, and the exterior work has not exhausted its useful life, making the subject exterior work not eligible for an MCI rent increase.

In light of the foregoing, the Commissioner finds that the Rent Administrator correctly denied the owner's MCI application under Docket Number IO410020OM. Foremost, the Commissioner notes that the owner failed to apply for a waiver of the useful life prior to the commencement of the subject work in accordance with Section 2522.4 of the RSC. Moreover, the Commissioner finds that the owner's claim that the Rent Administrator did not distinguish the pointing and waterproofing from the prior façade work and did not "offset for any item that did not exceed their useful life" is without merit. The record shows that the pointing and waterproofing work under Docket Number PC410113OM was not performed as an independent MCI item but was included as an integral part of the exterior restoration work performed, and as such, it does not have a separate useful life, but is subject to the twenty-five (25) years useful life of the exterior restoration work, which has not expired.

As noted above, a comprehensive building-wide exterior restoration is supposed to include all necessary pointing, waterproofing and masonry work, and that the granting of an MCI rent increase for such restoration contemplates that the building façade will be structurally sound and watertight for the twenty-five (25) year useful life an of exterior restoration. The owner is therefore prohibited from receiving an MCI rent increase for any subsequent work of a similar nature for the entire duration of the useful life of the subject exterior restoration. Here, the MCI rent increase granted under Docket Number PC410113OM on June 15, 2001 for exterior restoration has not yet exhausted its twenty-five (25) years useful life, and therefore the Commissioner finds that the subject exterior restoration, which included pointing and waterproofing,[2] cannot qualify for an MCI rent increase because it is subsequent work of a similar nature that was performed before the expiration of the useful life of the earlier exterior work performed under Docket Number PC410113OM.

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly denied the owner a rent increase, and the owner's PAR has not established any basis to modify or revoke the Rent Administrator's determination.

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

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

ISSUED: JUN 30 2023

Woody Pascal
Deputy Commissioner

[2] The record shows that, as stated in the Delta Contracting Group, Inc. statement dated February 14, 2019, the work was a "Façade Restoration" which included pointing, lintels, waterproofing, parapet stucco, coping, railing, doors, sidewalk shed/scaffolding, concrete flatwork, asbestos, and mobilization as integral parts of the exterior restoration work, totaling $128,600.00.

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Web Site: www.hcr.ny.gov

Right to Court Appeal

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

There is no other method of appeal.