

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

-----X

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW  
DOCKET NO.: MN110002RP

89-21 153 LLC/Zara Realty

RENT ADMINISTRATOR'S  
DOCKET NO: GM110023RV

PETITIONER

TENANT:

██████████  
89-21 153 Street  
Jamaica, NY 11432

-----X

**ORDER AND OPINION MODIFYING RENT ADMINISTRATOR'S ORDER**

This proceeding was commenced based on a remit order issued by Supreme Court, Queens County Justice Ulysses Leverett on October 26, 2022. Said Court order remanded the proceeding back to the DHCR Deputy Commissioner to clarify whether a clerical error was made in the petition for administrative review (PAR) which affirmed the order issued by the Rent Administrator (RA) regarding the date the agency found that the non-party tenant of record permanently vacated the subject apartment.

On February 14, 2024, DHCR served the parties with a Notice of Proceeding to Reconsider Order. The parties made no submissions.

The RA order issued on April 1, 2021 found that ██████████ had established his right to succeed to the subject apartment following the vacatur of his mother, the tenant of record on January 31, 2019. Upon court remit, the Commissioner finds that the correct date upon which the non-party tenant of record vacated the subject apartment was October 10, 2017. This date is supported by a letter signed by the tenant of record which was submitted with her son's succession complaint. The RA order is modified to reflect October 10, 2017 as the date the tenant of record vacated the subject apartment. The Commissioner finds that this amended date does not affect ██████████ succession rights because the record contained evidence that he resided in the subject apartment with his mother for two years prior to October 10, 2017.

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

ORDERED, that the Rent Administrator's order be, and the same hereby is, modified in accordance with this PAR order and is otherwise affirmed.

ISSUED:

APR 30 2024

A handwritten signature in black ink, appearing to read "Woody Pascal", written over a horizontal line.

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](http://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

-----X  
IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF [REDACTED] ADMINISTRATIVE REVIEW  
DOCKET NO.: MM210021RT

[REDACTED]  
PETITIONER

RENT ADMINISTRATOR'S  
DOCKET NO: KR210058RV

OWNER: 116N8th LLC.

-----X  
ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-named petitioner filed a timely petition for administrative review (PAR) against an order issued on January 5, 2024 by the Rent Administrator (RA) concerning the housing accommodation known as apartment [REDACTED] at 116 N 8th Street, Brooklyn NY 11249.

In the appealed order, the RA found that the complaint was withdrawn on December 28, 2023. Therefore, the RA terminated the lease violation complaint.

On PAR, the tenant contends that she filed the complaint with "co-tenant [REDACTED]" and that only he, and not her, withdrew the complaint because he moved out.

The owner answered the complaint stating that petitioner's name was not on the complaint, and she had no standing.

The PAR is denied.

There is some indication that the original complaint was signed by both [REDACTED] and the petitioner. In any event, petitioner was a signee on the vacancy lease and the owner was aware that she was a co-tenant. Also, the withdrawal letter indicated that only [REDACTED] was withdrawing the complaint. Therefore, petitioner did indeed have standing to continue the lease violation complaint.

With that said, the petitioner has filed a rent overcharge complaint under Docket Number MM210043R which is currently pending before the agency. Typically, the RA will incorporate the claims of a lease violation complaint into a rent overcharge proceeding and terminate the

PAR Docket No. MM210021RT

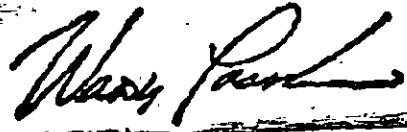
lease violation complaint anyway. As this is the practical outcome here, the tenant's PAR should be denied. Issues concerning the rent regulated status of the apartment, the legal regulated rent and whether the owner has to offer rent stabilized leases and register the premises will be decided under MM210043R.

