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

IN THE MATTER OF THE ADMINISTRATIVE APPEALS OF:	:	**REMIT**
	:	**DOCKET NO.: LQ110002RP**
[redacted]	:	
	:	**ADMINISTRATIVE DOCKET**
(Tenant)	:	**NOS.**
	:	**JV110037RO & JV110021RT**
DAVID NISIM	:	
(Owner)	:	**RENT ADMINISTRATOR'S**
PETITIONERS		**DOCKET NO.:GT110004AD**

X

COMMISSIONER'S ORDER AND OPINION ON REMIT

Petitioners timely filed administrative appeals (PARs) against Docket No. GT110004AD, an order issued on September 16, 2021, by the Rent Administrator concerning the housing accommodations known as 137-72 70th Avenue, [redacted], Flushing, NY which denied [redacted] request for succession rights and found that [redacted] was the first rent stabilized tenant of the subject apartment and terminated the proceeding.

In the subject consolidated Commissioner's order, PAR Docket Nos. JV110037RO and JV110021RT, the Commissioner found that the Rent Administrator properly denied [redacted] claim of succession rights and that [redacted] was the first rent stabilized tenant of the subject apartment.[1] The Commissioner's consolidated order of the aforementioned PARs was subsequently appealed in proceedings commenced by the above-named petitioner-owner[2] and petitioner-tenant[3] pursuant to Article 78 of the NYS Civil Practice Law and Rules. The subject proceedings were thereafter remitted to DHCR by an Order on Consent dated April 17, 2023 remitting the matter for the limited purposes of clarifying certain wording in the issued PAR order, and the issuance of a new determination.

[1] The Commissioner notes that the facts and findings are delineated in the Order and Opinion issued pursuant to Docket Nos. JV110037RO and JV110021RT and are therefore not recited herein.
[2] David Nisim v. DHCR, Supreme Court of the State of New York, Queens County, Index No. 702557/2023.
[3] [redacted] et al v. DHCR, Supreme Court of the State of New York, Queens County, Index No. 702796/2023.

Upon Remit, DHCR assigned Docket No: LQ110002RP to the proceeding and the Notice of Re-Opening (the "Notice")[4] was served on the parties on June 2, 2023.

In response to the Notice, the tenant, by counsel, submitted a June 22, 2023 response which requested, *inter alia*, that DHCR review its orders as it relates to the great-grandchildren of the deceased tenant [redacted], and their mother, [redacted], as the counsel claims that it has been demonstrated that the "infant children" are the "proper candidates for succession" and that [redacted] is the "third candidate" for succession.

The owner, by counsel, submitted a June 22, 2023 response which requested, *inter alia*, that the underlying PAR order be modified to remove that portion of the order which found [redacted] to be the first rent stabilized tenant of the subject apartment as he was found not to have succession rights and was not a tenant as defined by section 2520.6 of the Rent Stabilization Code. The owner reiterates their claims raised below, *inter alia*, that according to the Expulsion Order 326 dated March 6, 1980, [redacted] was a rent-controlled tenant, and not a rent stabilized tenant as claimed by the tenant, and that [redacted] documentary submissions, as well as the other occupants in the subject apartment, failed to substantiate their succession rights.

Thereafter, in response to a Request for Additional Information (RFAI), the owner filed a July 18, 2023 follow-up submission to address the tenant's June 22, 2023 submission, wherein the owner, reiterated their claims that the tenant did not prove his succession rights, that notwithstanding the statements of tenant's counsel, counsel was present at [redacted] deposition, and that any allegation regarding [redacted] is irrelevant in this proceeding.

The record reveals that the tenant sought an extension of time to respond to the RFAI mailed to the tenant on June 29, 2023 which sought a response to the owner's June 22, 2023 submission. On August 17, 2023, the tenant's request for an extension of time to respond was granted. The tenant's time to respond was extended to September 1, 2023. The tenant was further advised that no further extensions would be granted. At present, DHCR has not received tenant's response to the RFAI.

The Commissioner having reviewed the petitioners' appeals and any and all supporting documentation, any and all statements made by the parties, the underlying case file and all relevant Rent Regulatory Laws and Regulations, finds that a modification of the Rent Administrator's determination is warranted.

After a careful review of the administrative record, the Commissioner finds that the Rent Administrator's order is to be modified to remove that portion of the order which found [redacted] to be the first rent stabilized tenant of the subject apartment. It is not disputed that the issue of [redacted] status as a "tenant" has been raised by the owner in the Housing Court proceeding under Index No. 61567/17 and the Agency will defer to the outcome of that proceeding for the sake of administrative efficiency. The Commissioner affirms

[4] The Commissioner notes that the Notice's reference to New York County rather than Queens County for the Article 78's venue is harmless error and does not affect the subject findings of this Commissioner's Order and Opinion on Remit.

the finding that the Rent Administrator properly determined that [redacted] failed to substantiate their succession claim. The Commissioner also notes that the Rent Administrator properly found that upon the permanent vacatur of the tenant of record in February 2017, the apartment became subject to the Rent Stabilization Law and Code.

Accordingly, the Rent Administrator's order, Docket No. GT110004AD, is herein modified to strike that portion finding that [redacted] is the first rent stabilized tenant of the subject apartment.

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

ORDERED, that the Rent Administrator's order is herein amended to remove the finding that Christopher Ramirez is the first rent stabilized tenant and is so otherwise herein affirmed.

ISSUED:

Woody Pascal
Deputy Commissioner

OCT 06 2023

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.

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	
	:	**ADMINISTRATIVE REVIEW**
BECK STREET LLC	:	**DOCKET NO.: KP610018RO**
	:	
PETITIONER	:	**RENT ADMINISTRATOR'S**
	:	**DOCKET NO.:IW610008AD**

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On April 13, 2022, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on March 11, 2022 (the "order"), concerning the housing accommodation known as 676 Beck Street, [redacted] Bronx, New York wherein the Rent Administrator terminated the proceeding. The Rent Administrator advised the owner to file a Form RS-3 (Application by Owner to Determine Whether Building/Apartment is Exempt from the Emergency Tenant Protection Act or the Rent Stabilization Law) with this Agency to determine whether the building is exempt from rent stabilization based on substantial rehabilitation, if the facts warranted. The Rent Administrator also advised the tenant to file with this Agency a complaint of rent overcharge (Form RA-89) and/or a complaint of a failure to renew/failure to furnish a copy of a signed lease (Form RA-90) with this Agency, if the facts so warranted.

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

In the PAR, the owner, through counsel, seeks a reversal of the Rent Administrator's order, contending in sum, that the order: incorrectly "indicates" that for a building to be considered deregulated the owner must file an application with DHCR and then receive an order finding the building "deregulated based upon substantial rehabilitation"; and erroneously includes the statement that the occupant could file a complaint of rent overcharge or lease renewal without first determining whether "the occupant has a right to file a complaint with DHCR" as the occupant is not a "tenant" as defined by the rent regulations. The owner further

asserts, *inter alia,* that the Administrator should have determined the regulatory status in the proceeding and cites to a number of Agency cases that purportedly substantiate this assertion;[1] that the gut renovation occurred in 1983 and since that time no tenant has filed a complaint challenging the building's deregulation status further supporting their contention that the work was "done"; that when the work was completed there was "no provision in the RSC, for filing an application with the DHCR" for a deregulation order; and that substantial rehabilitation occurs by operation of law at the time the work is done and DHCR thereafter merely confirms such deregulation.

The tenant, by counsel, submitted a response to the owner's petition on June 14, 2022, which opposed the PAR. The tenant contends, in substance, that the owner is required to comply with Operational Bulletin 95-2, which pertains to the circumstances under which DHCR finds a building to have been substantially rehabilitated within the meaning of the Rent Stabilization Law; and that the subject complainant had standing to file his request for an administrative determination in the proceeding below.

Subsequently, the owner submitted a reply to the tenant's response on July 29, 2022 and reiterated the claims raised in their petition. In addition, the owner claimed that there is "no requirement" that the owner retain documentation from 1983, and that it would be unconstitutional for DHCR to require the owner to "produce such documentation now" with the owner citing to the "recent decision of the Court of Appeals in Regina" to substantiate this assertion.

The tenant thereafter submitted a follow up response, contending the owner's reliance on the Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal[2] is misplaced in this matter as the subject proceeding is not an overcharge complaint and therefore the ruling "does not apply".

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

The record reveals that the tenant, by counsel, commenced an Administrative Determination proceeding by letter filed on November 5, 2020, seeking a determination regarding the regulatory status of the subject apartment. The tenant asserted that there was a pending holdover proceeding, assigned Index No. LT-032356-19/BX, wherein the owner alleged that the subject premises was not rent stabilized because the premises was the "subject of a gut rehabilitation". The tenant claimed that: 1) the apartment is rent stabilized; 2) that the tenant had moved into the subject apartment on or about 1995, joining [redacted] his significant other and tenant of record; and 3) that the "Parties have agreed on the record" to have the issue of the status of the subject premises determined by DHCR.

On March 8, 2021, the Administrator served on the parties a "Notice of Commencement of Administrative Proceeding" ("Notice"), and along with the Notice, served a copy of the

[1] Matter of South Heights Development Corp., Docket No. BR210033RO; Matter of Portia Properties LLC, Docket No. UC620008RO; and the Matter of Hillside Avenue Associates LLC, Docket No. VJ910077RO.
[2] 2018 NY Slip Op 05797, 164 AD 3d 420 (App. Div. 1st Dept 2018).

tenant's Administrative Determination request on the owner, and simultaneously requested that the owner submit any and all documentary evidence regarding the regulatory status and rental history for the subject apartment.

Subsequently the owner, by counsel, responded to the Rent Administrator's Notice by submitting an answer dated March 24, 2021. The owner claimed that the subject premises was not subject to the Rent Stabilization Law, as it had been "gut renovated in 1983". The owner attached a copy of the Certificate of Occupancy for the building issued on February 22, 1983.

During the proceeding below, the Administrator requested an Agency inspection. On November 4, 2021, during the inspection the Agency inspector found: the subject building had five stories and a basement; and that there are five apartment units on each floor with two units in the basement for a total of twenty-seven apartments in the building, with all apartments being occupied.

On March 11, 2022, the Rent Administrator terminated the subject proceeding. The Administrator noted that the owner may file Form RS-3 with this Agency to determine whether the building is exempt from rent stabilization based on substantial rehabilitation, if the facts warrant. The Administrator further noted on page two of the order that: 1) the tenant may file Form RA-89 with this Agency to determine the legal regulated rent/overcharge of the subject apartment, and/or Form RA-90 (Failure to Renew and/or Failure to Furnish a Copy of a Signed Lease), if the facts warrant; and 2) the owner/tenant may visit a local Rent Office or access the Agency's website at hcr.ny.gov for forms and further information.

In view of the record herein, the Commissioner finds that the owner's PAR is without merit and the owner has not presented any allegations of error of fact or law to warrant a reversal or modification of the Rent Administrator's order. The Commissioner rejects the owner's claim that the Administrator should have made a determination on their substantial rehabilitation assertion below. While a ground for exemption from the Rent Stabilization Law may be that the apartments in the building were completed or substantially rehabilitated as family units on or after January 1, 1974, the Commissioner finds that the owner's request for the Rent Administrator to make such a determination was not properly before the Rent Administrator in this case. As detailed above, the tenant initiated the subject Administrative Determination proceeding, and in response, the owner raised their substantial rehabilitation claim, however, such a determination on the owner's exemption claim has the potential to affect other tenants in the building, and therefore all affected tenants should be a part of the proceeding whereby due process can be satisfied. Accordingly, for a proper decision to be rendered, the Rent Administrator correctly terminated the below proceeding, advising the owner to file a Form RS-3 with this Agency for the determination of whether the building is exempt from rent stabilization on substantial rehabilitation grounds, should the facts so warrant.

The Commissioner further finds that the owner's reliance on the Matter of South Heights Development Corp., Matter of Portia Properties LLC, Matter of Hillside Avenue Associates LLC and the Matter of Regina to be misplaced. The decisions in the referenced cases are not determinative of the issues herein as the facts in those cases are distinguishable. The first three

cases cited above pertain to matters where the Rent Administrator found the apartments to be rent regulated, which was not the case in the instant matter as no determination was made on the status of the subject premises. Moreover, in the Matter of Regina,[3] the tenant brought an overcharge proceeding wherein the applicable base date was at issue, which is not the case herein as no determination was made on an overcharge complaint.

The Commissioner notes that if the owner wants a determination from this Agency on their substantial rehabilitation claim, it is incumbent on the owner to file with this Agency their Application by Owner to Determine Whether Building/Apartment Is Exempt From The Emergency Tenant Protection Act Or The Rent Stabilization Law (Form RS-3).

Based on the foregoing, the Commissioner finds that the Rent Administrator's order is correct as issued and is proper under the circumstances herein, and the owner's PAR has not established any basis to modify or revoke the Rent Administrator's determination.

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

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

ISSUED:

NOV 03 2023

Woody Pascal
Deputy Commissioner

[3] 35 N.Y.3d 332 (2020).

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Right to Court Appeal

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	**ADMINISTRATIVE REVIEW DOCKET NO.:** LT420020RO
DOMINION MANAGEMENT	
PETITIONER	**RENT ADMINISTRATOR'S DOCKET NO.:** LQ420017AD

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ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

On August 21, 2023, the above-named petitioner-owner timely filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on July 17, 2023 (the "order"), concerning the housing accommodation known as 215 West 91st Street, Apt [redacted] New York, New York, wherein the Rent Administrator determined that on June 30, 2023 the Maximum Collectible Rent ("MCR") for the subject apartment was $1,520.87 and the Maximum Base Rent ("MBR") was $2,531.63.

The Commissioner has reviewed the record and carefully considered that portion relevant to the issues raised by this appeal.

In the PAR, the owner by counsel, requests a modification of the order asserting, in relevant part, that DHCR miscalculated the final amount permitted for the MCR for the year 2023 when the Administrator applied a 1% variable rather than the allowable 1.4% variable. The owner further contends that the correct MCR calculation is $1,526.89 and not $1,520.87 as set in the order, and that they do not dispute any of the other calculations in the order and accompanying chart. The owner submits, *inter alia*, a May 20, 2023 NYC Senior Citizen Rent Increase Exemption ("SCRIE") Tax Abatement Credit Adjustment Notice highlighting $1,526.86, the total amount listed under "Your Apartment's Allowable Legal Rent" for the "Benefit or Adjustment Period" from January 1, 2023 to December 31, 2023.

The tenant opposes the owner's PAR claiming the order does not need to be corrected as the May 2023 SCRIE "list the correct MCR" and that revising the order may cause delay in resolving their SCRIE issue.

After careful consideration of the entire evidence of record, the Commissioner is of the opinion the petition should be granted and that the Rent Administrator's order and accompanying chart below should be modified.

Section 2202.22 of the New York City Rent and Eviction Regulations (Rent Control Regulations) provides, in pertinent part, that where the maximum rent or any fact necessary to the determination of the maximum rent is in dispute, in doubt, or not known, the Rent Administrator may issue an order determining facts, including the amount of the maximum rent. The Rent Control Regulations also specify that where the Rent Administrator determines that the accommodations are subject to control, the Rent Administrator shall also fix or establish the maximum rent therefor... unless such maximum rent had been previously fixed or established by the State Rent Commission or by the Rent Administrator.

The Commissioner notes that under the MBR program, the tenant pays the MCR, which is generally less than the MBR. Additionally, pursuant to the Housing Stability and Tenant Protection Act ("HSTPA") of 2019, the MCR cannot be increased by more than 7.5% per year or the average of the previous five-year Rent Guidelines Board ("RGB") increases for each year of the two-year MBR cycles, unless there are Major Capital Improvements ("MCI") or Individual Apartment Improvement ("IAI") rent increases.

The Agency records show that on May 4, 2023, the tenant by counsel, initiated a proceeding with the DHCR to establish the current MCR. The tenant provided calculations of MBR/MCRs from 2013 to the date of filing. The tenant asserted, in sum, that DHCR, in a 2019 order assigned Docket No. DM420005RP, set the MCR at $966.04, effective January 1, 2013; that the 2019 DHCR order failed to include a Rent Control Rent History Report; and that the tenant's request was being made pursuant to the requirements of the tenant's SCRIE application. The tenant submitted, *inter alia*, a March 30, 2023 Tenant Statement showing a balance due to the owner and a DHCR Rent Control History Report dated March 12, 2013.

During the proceeding below, on May 24, 2023, the Rent Administrator mailed to the owner a Request for Additional Information/Evidence ("RFAI") wherein the owner was requested to submit complete, legible copies of the Form RN-26 that the owner had been required to serve on the tenant, for every year from 2014 to the present.

In the order under review, the Rent Administrator, on July 17, 2023, determined that the subject apartment's MCR on June 30, 2023 was $1,520.87 and the MBR was $2,531.63. The Administrator directed the owner to base all future MCR and MBR increases for the subject apartment on the lawful rent established in the order. Attached to the order was a computer printout chart of the subject apartment's MCR and MBR calculations beginning from January 1, 2013 through January 1, 2023, along with a brief explanation for each rent adjustment. In the subject order, it was noted that the Administrator used the information available in the Agency's records to compile the chart that accompanied the order and that those records included the January 22, 2019 DHCR order assigned Docket No. DM420005RP[1] in which the MCR was set at $966.04, effective January 1, 2013.

[1] The Commissioner notes that the facts and findings delineated in the Order and Opinion issued pursuant to Docket No. DM420005RP are not in contention here and are not recited herein.

In the instant proceeding, it is not disputed that the subject apartment is subject to the Rent Control Regulations and that [redacted]s the tenant of record.

As for the MCR calculated as of January 1, 2023 in the subject MCR and MBR calculation chart, the Commissioner finds the owner's claim has merit and that the Rent Administrator's order determining the MCR for the subject apartment on June 30, 2023, pursuant to Section 2202.22 of the Rent Control Regulations, contains an error, warranting a modification of the MCR as listed in both the Rent Administrator's order and accompanying MCR and MBR calculation chart[2] under Docket No. LQ420017AD.

In the instant matter, upon review of the calculation of the MCR established below, the Commissioner finds that the subject order and the accompanying chart under Docket No. LQ420017AD is hereby modified to reflect a 1.4% MCR increase beginning on January 1, 2023,[3] wherein such Rent Administrator's order and calculation chart is herein modified as follows:

1) in the order, the MCR, on June 30, 2023, is $1,526.89, and
2) in the chart accompanying the order, the MCR effective January 1, 2023 is $1,526.89.

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

ORDERED, that the petition is granted, and the Rent Administrator's order and accompanying chart are modified in accordance with this Order and Opinion, and that the Rent Administrator's order is so otherwise herein affirmed.

ISSUED:

NOV 10 2023

Woody Pascal
Deputy Commissioner

[2] The amended MCR and MBR Calculation Chart is attached to the herein PAR Order and Opinion.
[3] The Commissioner notes that, as stated in the DHCR's Notice of Maximum Collectible Rent Effective January 1, 2023, Part C – Computation of 2023 Maximum Collectible Rent, pursuant to the HSTPA of 2019, the MCR in effect on December 31, 2022 is increased by not more than 1.4% on January 1, 2023 (which is less than the 7.5% and is based on the average of the previous five years of one-year rent adjustments for rent stabilized apartments).

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Maximum Colectible Rent

Date		MCR 2013	Fuel Cost Adjustment	FCA 2013	Total MCR 2013				
1/1/2013	$966.04	$966.04	BO-422127-FC	$93.04	$1,059.08	Maximum Base Rent			
	Previous Rent	MCR 7.5%		Present FCA	Total MCR	MBR Docket	Previous MBR	MBR %	Total MBR
1/1/2014	$966.04	$1,038.49	CO-422545-FC	$99.20	$1,137.69	BR-420532-BR	$1,782.56	8.30%	$1,930.64
1/1/2015	$1,038.49	$1,116.38	DO-422354-FC	$63.00	$1,179.38				
1/1/2016	$1,116.38	$1,200.11	EO-422115-FC	$39.00	$1,239.11	DU-420592-BR	$1,930.64	9.60%	$2,115.98
1/1/2017	$1,200.11	$1,290.12	FO-421269-FC	$39.64	$1,329.76				
1/1/2018	$1,290.12	$1,386.88	GO-422003-FC	$45.40	$1,432.28	FU-420225-BR	$2,115.98	7.40%	$2,272.56
1/1/2019 - 6/14/2019	$1,386.88	$1,490.90	HO-420216-FC	$66.56	$1,557.46				
6/15/2019 - 12/31/2019	$1,386.88		HTSPA-No Fuel		$1,490.90				
		MCR HTSPA - 1%							
1/1/2020	$1,490.90	Denied	HTSPA-No Fuel	N/A	$1,490.90	HR-421407-BR	$2,272.56	Denied	$2,272.56
1/1/2021	$1,490.90	Denied	HTSPA-No Fuel	N/A	$1,490.90				
11/1/2022	$1,490.90	$1,505.81	HTSPA-No Fuel	N/A	$1,505.81	KS-420001-BR	$2,272.56	11.40%	$2,531.63
		MCR HTSPA - 1.4%							
1/1/2023	$1,505.81	$1,526.89	HTSPA-No Fuel	N/A	$1,526.89				

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	**ADMINISTRATIVE REVIEW DOCKET NO.:KR410002RT**
[redacted]	:	
PETITIONERS	:	**RENT ADMINISTRATOR'S DOCKET NO.:GQ410014AD**

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On June 1, 2022, the Petitioner-tenants filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on April 28, 2022 (the "order"), concerning the housing accommodation known as 105 Arden Street, Apt [redacted], New York, New York wherein the Rent Administrator determined that the subject apartment, based on high rent vacancy, was no longer subject to the Rent Stabilization Law and Code.

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

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

In this PAR, the tenants assert that the Administrator was incorrect when she ruled that the Housing Stability and Tenant Protection Act of 2019 ("HSTPA") did not apply to this proceeding because the proceeding was initiated prior to the enactment of HSTPA. The tenants cite to the Matter of Dugan v. London Terrace Gardens[1] ("Dugan") and claim the court therein held that HSTPA applies to pending cases.

The owner, by counsel, opposes the tenant's PAR asserting, in sum, that the tenants have not raised any errors of law or fact to warrant reversing the Rent Administrator's order, and that the tenants' reliance on the Matter of Dugan is incorrect as the cited case has been recalled and vacated by the Court of Appeals in the Matter of Regina Metro. Co., LLC v. New York State

[1] 2019 Slip Op. 06587 (App. Div. 1st Dept).

Div. of Hous. and Community Renewal, 154 N.E.3d 972 (N.Y. 2020) ("Regina"). The Commissioner notes that the Court in the Matter of Regina found that HSTPA does not apply to proceedings dealing with overcharges allegedly occurring prior to the effective date of HSTPA.

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

On June 14, 2019, the New York State Legislature enacted HSTPA (Chapter 36 of the Laws of 2019) which repealed the provisions of the Rent Stabilization Laws and Regulations which allowed for deregulation of apartments based upon high rent (high rent vacancy deregulation). The statute further provides that the provisions for the repeal of deregulation shall take effect immediately. (See HSTPA, Part "D" §8 and Part "Q" §8). The Legislature made a subsequent clarification as to the effect of Part "D" as it made an explicit exception in the "clean up" legislation enacted several days after the HSTPA's effective date, amending Section 8 of Part D to provide, in pertinent part, that: "This act shall take effect immediately; provided however, that (i) any unit that was lawfully deregulated prior to June 14, 2019 shall remain deregulated..."

Rent Stabilization Law ("RSL") Section 26-504.2 (a) provides for the deregulation of rent-stabilized apartments that reach a threshold legal regulated rent. Specifically, and as relevant herein, deregulation is triggered when a unit became vacant and the legal regulated rent thereupon exceeded $2,500.00 per month (high rent vacancy deregulation) inclusive of vacancy increase allowances and increases permitted for owner improvement. *See generally*, Altman v 285 W Fourth, LLC, 31 NY3d 178 (2018).

In the proceeding below, on May 15, 2018, the tenants, by counsel, commenced an Administrative Determination (AD) proceeding to determine the status of the subject premises. The tenants claimed, in sum, that the owner wrongly removed the apartment from rent stabilization; that the tenant, [redacted], moved into the subject apartment in June 2013, and that her initial lease stated the apartment was not rent regulated, and later the tenants were provided with Rent Stabilized leases; that the Rent Registration for the subject apartment listed the last rent stabilized tenant to have been [redacted] whom allegedly vacated the apartment in 2009 with a rent of $1,510.40; that the owner filed a Rent Registration in May 2010 listing the subject apartment as exempt based on a vacancy lease running from September 2009 - August 2011; that the available records from the NYC Department of Building ("DOB") show that no work was performed in the subject apartment until 2012; the value of the work was estimated at approximately $24,000.00; that when the subject apartment became vacant in 2009, even with a vacancy increase, the rent did not rise to the $2,000 threshold necessary to effectuate deregulation; and that when the Individual Apartment Improvements ("IAI") were allegedly completed in 2012, the rent still did not rise to the $2,500 threshold necessary to effectuate a deregulation. In support of the tenants' application they submitted, *inter alia*, a partial copy of the tenants' Standard Form of Apartment Lease dated May 30, 2013, Renewal Leases dated February 26, 2014, and March 3, 2016, the affidavit of [redacted], a long-time tenant in the subject building, who averred, *inter alia*, to the partial tenant history of the subject apartment; and the tenants' letter addressed to Sovereign Associates detailing defective conditions they found in the subject apartment in June 2013.

On September 13, 2018, the Administrator served on the parties a "Notice of Commencement of Administrative Proceeding" ("Notice") and along with the Notice, served a copy of the tenants' Administrative Review request on the owner of the subject premises and requested that the owner submit any documentary evidence, *inter alia*, regarding the rental history of the subject apartment, and any regulatory status claims regarding the subject apartment, if any. The tenant was also requested to submit proof of their initial date of occupancy and a history of the rent's paid.