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

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

ISSUED:

MAY 07 2024



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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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OFFICE OF RENT ADMINISTRATION  
GERTZ PLAZA  
92-31 UNION HALL STREET  
JAMAICA, NEW YORK 11433**

-----X

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: MN110016RO
30-44 [REDACTED] Owner LLC	RENT ADMINISTRATOR'S DOCKET NO: JT110032RV
PETITIONER	TENANT: [REDACTED]

-----X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-named owner filed a timely petition for administrative review (PAR) against an order issued on January 19, 2024 by the Rent Administrator (RA) concerning the housing accommodation known as apartment [REDACTED] at 30-44 29<sup>th</sup> Street, Astoria, NY 11102.

On August 24, 2021, the tenant filed a lease violation complaint alleging that her last lease was in 2019, and that the owner refused to offer a renewal lease.

In an answer dated August 30, 2021, the owner stated that tenant was offered a renewal lease on July 23, 2019; that the tenant failed to return a signed copy of the lease; that a replacement lease was offered in November 2019; that the tenant failed to return said lease; and that proof of mailing was annexed.

In reply, the tenant asserted that she signed a lease in October 2019, and it was never returned to her; that the owner has not cashed rent checks; and that this situation has caused stress. The tenant attached a renewal lease signed by tenant dated October 24, 2019 to commence December 1, 2019 for a one-year term. Said lease was not signed by the owner.

The owner denied that any such lease was returned to it. Later, the owner, in a further reply, dated June 20, 2023, stated that the executed lease in the tenant's response is insufficient to warrant as countersign because the tenant failed and refused to execute and return to the owner the lease rider.

The RA granted the tenant's application and directed the owner to offer the tenant a renewal lease within 30 days, for the tenant to return same within 60 days and for the owner to countersign same. The owner was also directed to file apartment registrations for 2021-2024.

On PAR, the owner contends that the RA order should be revoked because it offered a 2019 renewal lease, but the tenant failed to return the rider.

The PAR is denied.

The owner has not substantiated its claim that a rider was offered with the 2019 renewal lease or that the tenant refused to execute same. The owner neither attached a copy of the lease offer or the accompanying rider. Accordingly, the petitioner has not raised any basis to modify or revoke the RA's order directing the owner to offer the tenant a renewal lease. At this juncture, given that the term of the 2019 lease has long expired, the owner is directed to offer a new renewal lease within 30 days and based on the rent of \$895.33 per month.

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

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

ISSUED:

MAY 28 2024



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Woody Pascal  
Deputy Commissioner





State of New York  
**Division of Housing and Community Renewal**  
Office of Rent Administration  
Gertz Plaza, 92-31 Union Hall Street  
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There is no other method of appeal.

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

.....X  
IN THE MATTER OF THE ADMINISTRATIVE  
APPEAL OF

ADMINISTRATIVE REVIEW ST  
DOCKET NO.: LX410005RT

██████████

PETITIONER

RENT ADMINISTRATOR'S PA  
DOCKET NO.: LQ410008RV

OWNER: Bldg. Management Co., LLC

.....X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner filed a timely petition for administrative review (PAR) against an order of the Rent Administrator (RA) issued on November 28, 2023 concerning apartment ██████ at 222 East 44<sup>th</sup> Street, New York, NY 10017.

The petitioner filed a lease violation complaint on May 1, 2023 alleging that the owner failed to furnish a renewal lease; and that she has succession rights because she lived with the tenant of record, ██████, her partner, for two years prior to his eviction from the apartment.

The owner answered that on February 27, 2023 a stay of eviction was lifted, and the subject apartment was returned to the owner pursuant to the Decision and Order of Judge Frances A. Ortiz under Index No. L & T 63047/19 in the case of BLDG 44 LI, LLC v. Dallo Bons, John Doe and Jane Doe. The owner annexed a Decision/Order of the same Judge, dated December 1, 2022, which found that the petitioner was a "John Doe" in the eviction proceeding; that she has not demonstrated good cause to stay the eviction; and that pursuant to a Stipulation of Settlement from November 2020, ██████ agreed to a final judgment of possession against himself plus against occupant "Doe."