Subsequently, the tenants responded to the Notice by submitting, *inter alia*, correspondence from conEdison dated September 27, 2018, which listed the tenants' initial date of occupancy to be June 7, 2013, and copies of the tenants' USAA Federal Savings Bank statements as proof of their rental payments.

The record reveals that the owner, by counsel, submitted a response dated November 2, 2018 opposing the tenants' application. The owner claimed, *inter alia*, that the complaining tenants were the first deregulated tenants in the subject apartment as the legal regulated rent surpassed the $2,500.00 threshold in 2013; that Rent Stabilization rights cannot be created through waiver or estoppel; that the prior owner incorrectly listed the legal rent for the subject apartment on the Rent Registration in 2009; and that the legal rent was actually $1,607.16 and not $1,510.40. The owner submitted, *inter alia*, a copy of DHCR Order which granted an MCI Rent Increase dated March 17, 2008, assigned Docket No VK430061OM pertaining to the subject premises; a Lease Agreement dated September 25, 2009 for the subject apartment executed by [redacted] which included a Decontrol Notice listing the "Last Legal Regulated Rent" as $1,673.60; and two NYC DOB PW3: Cost Affidavits for Job Number 121397336, one labeled SC120622044 listing the Total Job Cost at $71,704.00 and the second labeled: SC120622033 listing the Total Job Cost at $26,891.00.

According to the record, during the proceeding, the tenants submitted follow up responses wherein the tenants asserted, *inter alia*, that the prior owner did not make an error in the rent registration; that according to the 2007 DHCR Registration Rent Roll report for the subject apartment, the legal rent of $1,329.33 was charged for a one-year lease commencing on July 1, 2006, and ending June 30, 2007, and in the subsequent year, the legal rent was increased to $1,468.83 which included the guideline increase plus the first six percent of the MCI increase of $83.15. ($1,329.33 x 4.25% = $1,385.82 + $83.15 MCI= $1,468.97); that if the owner failed to collect legal increases then the lawful rent stabilized rent is limited to the rent actually charged; that the prior owner fraudulently deregulated the subject apartment; that the owner has not submitted sufficient proof of the IAI; that the electric panel installed is empty, and that the subject apartment had not been rewired; that the tenants' independent contractor valued the completed work at $15,983.03; that the owner overstated the costs of materials; and that the owner failed to register the rent with DHCR. The tenants submitted a copy of DHCR Rent Registration records for the subject apartment.

Upon further review of the record, the owner submitted follow up responses wherein the owner claimed, *inter alia*, that the subject apartment was gut renovated in 2012; that the renovations cost approximately $32,299.00; that even, if using the tenants' calculations, the

subject apartment reach the threshold to deregulate; that the tenants' have not submitted an affidavit from their independent contractor; that in 2007 the legal rent was $1,329.33; and that even applying the tenants' estimate of the costs, the legal rent for the subject apartment reached $2,570.00 and would have surpassed the threshold to be deregulated. The owner submitted in the proceeding, *inter alia*, various invoices for building supplies, an order form from Empire State Supply Corp. for the materials and supplies for the subject apartment in the amount of $519.01; a one-year Lease Agreement dated August 18, 2011 for the subject apartment executed by [redacted]; and the affidavit of [redacted] dated February 28, 2019, wherein the affiant, *inter alia*, averred that renovations had been completed in the subject apartment, and the approximate cost of those renovations was $32,299.00.

Furthermore, the Agency record demonstrates that the Rent Administrator, on August 13, 2021, mailed the owner a Request for Additional Information/Evidence ("RFAI") and sought the following information:

1. Submit scope of work/working agreement/plan between the contractor, and the owner for the Individual apartment Improvements completed for the subject apartment.
2. Submit invoices, cancelled checks, and receipts related to the Individual Apartment Improvements for the subject apartment.

The Agency record demonstrates that the Rent Administrator, on November 26, 2021, mailed to the tenants a RFAI which sought all executed leases from their initial occupancy to the present.

In response to the November 26, 2021 RFAI, the tenants submitted, *inter alia*, their initial Lease Agreement dated May 30, 2013, two Renewal Leases dated February 26, 2014 and March 3, 2016, a Preferential Lease Rider dated April 9, 2014, and four (4) Extension of Lease forms dated June 29, 2018, May 10, 2019, May 4, 2020, and June 14, 2021.

On November 12, 2021, the owner responded to the August 13, 2021 RFAI asserting, *inter alia,* that the owner did not own the building at the time the IAIs were completed and submitted a copy of the tenants' rental ledger which commenced in July 2013.

Thus, relying on the evidence in the record, the Rent Administrator on April 28, 2022, found the following facts warranted the denial of the tenants' application and the finding that the subject apartment no longer subject to the Rent Stabilization Law and Code, based on high rent vacancy deregulation:

1. that there was no dispute by either party that IAIs were performed in the subject apartment while it was vacant in 2013;
2. that based on the tenants' submitted documentation substantiating the cost of the IAIs in the amount of $15,983.03, allowed an IAI increase for that amount and that the rent is established by adding $266.38 or 1/60111 of the total cost of the IAIs to the legal regulated rent on July 1, 2013, when the tenant(s) moved in;

3. that the effective date of the MCI Docket Number VK430061OM is January 1, 2008; that the owner is entitled to a permanent rent increase of $43.63 per room per month for (4) four rooms ($174.52 MCI Increase) with the owner having been entitled to collect a temporary increase of $43.63 per room for three months. The temporary rent increase was only applied to the collectible rent, and did not become part of the legal regulated rent;
4. that the subject building has six (6) or more housing accommodations as of January 1, 1974;
5. that pursuant to HSTPA, all forms of deregulation, with the exception of 421-a (16) apartments, were repealed as of June 14, 2019, and prior to that date, a vacant apartment with a legal rent that reached the deregulation rent threshold could become deregulated, and the incoming tenant could be charged a market rent. The instant proceeding was commenced prior to HSTPA. Therefore, pursuant to the Rent Stabilization Law and Code, effective June 24, 2011 to June 14, 2015, the high rent/vacancy deregulation provision allowed for the deregulation of an apartment upon vacancy if the legal regulated rent reached $2,500.00 in New York City; and
6. that pursuant to the 2007 rent registration and undisputed by the parties, the legal rent for the subject apartment was $1,329.33. Therefore, this amount establishes the base legal regulated rent, and June 1, 2006 (lease start date), as the base date. After calculating all allowable and applicable increases, the legal regulated rent on July 1, 2013, was $2,585.73.

Foremost, the Commissioner rejects the tenants' assertion that the Administrator erred in ruling that HSTPA did not apply in this proceeding. The Commissioner notes that the tenants' assertion is incorrect as the Rent Administrator's findings are in fact contrary to the tenants' assertion. Here, the Administrator correctly determined that the subject apartment had become deregulated due to high rent vacancy deregulation when the tenants moved into the apartment in 2013 based on the Administrator's calculations of all allowable and applicable increases from June 1, 2016 when the base date rent for the apartment was $1,329.33 (undisputed by the parties), and thus, the subject apartment was no longer under the jurisdiction of this Agency as the legal regulated rent on July 1, 2013 was found to be $2,585.73. The evidentiary record supports the determination as there was sufficient evidence to justify the finding that the subject apartment had been deregulated prior to the effective date of HSTPA as the legal regulated rent had reached the RSL threshold applicable at the time. In the PAR, the tenants are not contesting the IAIs were performed, or the costs the Administrator applied in this matter, or the amount of the legal regulated rent calculated by the Rent Administrator.

The Commissioner further notes the tenants' reliance on the Matter of Dugan and finds it is misplaced as the case is factually inapposite to the instant matter. In Matter of Dugan, the tenants, who resided in apartments where the owner had been receiving tax benefits under New York City's J-51 tax abatement and exemption program claimed the owner fraudulently charged them amounts in excess of the legal rents for their units.

The Commissioner finds that HSTPA was correctly applied in this high rent deregulation proceeding as the Administrator found that the subject apartment had been lawfully deregulated prior to June 14, 2019 and therefore the apartment remained deregulated. While the Court of Appeals in the Matter of Regina, disallowed the retroactive application of certain rent overcharge provisions contained in Part F of the HSTPA, it stated that:

> The question we address here is relatively narrow - we have no occasion to address the prospective application of any portion of the HSTPA, including Part F. We address the new legislation only to determine whether certain Part F amendments ... must be applied retroactively ... We conclude that the overcharge calculation amendments cannot be applied ... to overcharges that occurred prior to their enactment ...

Based on the foregoing, the Commissioner affirms the Rent Administrator's determination and accordingly, the Commissioner finds that the tenants' PAR does not establish any basis to modify or reverse the Rent Administrator's determination.

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

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

ISSUED: NOV 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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:	:	**ADMINISTRATIVE REVIEW DOCKET NO.:LM010010RO**
SIRO 208 ALBANY AVE LLC	:	
PETITIONER	:	**RENT ADMINISTRATOR'S DOCKET NO.:KV010004AD**

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On January 12, 2023, the Petitioner-owner filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on December 9, 2022 (the "order"), concerning the housing accommodation known as 208 Albany Avenue, [redacted] Kingston, New York wherein the Rent Administrator denied the owner's application finding the owner had not demonstrated unique and peculiar circumstances in order to increase the rent.

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 this PAR, the owner, by counsel, requests a reversal of the Administrator's order and asserts that the order is arbitrary and capricious, and that the Administrator erroneously determined that the subject apartment to be rent stabilized at a rent significantly below the prevailing rents for similar sized apartments in the same area; that the tenant had a "sweetheart lease for performing janitorial services at the building"; that in consideration of "his duties as [a] part-time super" the tenant received "a discounted monthly rent" of $1,200.00, an amount "significantly less than similar sized two-bedroom apartments in the building"; the order only compared the rents for apartments within the building instead of rents in the same area; that it was wrong to use comparable apartments from only the building as that is too small of a sample, with the owner citing to Harding v. Calogero[1], to support this assertion; that the purpose of the unique and peculiar circumstance provision is to bring rents, that have been artificially depressed

[1] 45 A.D. 3d 363 (1st Dept. 2007).

due to a unique and peculiar circumstance, in line with similarly situated housing accommodations; that the former owner and tenant's "employee/employer relationship" is a unique and peculiar circumstance when considering that the building was not previously subject to rent regulations; and based on the special relationship had between the prior owner and tenant and the previous non-rent regulated, free market status of the subject building a unique and peculiar circumstance existed with the owner citing to Migliaccio v. NYS Division of Housing & Community Renewal[2]. The owner resubmits the tenant's one-year lease dated April 1, 2019 which provided for a monthly rent of $1,200.00. The Commissioner notes that the lease is silent regarding the reasoning for setting the monthly rent at $1,200.00.

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

Pursuant to Section 2503.4 of the Emergency Tenant Protection Regulations ("TPR"), an owner may make an application to raise the tenant's initial legal regulated rent within 60 days of the local effective date of the Act on the grounds that the presence of unique or peculiar circumstances has resulted in a rent which is substantially different from the rents generally prevailing in the same area for substantially similar housing accommodations.

Pursuant to Agency long-standing policy and procedures, the owner must establish the existence of unique or peculiar circumstances which materially affected the rent of the housing accommodation and must establish that the rent of the housing accommodation is substantially out of line with the rents generally prevailing in the same area for substantially similar housing accommodations. This section does not permit rent adjustments solely because there are variations in rents for similar housing accommodations.

A review of the underlying proceeding reveals that the owner requested a rent increase for the subject apartment based on unique circumstances. The owner asserted that the tenant was paying $1,200.00 per month for a "large 2-bedroom unit"; that the tenant was working as a part-time superintendent for the previous owner; that the owner recently purchased the building and since becoming the owner had not increased the tenant's rent; there is no written agreement of employment between the tenant and the previous owner; that the rent is "much lower" than "similar large 2-bedroom units in the area"; that there is another 2-bedroom unit in the building that leased on the open market for $1,650.00; and that the legal regulated rent for the subject unit should be $1,650.00.

In the proceeding below, the Administrator commenced an Administrative Determination (AD) proceeding to determine the owner's rent increase request based on unique and peculiar circumstances. On October 24, 2022, the Administrator served on the parties a "Notice of Commencement of Administrative Proceeding" ("Notice") and requested both the owner and tenant submit a copy of all leases for the subject apartment and any kind of employment agreement between the previous owner of the building and the subject tenant.

[2] 161 A.D. 3d 747 (2nd Dept. 2018).

Subsequently, the owner responded to the Notice by asserting, *inter alia,* that there was no written employment agreement. The owner submitted, *inter alia,* their previous submitted October 4, 2022 correspondence; and the tenant's one-year lease dated April 1, 2019 which provided for a monthly rent of $1,200.00.

The record reveals that the tenant submitted a response dated November 2, 2022, and claimed, *inter alia*, that he had been living in the subject building since November 1, 2016 and had moved into the subject apartment on April 1, 2019 at a monthly rent of $1,200.00; that since March 31, 2020 he has remained in the apartment as a month to month tenant; that the tenant had a verbal agreement with the prior owner to "watch over the property and assist w/issues that arose at that time (4/1/19 – present)"; that the arrangement "helped keep" his rent "the same"; that "they also understood" that the tenant was "on a fixed income since he was disabled"; that the tenant has been "assured by the new property managers that this arrangement can continue" at the current rent subject to the new regulated increases. The tenant submitted a copy of the April 1, 2019 lease agreement for the subject apartment.

Thus, relying on the evidence in the record, the Rent Administrator on December 9, 2022, denied the owner's application for a rent increase based on unique or peculiar circumstances finding the following: that, firstly, even if accepted, the owner's argument that the tenant was a part-time super and was therefore paying a reduced rent, such circumstances are not unique or peculiar and are in fact a common occurrence; and secondly, a review of the average rents for similar apartments in the building reveal an average monthly rent of $1,421.75, which includes the subject apartment. The average monthly rent without including the subject apartment is $1,495.00. The tenant's current monthly rent of $1,200.00 is therefore not substantially out of line with either rents of similar housing accommodations in the building.

Foremost, the Commissioner rejects the owner's assertion that the Administrator erred in finding that there was no unique and peculiar circumstance warranting a rent increase. Under the totality of the circumstances herein, the Commissioner finds that the owner has not provided any basis to reverse the Administrator's order as the order was not arbitrary or capricious, and that the owner's contentions are unavailing. Here, the Administrator correctly determined that the owner failed to establish the existence of unique or peculiar circumstances which materially affected the rent of the housing accommodation. The owner's assertions that the subject tenant's rent had been discounted by the prior owner as the prior owner hired the subject tenant as a part-time superintendent and that the owner did not increase the tenant's rent once they purchased the building are insufficient bases in which to grant a rent increase. Moreover, the owner's unsubstantiated claim that the subject tenant's rent is substantially out of line with the rents generally prevailing in the same area for substantially similar housing accommodations is of no moment as the Administrator determined that the subject tenant's possible "employee/ employer relationship" was not a unique and peculiar circumstance.

The Commissioner further notes the owner's reliance on the matter of Harding v. Calogero to support their claim that the Administrator erred when only comparable apartments from the building were computed as those comparable apartments were too small of a sample.

However, the owner's reliance is unavailing as the facts are distinguishable from the matter herein. In the Matter of Harding, it was determined that there was unique and peculiar circumstances presented which included the owner's expulsion from the Rent Stabilization Association; the court appointment of a 7A Administrator, who grossly mismanaged the building; and DHCR issuance of numerous inconsistent rulings as to the rent regulated status of various units which are not the facts herein. The Commissioner notes that the owner did not submit any documentary substantiation that the monthly rent of $1,200.00 was an amount "significantly less than similar sized two-bedroom apartments" in the building or in the area. Similarly, the owner's reliance on the matter of Migliaccio v. NYS Division of Housing & Community Renewal is also misplaced. In the Matter of Migliaccio, unlike in the instant matter, a unique and peculiar circumstances was found to have existed which was based on the owner's personal family relationships with the tenants. The Commissioner finds that it was reasonable to have found that the owner had not establish a unique and peculiar circumstance to warrant a rent increase.

Based on the foregoing, the Commissioner affirms the Rent Administrator's determination and accordingly, the Commissioner finds that the owner's PAR does not establish any basis to disturb the Rent Administrator's determination.

THEREFORE, in accordance with the applicable provisions of the Emergency Tenant Protection Regulations, it is

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

ISSUED: NOV 16 2023

Woody Pascal
Deputy Commissioner

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Right to Court Appeal

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JAMAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO.: LV210011RO

WYTHE PROPERTIES LLC

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO.: LO210029AD

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On October 13, 2023, the above-named Petitioner-owner timely re-filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on September 20, 2023 (the "Order"), concerning the housing accommodation known as 373 Wythe Ave., Apartment [redacted], Brooklyn, NY (the "Premises"), wherein the Rent Administrator granted the owner's request to amend the 2014 Initial Apartment Registration for the subject apartment.

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

In the PAR, the owner requests that the Order be modified, asserting, in substance, that the Order should be reissued, "restor[ing]" the "legal rent to $4,160.00" as listed in the purported Initial Registration filed on March 13, 2014 so that the "next initial lease can be based on the legal rent of $4,160.00."

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

The record shows that the owner initiated the proceeding below on March 6, 2023 for the purpose of seeking permission to amend the 2014 DHCR Initial Apartment Registration for the subject apartment, claiming that an error was made by a marketing real estate company, Halstead, in drafting the initial lease and the following lease, and that the owner would like to amend the rent. In support of the request, the owner submitted the purported Rent Roll Listing as of March 3, 2023 showing Apartment #[redacted] with a Legal Rent of $2,740.50 and $0.00 of Preferential Credits, the purported DHCR Initial Apartment Registration form dated March 13, 2014 noting $4,160.00 as the Legal Regulated Rent as of August 11, 2013 and the Actual Rent Paid on August 11, 2013 as $2,675.00 with Preferential Rent indicated as the reason for the difference, along with the first page of a Standard Form of Apartment Lease made on March 13, 2014 between the owner and tenants wherein the monthly rent was $2,675.00 (with no mention of a preferential rent), and purported Annual Apartment Registrations for the years 2014 and 2016 to 2022, indicating only a Legal Regulated Rent, with no preferential rent noted in each year's form, and the 2015 DHCR Registration Rent Roll Report Effective April 1, 2015 which revealed that Apartment #[redacted] was registered as having a Legal Regulated Rent of $2,701.75 and no preferential rent, as well as a copy of the DHCR Directions for Filing an Administrative Determination where the owner is requesting to amend a prior year's registration. The owner indicated that the apartment would become vacant on April 1, 2023.

According to the Rent Administrator's record below, the Rent Administrator sought additional information regarding the owner's claim and requested a notarized copy of the rent ledger for the years 2013-2015, and notarized copies of the fully executed leases for the years 2013-2015 for the subject apartment.

The owner submitted a response to the Administrator's request dated May 17, 2023 which included a copy of Rent Ledger "Transactions" for Apartment [redacted] for January 1, 2013 through December 31, 2015, indicating that on January 1, 2015, the "Rent Charge Base Charge" was $2,675.00; the purported Initial Apartment Registration dated March 13, 2014 for lease dates April 1, 2014 through March 31, 2015 noting a Legal Regulated Rent of $4,160.00 and the Actual Rent Paid as $2,675.00; the "Initial Lease" and Riders for the period of April 1, 2014 to March 31, 2015, providing for a monthly rent of $2,675.00, with no mention of a preferential rent; and a Renewal Lease with Riders for the period of April 1, 2015 to March 31, 2016 providing for a monthly rent payment of $2,701.75, with no preferential rent noted.

Based upon a review of the documents and evidence presented, the Rent Administrator, on September 20, 2023, granted the owner's application by permitting the 2014 Initial Apartment Registration to be amended as follows: legal rent change to "$2675.00." The Rent Administrator noted that this order was "not a determination of the legal rent for the apartment but only a determination of whether the owner had sufficient justification for amending the registration."

After a review of the record, the Commissioner finds that the Rent Administrator correctly permitted the amendment of the 2014 Initial Apartment Registration for the subject apartment based upon the documentation provided. During the Rent Administrator's proceeding, the owner provided the initial lease, a renewal lease, a rent ledger, and a DHCR rent roll that indicated that the initial legal regulated rent of the subject apartment was $2,675.00.

Furthermore, the documentation submitted by the owner does not support the owner's claim on appeal that the initial legal regulated rent in 2014 was $4,160.00.

As to the owner's request to amend the legal regulated rent on appeal, the Commissioner notes that amendments to registrations may be accepted for processing when such amendment is for ministerial issues, such as clerical error in the rent amount, misspelling of the tenant's name or an incorrect lease term, which is not the case herein. Such a claim, to reissue the Order Granting Amended Registration to "restore the legal rent to $4,160.00" would, in essence, be re-calculating the rent history and determining the legal regulated rent. The amendment application process, as envisioned by the Rent Code Amendments of 2014, does not confer unlimited, open-ended rights upon the owner. In reviewing an amendment application, the Rent Administrator is tasked with determining whether sufficient justification has been provided by the owner for amending a specific portion, or portions, of an existing registration to safeguard the integrity of the information currently contained in the registration system.

In this case, the owner requested that the Rent Administrator amend the apartment's 2014 Initial Apartment Registration and provided sufficient documentation to support the owner's amendment request. As the Rent Administrator noted in their determination, the subject order was not a determination of the legal rent for the apartment but only a determination of whether the owner had sufficient justification for amending the registration. The Commissioner notes that registration amendment requests seeking to re-calculate the rental history or other types of changes are not applicable for an amendment registration application. Accordingly, the request to amend the legal regulated rent in this case is beyond the scope of the amendment application and is best left for other case types addressing overcharge complaints, lease violation complaints, or administrative determination proceedings involving the issue of status.[1] Moreover, the Rent Administrator properly noted that the owner should keep all relevant rent records on file in case the tenant seeks a determination regarding the legal rent and/or status of the apartment.

Based on the foregoing, 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:

DEC 01 2023

Woody Pascal
Deputy Commissioner

[1] The Commissioner notes that a registration with DHCR of the legal regulated rent by itself will not establish the legal rent for future usage.

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO. FX210001RO
729-731 Lafayette Mgmt, LLC,	RENT ADMINISTRATOR'S DOCKET NO. DW210056AD
PETITIONER	

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

This Order and Opinion concerns the housing accommodations known as apartment [redacted] at 729 Lafayette Avenue, Brooklyn. The above-referenced Rent Administrator's order determined that as of October 31, 2017 (the date of the order), the housing accommodation is subject to rent regulation and the legal regulated rent as $577.61 per month.

The Commissioner has reviewed the entire evidence of the record that is relevant to the issues raised in the PAR and finds that the Rent Administrator's order is correct as to the status of the subject apartment and incorrect as to the rent amount set therein.

The Rent Administrator's order states in pertinent part: that the proceeding was initiated by the tenant who sought a determination of the regulatory status of the subject accommodations as well as the legal rent. The owner responded and alleged that based upon an exit registration filed in 2011 with this Agency, the apartment was properly deregulated based upon high-rent vacancy. The Rent Administrator found that the owner failed to provide "a complete rental history from 2001 to present and all supporting documentation for all rent increases. Based on the evidence including that the apartment was registered in 1999 as having a legal regulated rent of $369.44 from which, without proof of leases, the Administrator calculated a rent of $577.61 as the legal rent under the one-year lease that took effect on December 1, 2013.[1]

Petitioner alleges, in essence, that the Rent Administrator erred in determining that the apartment was not lawfully deregulated on December 1, 2010, and in his consideration of a 1998 lease to establish that the apartment was not deregulated in 2010. The petitioner claims that a

[1] The Commissioner notes that the Rent Administrator deemed numerous guideline and vacancy lease increases in said calculations.

rent-stabilized tenant vacated the apartment in November of 2010; that that tenant's rent had been $1,854 per month; that the Rent Stabilization Law then allowed an increase of 17.75%, resulting in a legal regulated rent of $2,183.09; that the law at that time provided for deregulation when the legal rent "exceeded $2,000.00 per month at vacancy"; and that the Administrator's request for leases dating from 2001 was in contravention of the law in that it demanded more than four years of records be kept.

The tenant's answer states that while the owner could have charged more than the $2,000 deregulation threshold in the 2010 lease, it only charged $1,800. Thus, the tenant asserts that the legal regulated rent did not exceed $2,000 at that time and thus the apartment remained subject to rent-stabilization. Further, the tenant claims the owner's ensuing argument that the apartment became deregulated as soon as the owner could lawfully have raised the rent to $2,000 was charged is incorrect. The tenant has asserted that when $1,800was charged, that became the legal regulated rent in the absence of any indication that that rent was preferential.

The owner cites *Altman v. 285 West Fourth, LLC,* in which the Court of Appeals held, in 2018, that "the 20% vacancy increase should be included when calculating the legal regulated rent for purposes of determining whether the subject apartment has reached the $2,000 deregulation threshold" and "should have been considered in determining the legal regulated rent at the time of the vacancy," in contrast to the Appellate Division's holding (expressed by the Court of Appeals) that "although the owner was entitled to a 20% increase . . . , that increase did not serve to deregulate the apartment because the rent was not over $2,000 at the time the prior tenant vacated." The tenant meanwhile asserts that Petitioner's reliance on *Altman* is misplaced.

It is undisputed that the instant tenant's initial lease reserved less than said $2,000 in rent and that rent was not preferential with a legal rent of at least $2,000.00. Based on the foregoing, the Commissioner finds that the Administrator properly determined that the apartment remained subject to rent stabilization.[2]

The Commissioner finds that as set forth *infra,* the determination of continued regulation would be correct even under the previous law as the owner failed to preserve a rent in excess of $2,000.00 in the 2010 lease. Therefore, when the owner waived what it could have reserved as the legal rent in 2010, what it charged became the next legal rent, with no higher rent preserved. Thus the $1,800 paid by the tenant herein was the legal rent under her initial lease.