The RA denied petitioner's request for a renewal lease and terminated the proceeding.

On PAR, the petitioner contends that she is the surviving spouse of ██████; that she has succession rights to the subject apartment; that she was not a party to the Stipulation of Settlement; that she was living in the subject apartment for more than two years prior to the eviction of ██████; that she was hospitalized and did not receive any DHCR notices; and that the owner removed her belongings to a storage facility. The petitioner asserts that the RA failed to address her submission in which she included evidence supporting succession and set forth citations to numerous court cases supporting her succession rights.

The owner opposed the PAR by arguing, in sum, that the Civil Court has already evicted the tenant of record and determined the petitioner's claims to the apartment in the owner's favor.

The petitioner replied with a notice of a new address and counter arguments to the owner's opposition. In sum, the petitioner argued that the court decision did not apply to her because she was not a party to the eviction case and that the court did not determine her succession rights.

The PAR is denied.

As a first matter, the Commissioner has considered all of the petitioner's submissions and arguments, including a post-order submission submitted to the RA. Therefore, the Commissioner finds that there has been no due process violation because all of the petitioner's claims and arguments have been considered.


While Courts have found that there can be succession claims in holdover/eviction proceedings, the petitioner has no such valid claim here. The Civil Court has already evicted the tenant of record and returned the apartment to the owner. Moreover, the Court issued a further order on December 1, 2022 specifically finding that petitioner was "a/k/a John Doe" in the eviction proceeding and that she demonstrated no good cause to stay the eviction. The Court also found that the Stipulation of Settlement specifically applies to her. Therefore, any claim that the Court did not decide her succession rights or consider any other claims that she made as to tenancy rights is without merit. All such claims were resolved in the owner's favor.

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

ORDERED, that this PAR be, and the same hereby is, denied; and that the RA's order be, and the same hereby is, affirmed.

ISSUED:

JUN 05 2024



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](http://www.hcr.ny.gov)

### **Right to Court Appeal**

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There is no other method of appeal.

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OFFICE OF RENT ADMINISTRATION  
GERTZ PLAZA  
92-31 UNION HALL STREET  
JAMAICA, NEW YORK 11433

-----X  
IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW  
DOCKET NO.: MM410025RT

██████████

PETITIONER

RENT ADMINISTRATOR'S  
DOCKET NO.: KP410026RV

-----X OWNER: Riverton Square, LLC

**ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW**

The tenant filed a timely petition for administrative review (PAR) of an order issued on December 12, 2023 by the Rent Administrator (RA) concerning the housing accommodation known as Apartment █████ at 2160 Madison Avenue, New York, NY 10037.

The tenant filed an agency complaint alleging that the owner failed to offer a renewal lease on the same terms and conditions as the expiring lease.

The RA terminated the proceeding finding that the agency has no jurisdiction over the apartment because the premises is owned by a non-profit corporation under the Private Housing Finance Law and is subject to a Regulatory Agreement and is in receipt of a 420-c tax exemption.

On PAR, the tenant asserts that the owner is a rent-stabilized affordable housing complex; that the apartment registration in 2019 and 2020 shows her name as a rent-stabilized tenant; and that her leases in 2018 and 2020 signed by the owner are rent stabilized.

The owner responded that registrations and leases do not confer rent-stabilized status on the apartment.

The tenant replied that there could be no mistake that her leases and DHCR records indicate the apartment is "rent stabilized"; and that the owner's answer should be rejected as untimely as it took more than 20 days for the owner to answer her PAR.

The Commissioner finds that the PAR should be denied.

PAR Docket No. MM410025RT

As a first matter, it is noted that the owner's answer to the PAR was timely as it was mailed within the required period.

The record supports the finding that the subject apartment is not rent-stabilized. The 2015 Regulatory Agreement between the owner and HPD affords the owner the opportunity to exempt initial affordable housing units from rent-stabilization after they become vacant. Given that the tenant did not take occupancy until 2017, the record supports the RA's findings. The fact that the owner registered the apartment as rent-stabilized in the annual apartment registrations in 2019 and 2020 and offered rent-stabilized renewal leases does not confer rent-stabilized status on an exempt unit.