Based on the totality of the record, the Commissioner finds that the initial rent of $1,800, which was collected starting in December 2010 is the tenant's initial rent. Adding the increases used by the Administrator thereafter (3%, 3.75%, and 4% through the last lease covered by the order) yields a rental of $2,000.47 under the one-year lease of December 1, 2013. Since the threshold for destabilization was then $2,500, the Commissioner finds that the subject apartment was rent stabilized as of the date of the Administrator's order. (The order freezes the rent after November 30, 2014, "until . . . the necessary registrations are filed with the Agency.")

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[2] Pursuant to the Housing Stability and Tenant Protection Act (HSTPA) effective June 14, 2019, high-rent deregulation of apartments was repealed.

As of the date of the Rent Administrator's order, in sum, the subject accommodations are rent stabilized at a monthly rental of said $2,000.47.

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

ORDERED that this petition be, and the same hereby is, granted to the extent set forth above, the legal rent set in the Rent Administrator's order is hereby modified to $2,000.47, and that the petition be and hereby is otherwise denied, the subject accommodations being rent stabilized as of the time of said Order, and it is further

ORDERED that the Rent Administrator's order be, and the same hereby is, modified consistent with the foregoing.

ISSUED:

DEC 15 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.: KX410015RT

[redacted] AND [redacted]

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO.: KS410015AD

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On December 14, 2022, the above-named Petitioner-tenants filed a Petition for Administrative Review ("PAR") challenging KS410015AD, an order the Rent Administrator issued on November 21, 2022 (the "order"), concerning the housing accommodation known as 222 West 23rd Street, Apartment [redacted] New York, New York, wherein the Rent Administrator found that the owner is entitled to offer the tenants renewal leases based on the Rent Guideline Board Orders ("RGBO") for apartments due to the previous reclassification of the subject building from hotel to apartment building status.

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.

On July 22, 2022, the owner, through counsel, attaching supporting documentation, requested an Administrative Determination ("AD") regarding whether the owner was entitled to rent increases pursuant to the Hotel RGBOs or the Apartment RGBOs upon renewal of the tenants' lease as there was a dispute between the owner and tenants. The owner asserted that on June 4, 2012, the parties (which included the former owner of the subject premises and the subject tenants) entered into a Housing Court Stipulation that provided that the subject tenants shall remain subject to the RGBOs for Hotels. Nonetheless, the owner averred that the Division thereafter determined that the subject building was reclassified under the Rent Stabilization Code from hotel status to apartment building status, effective January 1, 2014, as the owner was not providing the requisite hotel services under Section 2521.3 of the Rent Stabilization Code ("RSC" or "the Code"), and

that the permanent tenants were granted reductions for the lack of hotel services, and directed the owner to offer rent stabilized leases. The tenants were afforded an opportunity to review and respond to the owner's AD request by service of the owner's request on the tenants on August 9, 2022.

The record reveals that the tenants, in their rebuttal answer received on October 17, 2022, contended that the RGBO for hotels is applicable in this case, referencing, as noted above, the Stipulation the prior owner and tenants entered into on June 4, 2012 under the Civil Court proceeding, L&T Index No. 091759/2011, which established the Legal Regulated Rent ("LRR") at $1,100 per month effective through and including May 31, 2013, and thereafter shall remain subject to the RGBO pertaining to hotels, and, in addition, provided "that the terms and conditions are binding upon all successors, assigns and transferees of the parties and all administrators, executors and agents or representative thereof." The tenants argued that there was no legal basis to negate the provision of the Stipulation, that the Stipulation provides the tenants "greater rights and more stringent protections against rent increases than the lesser protections provided" by the RGBO for apartments, and that the DHCR lacks any equitable jurisdiction in this matter as same is res judicata.

The owner responded to the tenants' answer, averring that the reclassification accorded a concomitant rent reduction tantamount to the loss or value of hotel services not provided, and that the subject tenants "applied" for enforcement of the reclassification orders on April 14, 2021, the same reclassification orders the Petitioner-tenants were challenging, and that the DHCR in their response letter dated July 19, 2022, explained that the reclassification orders made the permanent tenants subject to the Apartment RGBOs, and not the Hotel RGBOs. The owner further asserted that the Stipulation acknowledged that the subject apartment, at that time, was subject to the Hotel RGBOs, but was not a contract for the Hotel guidelines to apply in perpetuity regardless of future reclassifications orders.

On November 21, 2022, the Rent Administrator, having considered all the submissions by the tenants and the owner and the record therein, determined the owner is entitled to offer the tenants lawful rent guideline increases pertaining to apartments and not hotels as the reclassification of the building, as determined by this Agency under the RSC, effective January 1, 2014, was issued after the Housing Court Stipulation.

In the PAR, the tenants, by counsel, requests that the Rent Administrator's order be reversed, averring that there is no authority in the enabling statute by which the Rent Administrator could nullify the right of the tenants, as established in the Stipulation which sets lesser rent increases by the RGBOs for Hotel; that the Rent Administrator should have found the issue regarding rent increase was res judicata having been stipulated between the tenants and the prior owner, instead of invoking "concurrent jurisdiction" and then issuing a determination in conflict with the "so - ordered Stipulation of settlement"; and that regardless of the reclassification, because the Stipulation affords the tenants "greater rights" than the Rent Stabilization Law ("RSL"), and the fact that there is no prohibition in the RSL against charging lower rent increases, there is no legal basis for the Agency to negate the tenants' contractual rights to limit rent increases to Hotel RGBOs.

The owner objects to the tenants' PAR, claiming that the Rent Administrator's finding was adequately supported by the facts and the law.

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

RSC Section 2521.3 ("Classification of Buildings") provides, in pertinent part:

(a) Upon application by a tenant or owner, the DHCR shall issue an order determining a building's classification based upon the services provided and other relevant factors. Except as provided in subdivisions (c) and (d) of this Section, if it is determined that such building is not a hotel, the DHCR shall classify the building as an apartment building unless the owner restores sufficient services to maintain a hotel classification in accordance with subdivision (b) of this section. If the building is reclassified, then the housing accommodations therein shall thereafter be subject to the provisions of this Code applicable to apartment buildings, at the legal regulated rent for each housing accommodation as determined by the order of the DHCR, plus lawful increases and adjustments allowed pursuant to this Code. In order for an owner to retain or continue the building's classification as a hotel, he or she must provide, in addition to any other services he or she is or was providing pursuant to section 2520.6(r) of this Title, all four of the following services:

(1) maid service, consisting of general housecleaning at a frequency of at least once a week;
(2) linen service, consisting of providing clean linens at a frequency of at least once a week;
(3) furniture and furnishings, including at a minimum a bed, lamps, storage facilities for clothing, chair and mirror in a bedroom; such furniture to be maintained by the hotel owner in reasonable condition; and
(4) lobby staffed 24 hours a day, seven days a week by at least one employee.

(b) A building 's classification as a hotel will not be retained or continued where the DHCR determines that 51 percent of the permanent tenants are not receiving maid and linen service, except that all tenants receiving such shall be entitled to receive the services for the duration of their occupancy.

At the outset, the Commissioner notes that it is not disputed that this Agency, under the RSC, previously reclassified the subject premises from a "hotel" (as defined under sections 2520.6 and 2521.3 of the RSC) to an "apartment building," effective January 1, 2014. It is also not disputed that the former owner and subject tenants entered into a Stipulation of Settlement dated June 4, 2012 under Civ. Ct., NY Co. L & T Index No. 091759/2011, which settled a rent overcharge claim by the tenants, established a legal rent, and set forth that the legal rent shall remain subject to the RGBOs pertaining to hotels.

In light of the above, the Commissioner finds that the Rent Administrator properly determined that the owner is entitled to offer the tenants lawful rent guideline increases pertaining to apartments and not hotels. Although the record reveals that the tenants and former owner

entered into a Stipulation of Settlement, such stipulation was agreed to prior to the reclassification of the building effective January 1, 2014. Accordingly, the circumstances changed when the building was reclassified from a hotel under the RSC to an apartment building under the RSC. Therefore, in accordance with Section 2521.3 of the RSC, it was determined that such building was not a hotel, the DHCR classified the building as an apartment building, and as the building was reclassified, the housing accommodations *shall thereafter* be subject to the provision of the Code applicable to apartment buildings, at the legal regulated rent, *plus lawful increases and adjustments allowed pursuant to the Code*. The Commissioner therefore finds that the Rent Administrator properly applied the RSC to the facts of this case.

The Commissioner notes that as a general rule, the DHCR encourages and equally recognizes an amicable settlement or resolution of disputes between tenants and owners by way of court ordered stipulations or other private agreements. However, it is also well-recognized that any purported waiver of rent stabilization rights in a settlement agreement is invalid as a matter of public policy, even if it benefits the tenant (see Drucker v. Mauro, 30 A.D.3d 37 (1st Dept. 2006; see also Cvetichanin v. Trapezoid Land Co., 180 A.D.2d 503 (1st Dept. 1992)). Furthermore, the Commissioner notes that although the tenants and prior owner agreed to hotel guideline increases going forward, as the Court in the Matter of Cvetichanin stated, "[n]o preclusive effect can be given to a judgment as to any issue excluded, as a matter of law, from the settlement agreement underlying that judgment."[1] Subsequent to the prior owner and tenants' settlement, the premises was reclassified to an apartment building, and therefore, the effects of such a reclassification was not and could not have been part of the Stipulation of Settlement.

The Commissioner finds that the Petitioner-tenants have not offered a basis to modify or revoke the Rent Administrator's finding that the apartment RGBO is the applicable guideline increase in the instant case. Accordingly, the Rent Administrator's order under Docket No. KS410015AD is herein affirmed.

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

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

ISSUED: DEC 20 2023

Woody Pascal
Deputy Commissioner

[1] Cvetichanin, 180 A.D.2d at 504.

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO.: LO410004RT

[redacted]

PETITIONERS

RENT ADMINISTRATOR'S DOCKET NO.: JX410002OD

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On March 8, 2023, the above-named Petitioner-tenants timely re- filed a Petition for Administrative Review ("PAR") challenging JX410002OD, an order the Rent Administrator issued on December 7, 2022 (the "order"), concerning the housing accommodations known as 308 West 30th Street, New York, New York, wherein the Rent Administrator granted the owner's application to modify services by replacing the old audio-only intercom system with a new one-way video intercom system.

The proceeding below was commenced on December 16, 2021, by the owner's filing of an Owner's Application For Modification Of Services ("OD") with this Agency. The owner sought permission to change the existing standard old audio-only intercom system with a new one-way video intercom system. The owner asserted that the new system would allow the residents to both hear and see their visitors, guests, and/or delivery personnel before granting access to the building; that the new system panels would be located at each exterior street-level door, as well as inside the locked vestibule; that the new intercom system, although could connect to the tenants' cell phones/landlines, would be hardwired in each apartment at the location of the current buzzer panel, with two-way audio and one-way video capability; and that the new system makes it easier for tenants to grant access to their guests, enhances the safety and security of both the individuals accessing the premises, and equally the tenants.

On February 4, 2022, the owner's application was served on the tenants. Some tenants did not oppose the owner's application. However, various tenants, including the subject Petitioners, objected to the proposed modification, claiming that the tenants were concerned with the standard and the quality of work, and the manner in which same would be conducted. Specifically, that the owner's previous renovations were of inferior quality, and the residents' quality of life was greatly impacted during construction periods. The tenants further contended that the same 60-year old intercom wires would be used along with the new system; and that a Major Capital Investment ("MCI") rent increase application would be filed by the owner upon granting the proposed modification.

On September 23, 2022, the owner was provided with an opportunity to review and respond to the tenants' objections.

In the owner's rebuttal answer dated October 6, 2022, the owner argued that the objections raised by the tenants were without merit, claiming that the proposed conversion constituted an enhancement to the intercom system and would inure to the direct benefit of the tenants. The owner further argued that the new intercom system would be installed by ProtectNet Security Corp., a third party that has no shared interest with the owner; that new wiring would be installed, replacing the current 60-year old wiring the tenants were concerned about; and that the new system would not require the tenants to maintain a landline or any other type of telephone service to enjoy the full functionality of the new intercom system.

The Rent Administrator, on December 7, 2022, after consideration of the tenants' and the owner's submissions, including the relevant evidence in the record, granted the owner's application under Docket No. JX410002OD, and concluded in relevant part, that the owner's application to modify services by replacing the old audio-only intercom system with a new one-way video system was not inconsistent with Section 2522.4 of the Rent Stabilization Code ("RSC" or the "Code").[1]

In the PAR, the Petitioners seek a modification of the Rent Administrator's order, alleging that the order is based on multiple errors in law and fact. The Petitioner-tenants claim that the owner, Mr. Joel Weiner (The Pinnacle Group), has a shared interest in West 30th Realty LLC/ the Irvin Condominium and is aware of building code provisions, and has not complied with local rules and regulations for many years; that the tenants cannot be expected to "police and monitor contractors"; that before the owner is allowed to perform work, there should be an application for "CONH which will provide greater oversight by local elected officials and/ city/state/ agencies"; that unsupervised and unpermitted construction work from February of 2022 to October 2022 breached the tenants' warrant of habitability, during the same time when the elevators were out of service, vermin increased, and hot water/heat were "frequently" out of service; and that the tenants have photos/videos of "illegal work occurring". The Petitioners submitted along with their PAR various documents to purportedly substantiate their claims, including the Decision/Order of Hon. Jack Stoller, dated January 20, 2023, assigned Index Nos. 58883/14 and

[1] The Commissioner notes that the Rent Administrator further determined that the new intercom system is an enhancement and since the intercom system is hard-wired and does not require the use of tenants' telephone (landline and/or cell phone), there is no reduction in service. The Rent Administrator also noted that a rent reduction was not warranted since the conversion was deemed an adequate substitution of services.