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

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

ISSUED:

JUN 10 2024



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WOODY PASCAL  
Deputy Commissioner



State of New York  
**Division of Housing and Community Renewal**  
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Gertz Plaza, 92-31 Union Hall Street  
Jamaica, NY 11433  
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There is no other method of appeal.

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

X

IN THE MATTER OF THE  
ADMINISTRATIVE APPEAL OF

5712 Realty, LLC,

ADMINISTRATIVE REVIEW  
DOCKET NO. MN210013RO

RENT ADMINISTRATOR'S  
DOCKET NO. LU210001RK

PETITIONER

TENANT: [REDACTED]

ORDER AND OPINION DENYING  
PETITION FOR ADMINISTRATIVE REVIEW

The above-named owner has filed this administrative appeal ("PAR") against an order issued on January 26, 2024, by a Rent Administrator ("RA"), concerning the housing accommodations known as apartment [REDACTED] at 712 Crown Street, Brooklyn 11213, in which the Administrator, affirming his prior determination issued under KM210059RV, has determined that the tenant is entitled to succession rights to those accommodations. The RA found that the complaining tenant herein has succeeded as the rent stabilized tenant of the subject apartment because he lived with his father, the tenant of record, for at least two years prior to the death of his father, which fulfills the requirements of Section 2523.5(b) of the Rent Stabilization Code (RSC). RSC Section 2523.5(b) provides that a family member of a rent stabilized tenant of record who has resided with said tenant for at least two years immediately prior to the permanent vacatur of that apartment by said tenant of record, has the right to succeed as the rent stabilized tenant of that apartment. The rationale of Order KM210059RV, as affirmed by the Order under consideration, was that the tenant had proved that he was the son of [REDACTED] (the then tenant of record), with whom "he lived in the subject apartment for two years prior to the passing away of his father."

In the PAR, the owner asserts that it has not been demonstrated that the tenant resided in the subject apartment for the requisite two-year period prior to the death of the tenant of record, and that succession rights have therefore not been established.



In answer to the PAR, the tenant cites as evidence of such residence, affidavits from neighbors, checks and a bank statement, a Debit Account Statement from "pathward", a Decision/Order from the Kings County Housing Court (Index No. LT-308136-22/KI), as well of proof of rental payments allegedly showing that he lived in the subject apartment both before and after his father's death. The tenant also cites the Administrator's Order at issue and provides documents indicating that he has become disabled.

In response to the tenant's answer, the owner alleges that the tenant is not the informant on his father's death certificate, despite allegedly residing with his father at the time that his father passed away in the subject apartment; that the tenant's identification card "was issued [just] one month prior to the passing of the tenant of record"; that a doctor's letter, dated a month before said passing, stated that a relative "should reside with" said tenant; that the bank statements do not "reveal a single transaction in the general vicinity of the Subject Premises and fail to span an entire year"; that this Agency should hold a hearing at which the aforementioned affiants would be cross-examined; that their "boilerplate" affidavits do not establish personal knowledge of the tenant's occupancy during the relevant period; that the tenant has failed to submit documents that are easily obtainable, such as those from Con Edison, National Grid, bank statements, cable bills, internet or cellular-phone statements, or the 2019 W-2 statement "despite incontrovertible evidence . . . that [the tenant] had the same employer in 2019"; and that the tenant now alleges for the first time, that he is disabled.

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

The record establishes that the tenant lived with his father, the prior tenant of record, for at least two years prior to the passing of his father on January 19, 2021. This record includes: 1. Seven affidavits from neighbors of the tenant at the subject building stating that the tenant lived in the subject apartment, five of which specifically attest that the tenant lived in the subject premises from November of 2018 until the death of his father in January of 2021; it is noted that the fact that some of these affidavits contain identical language does not detract from the probative value of these statements sworn before notaries on penalty of perjury should they contain any false statements; 2. A Debit Account Statement from "pathward" in the

tenant's name at the subject apartment showing transactions from January 2, 2019 to December 31, 2019; 3. A NYS Higher Educational Services Corporation (NYSHESC) letter dated May 15, 2019 and a NYSHESC check to the tenant dated November 15, 2018, both in the tenant's name and referencing the subject apartment; 4. A W2 for the year 2020 as well as an Internal Revenue Service (IRS) 1095-C Form (Employer-Provided Health Insurance Offer and Coverage) for 2020 both of which are for the tenant and both of which reference the subject apartment; 5. A Solicitation from Priests of the Sacred Heart dealing with events in December of 2020 and addressed to the tenant at the subject apartment, and 6. A Decision/Order from the Civil Court of NY Kings County Housing Part T, Index No. LT-308136-22/KI granting the tenant's cross-motion in the holdover proceeding initiated by the owner. Said cross-motion asked for a stay of the holdover proceeding pending a determination by this Agency of KM210059RV (the first RA's Order in the instant proceeding upheld by the RA's Order that is the subject of the instant PAR). The Court granted the cross-motion and granted a stay of that proceeding finding that the tenant had demonstrated "a meritorious claim through the documentary evidence submitted to the DHCR. These documents include proof of the relationship between the tenant of record, his father, and himself, documents related to the death of the tenant of record, rent payments made in respondent's name, tax returns, voter and jury records, utility statements, bank records, and school records." While the Court did not make a finding that the tenant would prevail in proceeding KM210059RV, it did find that the tenant had a meritorious claim, and cites several specific evidentiary documents showing such merit. It is noted that this Decision/Order was actually submitted by the owner as well as by the tenant, and that the owner does not make any allegations refuting or explaining in its favor the statements of the Housing Court.

The record therefore shows that the tenant resided with his father, the prior tenant of record, for at least two consecutive years immediately prior to the passing of his father. The tenant is therefore entitled to succession rights in the subject apartment pursuant to the RSC, and the RA's Order at issue is accordingly affirmed. It is noted that a hearing will only be conducted at the discretion of the Agency. Given the evidence in the record, as outlined above, which is sufficient to clearly establish the tenant's right to succeed as the rent stabilized tenant of the subject apartment, a hearing need not and will not be conducted.

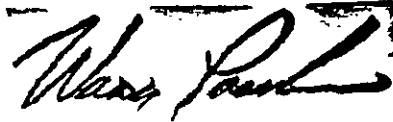
MN210013RO

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

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

ISSUED:

JUN 13 2024



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Woody Pascal  
Deputy Commissioner



State of New York  
**Division of Housing and Community Renewal**  
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their entire tenancy. The tenant asserted that her parents' rent-controlled status should carry over from the previous apartment pursuant to a Court of Appeals decision in Capone v. Weaver, 6 N.Y.2d 307 (1959), and that she had a right to succeed to the apartment following the death of her father in 2016 (her mother previously died in 2014). The tenant asserted that she is disabled and meets the one-year co-occupancy requirement for a disabled person. The tenant further asserted that the agreement was not wholly voluntary; that her parents did not understand that they would be losing their rent-controlled rights; and that the owner benefitted by moving her parents to a smaller apartment and then converting the old apartment to a doctor's office and then back to an apartment with a rent above the deregulation threshold. In sum, the tenant argued that the agreement benefitted the landlord to the detriment of her parents and was not wholly voluntary.

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

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

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

The PAR was denied on July 12, 2019.

Thereafter, the tenant challenged the PAR order in an article 78 proceeding in New York Supreme Court. On March 9, 2020, Justice Carol R. Edmead issued a Decision and Order remitting the matter to DHCR for further proceedings. The Court directed DHCR, in conformance with Capone, to conduct a factual inquiry into the circumstances of the parents' surrender of the rent-controlled apartment.