52969/15 concerning nonpayment of rent and rent abatement issues; documents purporting to indicate the identity of the owner of the premises and their "bad" actions; and various asbestos assessment, violation(s), and service-related documents.

The owner objects to the Petitioners' PAR, contending that the Petitioner-tenants fail to establish any basis to modify or revoke the Rent Administrator's determination, and as a result, the tenants' appeal should be denied and the Rent Administrator's order affirmed; and that the new evidence the Petitioners seek to introduce on PAR is outside the scope of the Commissioner's review as same was not presented to the Rent Administrator during the underlying proceeding.

The Petitioner-tenants were provided with an opportunity to respond to the owner's objections, and the tenants thereafter asserted that the owner's history of "illegal, shoddy, and substandard" work is "indeed material" to the PAR, and that unannounced inspections should be required for the safety of all residents.

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.

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

Section 2520.6(r) of the Rent Stabilization Code ("RSC" or "the Code") defines required services as those services which the owner maintained or was required to maintain on the applicable base date, and any additional space or services provided or required to be provided thereafter by applicable law. Section 2522.4(d) and Section 2522.4(e) of the Code require the owner to file an application with DHCR for permission to decrease a required service, or for any modification or substitution of required services. Accordingly, no modification or substitution of required services may take place prior to the approval of the owner's application by DHCR, unless it is required for the operation of the building in accordance with specific requirements of law.

In accordance with the above rent regulatory provisions, in order to determine whether such an application should be granted, DHCR is compelled to examine all aspects of the proposed change to ensure that the results of the proposed modification are not inconsistent with the Rent Stabilization Law ("RSL") or Code.

After a review of the record, it is the opinion of the Commissioner that, in this case, the proposed modification of services, the replacement of the traditional old audio-only intercom system with a new one-way video intercom system which is hard-wired and does not require the use of the tenants' telephone(s), constitutes an adequate substitution of service that is consistent with the RSL and Code. Accordingly, the Commissioner finds that Rent Administrator properly granted the owner's application to modify service. Here, as proposed by the owner, the new audio-video intercom system will provide the tenants with the ability to see and hear prospective visitors at both entrances to the building, as outlined in the subject Rent Administrator's order. Moreover, the proposed new intercom system will be hard-wired, located in each apartment at the current buzzer panel, and does not require the use of tenants' telephone (landline and/or cell phone).

Under these circumstances, the Commissioner finds that the proposed new two-way audio and one-way video intercom service to be an adequate substitution of the old audio-only intercom system and therefore the Rent Administrator properly found that the proposed intercom system is not a reduction in service and does not warrant a rent reduction.

The Commissioner notes that the tenants' do not dispute the proposed intercom service itself, but instead raise concerns with the potential impact of the construction work required to install such intercom service. The Commissioner advises the parties that the installation and/or modification of the intercom must comply with all local rules and regulations for the jurisdiction within which the property is located. If the facts so warrant, the tenants are advised to file complaints with the applicable municipal agencies that may have jurisdiction over such work including, but not limited to, 311, NYC Department of Buildings, and NYC Housing Preservation and Development. Furthermore, if the facts so warrant, the tenants are advised to file with this Agency an Application for a Rent Reduction Based Upon Decreased Service(s)- Individual Apartment (Form RA-81) and/or an Application for a Rent Reduction Based Upon Decreased Building-wide Service(s) (Form RA-84).

The Commissioner finds that new evidence submitted by the Petitioners for the first time on appeal is beyond the scope of review of this administrative appeal, which, pursuant to fundamental principles of the administrative appeal process and Section 2529.6 of the Code, is limited to a review of the facts or evidence presented to the Rent Administrator.

As for the unrelated service complaints raised by the Petitioner-tenants in their appeal, the Commissioner advises the tenants to file rent reduction applications with this Agency, if the facts so warrant.

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly granted the owner's OD application, and the Petitioners' PAR has not set forth any basis to modify or revoke the Rent Administrator's order.

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

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

ISSUED:

NOV 03 2023

Woody Pascal
Deputy Commissioner

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO.: LO410010RO

30 PARK AVENUE LLC

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO.: IR410002OD

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The Petitioner-owner timely filed an administrative appeal against an order issued on January 31, 2023 by the Rent Administrator concerning the housing accommodations known as 30 Park Avenue, New York, New York which denied the owner's application for a modification of services for fifty-five (55) rent regulated apartments to wit: by removing the doormen and substituting to electronic sliding doors, 24 hour concierge, and the addition of 34 security cameras; and removing the elevator operators and substituting to the additional 34 security cameras.

The Petitioner requests a reversal of the Rent Administrator's order and argues that all services were being maintained despite the modification implemented by the owner; and that the denial of the owner's application was inconsistent with the Rent Stabilization Code ("RSC") as the proposed modifications were adequate substitutions of the services. The owner claims, *inter alia*, that DHCR had previously granted similar requests for modification of services citing to the Matter of William C. Dixon[1] and Matter of Rueben Givens[2]; that DHCR has determined that the "elimination of elevator operators is consistent with the RSC" as long as an owner "maintains security, janitorial and concierge services" citing to the Matter of Eleven Riverside Drive Corp[3]; that the owner requests to substitute and 'supplement certain doorman services and elevator operator services with technological upgrades and more efficient deployment of staff" in the subject building; that many of the referenced "tasks" were undertaken as " favors" and thus were not "required" services under the RSC; that the owner may reduce the "amount of building employees so long as equivalent services were being furnished"; that the "reference tasks are not required services"; and that DHCR factual findings were not based on any empirical evidence or data and were in fact speculative.

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[1] Docket No. BN210041RT.
[2] Docket No. EQ610039RT.
[3] Docket No. ZA410039RO.

In their answers and follow-up responses, various tenants along with a tenants' representative, oppose the owner's PAR and asserts, *inter alia*, that the cases cited by the owner in the PAR cannot be compared with this matter as the cited cases deal with different facts.

The record reveals that the owner submitted follow-up responses dated May 16, 2023 and August 8, 2023, wherein the owner reiterated their claims raised in the PAR and, *inter alia*, that the owner is providing the required services despite those services being provided in a "different manner."

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.

RSC Sections 2520.6(r) and 2522.4(d) require an owner to provide and maintain on the applicable base date all required services unless and until an owner files an application to decrease such services and an order permitting such decrease has been issued. RSC Section 2522.4 provides that no such reduction in rent, decrease in services, or modification or substitution of required services shall take place prior to the approval of the owner's application by DHCR. RSC Section 2522.4(d)(4) further provides that such decrease must not be inconsistent with the Rent Stabilization Law or Code.

In accordance with the above rent regulatory provisions, in order to determine whether such an application should be granted, DHCR is compelled to examine all aspects of the proposed change to ensure that the results of the proposed modification are not inconsistent with the Rent Stabilization Law or Code.

According to the record, the proceeding below was commenced on June 12, 2020, by the owner's filing of an Owner's Application For Modification of Services with this Agency. The Application sought permission to replace the doormen and elevator operator positions with monitored technology, in conjunction with other personnel inside the building. The owner asserted that currently the building has two doormen per shift stationed in the lobby, near the entrance doors of the building, between the hours of 8:00 am and 12:00 am daily and one service elevator operator per shift who is stationed in the service elevator between the hours of 8:00 am and 12:00 am daily. The owner, by their representative, asserted that they sought to replace the two doormen with electronic sliding doors that will activate, touch-free by detection sensor, to allow residents and guests to enter and exit the building; a twenty-four hours a day, seven days a week manned concierge service will be stationed in the building lobby (the "Concierge") and will operate in three shifts per 24-hour period. Moreover, there are presently 31 security cameras in operation throughout the common spaces of the building (including within the elevator cabs and at all entrances and exits to the building), and that the owner proposed to substitute the service elevator operator with the installation of additional cameras in the hallways leading to and in the area around the elevators, and that the "feed" from all the cameras (31 current and 34 proposed) will be monitored by the Concierge from the Concierge station in the lobby. The owner further asserted that there will be no reduction of services by their proposed modifications requested as security for the building will be maintained by the camera surveillance system and the Concierge, and that two doormen and service elevator operator's duties and responsibilities will be shared by the pre-existing building staff.

According to the record, the tenants were served with notice of the owner's application (the "Initial Notice") on July 23, 2020. In their answers, various tenants and their representative, oppose the owner's application objecting to the owner's application. The various tenants and tenants' representative asserted, *inter alia*, that the proposed changes were implemented prior to the owner obtaining Agency approval; that the doorman service is provided 24 hours a day 7 days a week; that the proposed use of the extended cameras throughout the building

and having it monitored by one person at all times is not a form of security; that over the years there has been a substantial reduction in the number of building staff from fifteen to ten; that staff are responsible for a range of duties - opening the front doors; helping with: parcels when entering the building, unloading cars in front of the building, and getting taxis; screening and announcing visitors prior to sending them to the apartments; escorting delivery service workers into and out of the building; and maintaining the hallways, compactor room, and recycle room. In addition, the tenants also opposed the installation of the electronic sliding doors as they claimed, *inter alia*, the doors are dangerous. The tenants submitted follow-up responses reiterating their objections, *inter alia*, that the modifications put in place by the owner without DHCR approval were not adequate and, in sum, that the proposed single Concierge cannot monitor the "50-plus" security cameras while performing their other outlined duties.

The record reveals that the owner submitted follow-up responses wherein the owner contended, *inter alia*, that the proposed modifications will have no effect on the services provided by the owner; that the modifications proposed in their application have become common in the age of modern technology and have been repeatedly found by DHCR not to be a reduction in building services; that a reduction in staff is not a reduction in service; that there is always at least one porter and one doorman working a twenty-four hour a day shift, seven days a week; that there are times when there are multiple porters on site along with the building doorman, handyman, and the live-in superintendent; that there has been no change in the number of porters or members of the cleaning staff; and that the proposed modifications will make staff more efficient.

The Rent Administrator's order, that is the subject of the instant PAR, denied the owner's Application. The Rent Administrator determined that the owner's application to modify services, by eliminating the two doormen and replacing them with monitored technology is not consistent with the Rent Stabilization Law and Code. The Administrator noted on page two of the order that it was evident, after careful examination of the owner's submissions and tenants' responses, that the modification of services is not an adequate substitution of services. The Administrator further noted that there was no dispute that a doorman and service elevator operator were previously provided and that the number of staff on hand to provide the range of services has been significantly reduced. While the owner claimed the subject building was adequately staffed to effectively manage the required services, supplemented by electronic technology, it is not practical to expect one Concierge to perform all the tasks previously done by two doormen, in addition, to effectively monitoring footage from the planned sixty-five cameras.

Based on the totality of the evidence in the record, the Commissioner finds no error by the Administrator in determining that the proposed modifications to eliminate the doorman and elevator services and replace them with monitored technology are inadequate substitutions. The Rent Administrator was correct in the disallowance of the modification requested in this case based upon current Agency practice in cases such as the one under consideration.

With regard to the owner's reliance on the Matters of Williams C. Dixon, Rueben Givens and Eleven Riverside Drive Corp. to support their claim that their proposed modifications should have been considered adequate substitutions of services, the Commissioner finds the owner's reliance to be misplaced. The cases cited by the owner are distinguishable from the matter herein as the modification proposed by the owner was found to have reduced required services which is unlike the facts in the Matter of Williams C. Dixon where the owner's substitution of the part-time lobby attendant with security cameras was found to be adequate, and in the Matter of Rueben Givens the reduction of maintenance staff was found to have been a de minimis condition as the Agency inspection revealed that the modified janitorial services were being adequately maintained in the building. Furthermore, the Commissioner notes that the Matter of Eleven Riverside Drive Corp. maintains the same principle that a modification must be an adequate substitution consistent with the RSC, as the proposed substitution therein of four automatic passenger elevator operators with two new lobby runner positions was

found to be adequate as the modification proposed therein created two lobby runners positions that would provide new curbside service, package assistance, organized delivery of packages and additional janitorial services building-wide. In the instant matter, the Commissioner finds there is no basis for disturbing the Administrator's order of denial.

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly denied the owner's application, 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: NOV 21 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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	**ADMINISTRATIVE REVIEW DOCKET NO.: LO410022RO**
ELIZABETH ROY **PETITIONER**	**RENT ADMINISTRATOR'S DOCKET NO.: KX410001OH**

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-named owner-petitioner filed a Petition for Administrative Review (PAR) against an order issued on February 2, 2023 by the Rent Administrator concerning the housing accommodations known as 111 Hudson Street, New York, NY, Apt. [redacted], wherein the Administrator denied the owner's application for a rent increase based upon a comparative hardship under Section 26-511(c)(6) of the Rent Stabilization Law and Section 2522.4(b) of the Rent Stabilization Code.

The application was filed by the registered owner of an individual rent stabilized apartment in a the subject condominium building. In denying the application, the Rent Administrator noted that "for a co-operative/condominium corporation to file for an owner hardship (OH), the application must be filed by the management agent on behalf of the corporation," which "entails providing, for a chosen test year, information about the . . . corporation's rental income from all sources and related expenses."

The owner-petitioner of Apt. [redacted] requests a reversal of the order and claims, in substance, that because the application sought a hardship rent increase for only one rent stabilized unit, "not . . . a co-operative/condominium association," the application was appropriately filed by the individual owner of Apt. [redacted]. The owner-petitioner contends that there is "no restriction in DHCR literature on filing comparative hardship application on individual condominium units."

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

The owner-petitioner's claim that the application was properly filed by the individual owner of individual Apt. [redacted] is without merit. The comparative hardship provisions of the Rent Stabilization Law and Rent Stabilization Code provide owners with relief in the form of a hardship rent increase if the owner has not been able to maintain the same average annual net rental income in a current three-year period when compared with the average annual net rental income during a three-year

base period. In a co-operative/condominium building, the Division requires that a comparative hardship application be filed by a managing agent on behalf of the building corporation.

Regarding the claim that there is "no restriction in DHCR literature on filing comparative hardship application on individual condominium units," it has been long-standing DHCR policy to deny comparative hardship applications for a rent stabilized apartment within a co-operative/condominium building when such applications are not prepared on a building-wide basis and/or are incorrectly based on data related to only one apartment. *See, e.g.,* Docket Nos. CI310005OH (1988); CG110162RO (1994); DA410234RO (1995); DA310277RO (1996); OC630044RO (2000); YL110029RO (2023).

A review of the record shows that the application was not filed by a managing agent on behalf of the building's co-operative/condominium corporation as required; was incorrectly based on data related to only one apartment; and failed to include relevant building-wide financial information, such as operating expenses incurred by the condominium corporation. Accordingly, the Commissioner finds no error in the Rent Administrator's decision to deny the subject comparative hardship application as improperly filed. However, this order and opinion is issued without prejudice to the owner's right to properly file a new comparative hardship application, 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: OCT 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
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Right to Court Appeal

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STATE OF NEW YORK
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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF Sumpter Palace LLC PETITIONER	ADMINISTRATIVE REVIEW DOCKET NO.: LV210016RO RENT ADMINISTRATOR'S DOCKET NO.: HV210001UC TENANTS: Various

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-referenced owner filed a timely petition for administrative review (PAR) of an Order issued on September 12, 2023, by a Rent Administrator (RA) concerning 209 Sumpter Street, Brooklyn, NY, 11233. The RA's Order that is the subject of this PAR found that the work contract provided by the owner indicates that work was done in units [redacted] and [redacted]; that the scope of work described in the architect's affidavit does not show that at least 75% of all building-wide and individual apartment systems were completely replaced; that the owner was unable to provide all work permits that were requested to show that the systems were replaced as claimed; and that evidence in the record, including the PW-3 for the project, the plumbing permit and the Letter of Completion signed by the Department of Buildings (DOB) in January of 2021, contradicts the owner's statement that the renovation commenced in August of 2014 and was completed in October of 2016. The RA therefore denied the owner's Application to exempt the subject building from rent regulation based on substantial rehabilitation of such building.

On PAR, the owner alleges that the RA erred in denying the owner's Application because there is voluminous evidence in the record establishing that the owner performed a complete gut renovation of the premises, which evidence includes cancelled checks, architectural plans, an architect's affidavit, a DOB Letter of Completion, contracts, paid invoices, cost affidavits

and photographs; that such evidence shows that the gut renovation included reframing the common areas with sheetrock, plastering and painting, installation of new tiles in all public hallways, redoing and retiling of interior stairways, installation of a new front door, of a new intercom system, of new electrical wiring for lighting in public hallways, and of a new roof, pointing and exterior repairs as needed, installation of new security cameras, of new plumbing in apartments, of a new HVAC system, of new gas lines, of new circuit breakers for each unit, of new windows and doors for each unit, and of new closets, new kitchen installations, including new stoves and refrigerators, installation of new fireproof apartment doors, and a complete gut renovation of all bathrooms including tiling, bathtubs, lighting, vanities and plumbing; and that an inspection should have been conducted before the RA arbitrarily and capriciously determined that the work at issue did not constitute a substantial rehabilitation.

The tenants were served with the owner's PAR, however, to date, none of the tenants have made any submission in response thereto.

The Commissioner, after careful review of the record, finds that the PAR must be denied.

The RA was correct to find that the owner failed to show that a qualifying substantial rehabilitation was in fact performed. Operational Bulletin 95-2 (OB 95-2) outlines the criteria an owner must meet to prove substantial rehabilitation:

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

The list of building-wide and apartment systems includes:

1. Plumbing
2. Heating
3. Gas supply
4. Electrical wiring

5. Intercoms
6. Windows
7. Roof
8. Elevators
9. Incinerators or waste compactors
10. Fire escapes
11. Interior stairways
12. Kitchens
13. Bathrooms
14. Floors
15. Ceilings and wall surfaces
16. Pointing or exterior surface repair as needed
17. All doors and frames including replacement of non-fire rated item with fire-rated ones.

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

As stated by the RA's Order, the affidavit of the owner's architect does not prove that 75% of building-wide and individual apartment systems were completely replaced. Said affidavit states that the work at issue included reframing the common areas with sheetrock, plaster and painting, new tiles in all public hallways, interior stairways redone and retiled, new front door, new intercom system, new electrical wiring for lighting in public hallways, new roof, pointing and exterior repairs as needed, new security cameras, new plumbing in apartments, new HVAC system installed, new electrical wiring to accommodate higher voltage, new gas lines, new circuit breakers for each unit, new windows and doors for each unit, new closets, new kitchen plumbing, new stoves and refrigerators, new fireproof apartment doors, and complete gut renovation of all bathrooms including tiling, bathtubs, lighting, vanities and plumbing.

The architect's affidavit makes no mention of elevators, incinerators/waste compactors, fire escapes, flooring, and

replacement of ceilings and walls in each unit, so it does not attest to the replacement of these five systems. In addition, such affidavit claims that there were new kitchen installations but only new plumbing and stoves and refrigerators are specifically mentioned which do not comprise the full replacement of the kitchens, that new plumbing was installed in the kitchens and bathrooms which is not a full replacement of this system building-wide, that HVAC systems were installed in the apartments which is not a full replacement of the heating system building-wide, that there was electrical wiring installed for lighting in the public hallways and new electrical wiring and circuit breakers were installed in the apartments which does not comprise a full replacement of the electrical system building-wide, that new gas lines were installed in the apartments which does not comprise a replacement of the entire building-wide gas system, and that new windows were installed in the apartments but there is no mention of building-wide replacement of windows. Accordingly, the architect's affidavit does not claim complete replacement of these systems as required by OB 95-2. While the affidavit claims that new doors were installed in apartments and that a new front door for the building was also installed, other common-area and building-wide doors are not mentioned, so the affidavit is unclear as to whether this system was or was not completely replaced.

Said affidavit only attests to the complete replacement of building-wide and all units' intercom system, interior stairways, roof, bathrooms, and pointing and exterior repair, which comprise only five of the 17 systems required by OB 95-2. Therefore, even if doors are considered to have been fully replaced in all units and building-wide, the owner's architect has only attested to the complete replacement of 6 of the 17 systems required by OB 95-2, or 35.3% of such systems, and the RA was correct to find that the architect's affidavit did not indicate that at least 75% of building-wide and individual apartment systems were completely replaced.

The RA was also correct to state that the owner did not provide all work permits to show that the systems were replaced as claimed. Specifically, three DOB Work Permits contemporaneous with the claimed work provide for gas and plumbing fixtures to be

added as per plans, for the boiler to be removed in the cellar, and "MECH/HVAC APPLICATION FILED..." These permits do not therefore provide for full replacement of the entire plumbing, electrical or gas systems. Further, the owner also submitted a DOB Work Permit for the same job/permit number as the work at issue and as set forth on the above-referenced other three DOB Work Permits that was issued on 01/22/2021 and expired on 01/22/2022. The work was not therefore "completed in October of 2016", as stated in the owner's submission received by this Agency on January 28, 2021. Further, as also correctly stated by the RA, the notarized DOB PW3 Cost Affidavit is dated June 8, 2020, which also contradicts the owner's January 28, 2021 statement that "the renovations were commenced in August of 2014 and were completed in October of 2016." While it is noted that the record also contains another DOB PW3 Cost Affidavit with similar information and dated 08/12/2014, said affidavit is not notarized. The RA was also correct to state that the DOB Letter of Completion submitted by the owner, which Letter is dated 11/30/2021 and which signed off on the project as of 11/30/2021, contradicts the owner's statement regarding the completion and the timing of the work at issue.

Finally, the owner submitted three Contracts for work at the subject premises. Such contracts do not prove that 75% of the 17 building-wide and apartment systems set forth in OB 95-2 were completely replaced. Further, while the Contract for some common area work and for work in apartments [redacted] and [redacted] is dated 11/15/2015, and the contract for work in apartment [redacted] is dated, 01/05/2015, the Contract for work in apartments [redacted] and [redacted] is dated 01/15/2017, which is after the October of 2016 date that the owner claims was the completion date of the entire project. Accordingly, the work in 33.3% of the apartments (two of six total apartments in the building) was not part of the project at issue. It is noted that the contract providing for work in the common areas states that there will be "complete rehabilitation of the roof" and that there will be "installation of new tiles for stairways", while the architect's affidavit states that there was a "new roof" installed and "interior stairways [were] redone and retiled" which is much more comprehensive than the contract. Further, some of the common area work set forth in said contract is not reflected in said affidavit, and some of the common area work set forth in said

affidavit is not reflected in said contract.

Given that the owner has not submitted adequate evidence of complete replacement of 75% of all building-wide and apartment systems, and has submitted evidence showing that much of the claimed work was not performed as a part of the DOB approved project that the owner uses as the basis for its Application herein, the RA was correct to find that the owner's Application must be denied.

It is noted that the performance of an inspection in cases such as this one is discretionary. The RA had sufficient evidence, as outlined above, to come the correct determination that the owner did not perform a qualifying substantial rehabilitation of the subject premises.

THEREFORE, in accordance with the relevant provisions of the Rent Stabilization Laws and Regulations, it is

ORDERED, that this petition is denied.

ISSUED:
DEC 05 2023

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
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Jamaica, NY 11433
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STATE OF NEW YORK
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JAMAICA, NEW YORK 11433

X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: LP210022RO

ZEV GER INC.

RENT ADMINISTRATOR'S
DOCKET NO.: IV210004UC

TENANTS: VARIOUS

PETITIONER X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-named petitioner-owner timely filed an administrative appeal (PAR) against the above-referenced Order issued on March 15, 2023 by a Rent Administrator (RA) concerning the premises located at 739 DeKalb Avenue, Brooklyn, New York 11216. Said Order found that the owner failed to submit necessary information/evidence to prove that the building has been substantially rehabilitated within the meaning of Rent Stabilization Code (RSC) §2520.11(e); that the owner's substantial rehabilitation Application is therefore terminated and the subject building remains subject to rent regulation; and that the owner must file annual registrations with DHCR and offer rent regulated leases to all affected tenants in accordance with the Rent Stabilization Law (RSL) and Code.

On PAR, the owner contends that the Order and determination denying owner's Application under Docket Number IV210004UC must be reversed; that the owner was denied due process because the RA failed to serve the owner with a copy of DHCR's Inspection Report and because the RA failed to consider the Owner's rebuttal submission (dated March 14, 2023) regarding said Inspection Report; that the RA's findings lacked a rational basis in light of the fact that the inspectors found the majority of the systems were replaced in 2007; that more than 75% of the systems were substantially rehabilitated; that the RA failed to consider the fact that this building was converted from a three family building to an eight family building, which, by necessity, meant the walls and floors were replaced; that the RA's determination that the public staircases were not replaced lacked rational basis; that DHCR failed to consider the Department of Buildings (DOB) approved floorplans which show the replacements of the stairs and walls of the apartments; that the RA failed to apply rational criteria to support her finding that certain floors, walls and ceilings were not replaced; that the RA's determination of the age of the walls and ceilings is arbitrary and capricious because it does not follow industry practice; that DHCR's

inspectors failed to substantiate their findings and issued vague conclusions; that DHCR failed to apply the exception criteria of RSC §2520.11(e), and of Operational Bulletin (OB) 95-2, which permits certain components of a building to remain without replacement due aesthetic and/or historic merit; that the RA failed to consider the "wear and tear" that has occurred since the substantially rehabilitation was performed 16 years ago, which has led to an unjust result for the owner; and that the RA failed to apply the principles of equity and rationality under Ador Realty, LLC v. Div. of Hous. & Cmty. Renewal, 25 A.D.3d 128, which require reversal of the challenged Order.

The owner further contends that the Inspection Report found that 12 of 15 systems were replaced, which accounts for 80% replacement of required systems and it is greater than the 75% replacement requirement of OB 95-2; that the building was vacant and was in a seriously deteriorated condition prior to the renovation; that all building-wide systems were replaced except those that were structurally sound or of historic and/or aesthetic merit as per RSC §2520.11(e) (2); that the building was vacant and uninhabitable at the time of renovation, thus creating the presumption that it was substantially deteriorated; that there were 185 outstanding violations at the time of rehabilitation; that, to demonstrate the building's deteriorated condition, the owner provided the affidavit of an architect, as well as the affidavit of the general contractor who did the work; that each of the existing residential floors were subdivided into two apartments and the commercial space was divided into two apartments as well; that the renovation work was completed on or about December 2007; that, after the renovation work at issue was completed, the owner's attempt to add additional floors to the subject building was ultimately determined to not be viable; that this caused a delay which required the owner to do additional work to conform to DOB's 2020 Codes; that 15 of the building-wide apartment systems listed on OB 95-2 were completely replaced, and only the elevator and incinerator/waste compactor systems were not replaced because there were no such systems in the subject building; that DHCR waited two and a half years after the instant Application was filed to conduct a physical inspection of the subject building, which was substantially rehabilitated in 2007; that DHCR inspectors' findings lacked a rational basis; that the inspectors incorrectly stated that the sprinkler system was installed in 2021 when all the work was done 2007; that the hot water tank broke down two years prior to the inspection and the owner installed a new one; that the gas meters were updated to "smart meters" by National Grid after DOB inspection for a Certificate of Occupancy; and that the RA completely ignored the DOB approved floorplans which clearly indicate that new steel pan staircases were installed on all floors.

Finally, the owner alleges that the original wood floor was in place since 1908 and steel and wood staircases were installed in 2007; that, afterwards, brand new vinyl titles were installed on the treads; that the RA's determination regarding staircases was therefore clearly in error; that it was irrational for DHCR inspectors to find that some of the apartments were not gut renovated given that new walls had to be constructed to make the existing three residential units into six residential apartments and to convert the commercial unit into two apartments; that the moldings and wood floors which were not replaced fall under the RSC §2520.11(e) (2) exception because the aesthetic and/or architectural nature of these items add to the charm of the building; that the very small areas retaining the original character of this building, originally built in 1908, comprise a tiny portion of this large renovation project and should not have resulted in the denial of the substantial rehabilitation Application; that the inspector's notation about Apartment [redacted] having some walls and floors appearing to be "older" than 2007 should be ignored as these items were

preserved to maintain the charm and warmth of this older building; that the alleged wiring running outside the of a wall of one of the apartments does not establish that such apartment was not gut renovated; that all the wiring was new in 2007 and was signed off on by DOB; that an affidavit by a painter describes his process of prepping and finishing the brand new walls of the public hallway; that there is no regulatory prohibition against seeking a substantial rehabilitation exemption many years after the construction was completed; that, given the passage of time, a DHCR inspection does not guarantee reliable evaluation under Ador; that the Ador Court found, in analogous circumstances to those herein, that a substantial rehabilitation should be found "because the documentary evidence submitted by the owner in support of these improvements was otherwise sufficient in accordance with the DHCR's policy."; that the owner in Ador had made major capital improvement and not a substantial rehabilitation, but the Ador finding is still analogous and applies herein; that the DHCR inspectors' findings in the instant case amount to "curt conclusions", and there is no factual support for their findings that "the public hallway plaster and wood walls and ceiling appear to be much older than 2007"; that, in a similar case, the Supreme Court found that DHCR reliance on an inspection report amounted to a curt conclusion without any factual support of same and was therefore arbitrary and capricious (citing 65 Hillside Realty LLC. v. NYS DHCR Index 161306/20); and that it is requested that DHCR reverse the challenged Order based on the DHCR inspectors' agreement that 75% of the systems were replaced.

In answer to the PAR, [redacted] (the tenant of apartment [redacted]), who before the RA acted as a representative for all the tenants residing in the subject building, alleges in relevant part that the building was not "vacant and uninhabitable" from 2005 to 2007 based on HPD violations; that the illegal conversion of three residential units was done between May 2004 to August 2005; and that the apartments, common spaces, and building systems still have a lot of imperfections because they were not originally installed up to code and have not been brought up to code to this day.

The owner replied to tenant's answer, alleging that the evidence submitted on PAR establishes that the premises were substantially rehabilitated; that reliance on the inspectors' Report is arbitrary and capricious and insufficient to sustain a determination that there has not been a substantial rehabilitation; and that, although it took owner from 2005 to 2021 to obtain the Certificate of Occupancy, this fact is irrelevant as to whether the Application herein should be granted.

The tenant of apartment [redacted] then submitted evidence that deals with a time period prior to the substantial rehabilitation time period herein (2005-2007). Because this evidence is not relevant to the instant matter, it has not been considered and has not been forwarded to the owner. The owner was served with another tenant submission in August of 2023 but has not, to date, responded thereto.

The Commissioner, having reviewed the entire evidentiary record, finds that the owner's PAR is denied.

Regarding the alleged substantial rehabilitation, the owner failed to show that a qualifying substantial rehabilitation was in fact performed. OB 95-2 outlines the criteria an owner must meet to prove substantial rehabilitation:

A. At least 75% of the below-listed building wide and apartment systems must have been completely replaced; all ceilings, flooring and plasterboard or wall surfaces in common areas must

have been replaced; and ceiling, wall and floor surfaces in apartments, if not replaced, must have been made as new.

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

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

Further, OB 95-2, I. Criteria, Section D, states that [A]ll building systems [must] comply with all applicable building codes and requirements....

The Commissioner finds that there was no due process violation in the RA's failure to serve the inspectors' Report on the parties as such service is not required by Law or Code. Further, there was no due process violation in the RA's failure to consider the owner's response to such report, which response was dated the day before the date of issuance of RA's Order. However, nonetheless, the owner cannot persuasively argue that it has not had a full and fair opportunity to comment regarding the Agency Inspection Report as the owner has obtained copies of such Report and as all of the owner's contentions regarding such Report have been fully and carefully considered herein on PAR.

The inspectors' Report clearly indicates that all ceilings, flooring and plasterboard or wall surfaces in common areas were not replaced as is required pursuant to OB 95-2 and as outlined above. The inspection Report states that "[t]he upper-level hallway floors are pine boards that appeared to be much older than 2007. The public hallway plaster and wood walls and ceilings appear to be much older than 2007", and that "the building was not fully gut renovated as claimed. Some areas appear to have been replaced around 2007 while other areas appear to be much older. Some items were replaced as recently as 2022." Accordingly, the Agency inspectors found that common area ceilings, flooring and plasterboard or wall surfaces were not completely replaced as part of the project as is required by OB 95-2 for a qualifying substantial rehabilitation.

Despite the owner's allegations regarding the reliability of the findings of the inspectors, the inspections of the premises were in fact carefully conducted by two trained, professional, and impartial Agency inspectors, and the Commissioner finds no reason to find that their determinations are not fully reliable. Further, the Commissioner finds that said Agency inspections, and the Report generated in connection with such inspections, are more reliable and probative than the affidavits of parties employed by the owner in connection with the project at issue. It is noted that the professional and impartial Agency inspectors did in fact carefully consider the issue of wear and tear, mentioning several times in their Report the relative apparent ages of various items and systems.

The owner has also failed to show that it completely replaced 75% of building-wide and individual apartment systems, also as required by the RSC and by OB 95-2. The owner alleges that there are no elevators and incinerators/waste compactors at the subject building, and this allegation has not been contested. As a result, the owner must show a complete replacement of at least 75% of the remaining applicable systems, which is 12 of the applicable remaining 15 systems listed on OB 95-2 and outlined above. Pursuant to OB 95-2 "all building systems [must] comply with all applicable building codes and requirements...", which means that the necessary. DOB work permits must be submitted as relevant. For electrical work to comply with applicable building codes and requirements, the owner must show that an electrical permit was obtained and that said electrical work passed DOB inspection. However, no electrical permit was issued by the DOB and there are no records of any electrical work inspections done by DOB for the subject building. As a result, whatever work may or may not have been done on the electrical system, the owner has failed to submit required permits and proof of DOB inspection and such system may not, therefore, be considered to have been properly completely replaced pursuant to OB 95-2. The Commissioner notes that, on September 28, 2022, the RA requested that the owner submit all applicable permits for the subject project and that, at no stage of this proceeding, has the owner provided any electrical work permit from DOB or evidence of DOB inspection of electrical work.

The inspectors' Report states that the "interior stairway appear[s] to be much older than... from 2007,....", and that the "interior pubic staircase was not replaced and appears to be much older than 2007." Accordingly, the interior stairways cannot be considered to have been completely replaced.

The Commissioner finds that the floors in the apartments were not completely replaced. The inspectors' report states that Apartment [redacted] "...pine board flooring... appear to be much older than 2007." Accordingly, of the four apartments inspected, one of them, or 25%, of the inspected apartment floors were not replaced, and, along with the failure to replace all common area floors as outlined above, the floor system cannot be found to have been replaced building-wide and in all apartments.

The ceilings and wall surfaces were not completely replaced. The inspectors' Report states the Apartment [redacted] "...plaster walls/ceiling...all appear to be much older than 2007", and that, regarding Apartment [redacted] "walls and ceiling appear to be much older than...2007...." Accordingly, given that the ceilings and wall surfaces were not completely replaced for two of the four inspected apartments, and given that public area ceilings and walls were not completely replaced, as outlined above, the ceiling and wall surface system cannot be found to have been completely replaced building-wide and in all apartments.

The above-mentioned failures to replace staircases, floors, ceilings and walls do not fall into the RSC §2520.11(e) and OB 95-2 exception permitting certain components of a building to remain without replacement due aesthetic and/or historic merit. There is no evidence that the building, or the components at issue, have any special aesthetic or historical merit. While the owner makes unsupported allegations of such merit, there is no supporting evidence, and the Agency inspectors made no note of any such merit. Further, this exception generally applies to unique and specific buildings, often buildings with historical or landmark status, and generally applies to the façade or other public part of a building. There is no evidence of any special esthetic or historical merit to the building itself, or of any of the components referred to by the owner, and therefore no grounds for making any exception to the requirements of complete replacement of all systems in this case.

In sum, the owner did not completely replace at least four of the 15 applicable systems of the subject building (namely the above-outlined electrical system, interior stairways, floors, and ceilings and wall surfaces) and it did not therefore fulfill the requirement that 75% of such 15 systems be replaced. For this reason as well, therefore, the substantial rehabilitation Application must be denied.

The Commissioner finds that Ador Realty, LLC v. Div. of Hous. & Cmty. Renewal, 25 A.D.3d 128 is distinguishable from the instant proceeding. Here, unlike Ador, all the inspected areas were outside of the walls and visible to the inspectors, while, in Ador, all the areas at issue were behind the walls. As a result, Ador is not analogous to the facts of the instant case. The 65 Hillside case dealt only with the inspector's lack of a specific description and lack of supporting evidence regarding his findings about the elevator in that case. 65 Hillside is not analogous to the instant case which does not deal with elevators, in which the inspectors herein made very specific findings and descriptions, and in which the inspectors herein supported their findings with photographs.

The owner alleges that the building was vacant prior to and during the renovation that lasted from 2005 to 2007, and that there is therefore a presumption that the building was seriously deteriorated. This is, however, contradicted by DOB records. On September 12, 2005, a complainant called to complain about the defective sprinkler system at the building which means that at least one of the then three apartments was in fact occupied. In addition, on August 8, 2006, a complainant called to complain that she had no secondary means of egress from her apartment at the subject premises which means that, at this time as well, at least one of the three apartments in the subject premises was occupied. Therefore, the building was at least 33% occupied prior to and during the renovation (see Matter of SH Harman LLC v. New York State Div. of Housing & Community Renewal, 2021 N.Y. Misc. LEXIS 5742 which found that "DHCR rationally found that petitioner was not entitled to the presumption that the building was substandard or seriously deteriorated based on 80% vacancy, which finding was supported by the DOB violations indicating that two or even three of the apartments in the six-unit building were occupied during the renovations.... DHCR's finding that petitioner failed to submit sufficient evidence to show that the building was substandard or seriously deteriorated is neither arbitrary nor capricious"). Further, in a document for DOB Job# 301939071 (the Job at issue), filed on June 8, 2005, the owner states that the subject building was to remain occupied during the renovation period. It is noted that the outstanding violations alleged by the owner, even if in effect at the relevant time, do not in and of themselves indicate that the premises were seriously deteriorated. The Commissioner therefore

finds that objective DOB evidence contradicts the allegation of the owner, and the affidavits of the architect and of the contractor, stating that the building was seriously deteriorated because it was 80% vacant prior to and during the renovation at issue.

It is noted that DOB approved plans are not proof of what work was actually performed, and, in this case, do not contradict the findings of the RA or the findings herein.

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

ORDERED, that the owner's petition is denied, and that the Rent Administrator's Order is affirmed.

ISSUED: DEC 27 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.