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

Under Docket Number KV410003RP, on February 8, 2023, the Deputy Commissioner granted the tenant's PAR. The Deputy Commissioner concluded that the parents' waiver of their rights under the rent control laws was void based on the lack of evidence that: the agreement was part of a settlement; that the parents were represented by counsel; and that the agreement was approved by DHCR or a court of competent jurisdiction. The Deputy Commissioner also found that the facts of the case demonstrated that the surrender of the rent-controlled unit was not wholly voluntary; that the owner benefitted from the parents' move; that the transfer came at the request of the owner that the parents move to a smaller apartment on a higher floor; that the owner then converted the former rent-controlled unit to a doctor's office and then back to an apartment with a

rent that exceeded the deregulation threshold; that this increase in rent and the subsequent deregulation of a former rent-controlled apartment represents a direct benefit to the owner which resulted from the parents' moving; and that there is no evidence that the agreement sufficiently informed the parents of the rent-control rights that they were forsaking or the implications that moving into a "free-market apartment" had for themselves or family members. The Deputy Commissioner also found that that tenant's parents retained their rights as rent-controlled tenants into the subject apartment; that the tenant, as a disabled person, resided with her father one year prior to his death; that she has succession rights to the subject rent-controlled apartment; and that her rent should be based on \$541 per month.

The owner then commenced an Article 78 proceeding challenging PAR order KV410003RP. The owner asserted, amongst other things, that DHCR denied the owner due process by failing to request additional evidence from the parties and failing to conduct a factual inquiry into the circumstances of the tenant's parents' surrender of the rent-controlled apartment for an unregulated unit as directed by Justice Edmead.

In a Decision/Order, dated January 8, 2024, New York Supreme Court Justice Shahabuddeen Abid Ally remitted the matter to DHCR for the agency to conduct further fact-finding on the issue of whether the parents were sufficiently advised of the rights they were relinquishing in the agreement.

On January 30, 2024, DHCR served the parties with Notice of Proceeding to Reconsider order under new Docket Number MM410011RP.

On February 5, 2024, DHCR sent a letter to the respective attorneys for the parties requesting that each submit comments on the circumstances that lead to surrender of the parents' rent-controlled apartment and whether the parents were sufficiently advised of the rights they were relinquishing as rent-controlled tenants.

### **Tenant's Response**

On March 6, 2024, the tenant's attorney stated that [REDACTED] parents never knowingly abandoned their rights as rent-control tenants and thus retained rent-control status after moving to the subject apartment, thereby entitling [REDACTED] to succession rights.

In an affidavit, dated March 5, 2024, [REDACTED] stated the following: that she has continuously lived in the subject apartment since at least 2007, when she moved there with her parents from Apartment [REDACTED] (the previous rent-controlled unit); that she grew up in Apartment [REDACTED]; that the prior owner approached her parents in July 2007 to request that they move from Apartment [REDACTED] to Apartment [REDACTED] so that Apartment [REDACTED] could be converted into a doctor's office; that the owner asserted that moving to Apartment [REDACTED] was in their best interest because having a doctor's office downstairs would be helpful to both of them as they aged; that the old apartment was converted to a doctor's office for approximately eight months and then was converted back to a market rate apartment; that the owner repeatedly presented the offer to her parents in July

and August of 2007; that she observed her father's conversations and interactions with the landlord's agent regarding the transfer; that the landlord repeatedly made representations that "everything would remain the same," including the rent, and that the only difference was that Apartment [REDACTED] was smaller; that her mother and father were in their eighties at the time and suffered from dementia and heart disease; that she herself was suffering from cancer; that she does not believe her father understood the agreement; that both her parents were over 80 years old when they signed the agreement and had no knowledge of the rent-control laws; that they did not understanding the rent-control protections they were forgoing by moving to Apartment [REDACTED]; that her father trusted the landlord; that rent-controlled rights were never discussed with the landlord before signing the agreement; that when her father asked if his daughter's name would be added to the new apartment lease, the landlord assured the father that he already knew that [REDACTED] lived with her parents and could continue to live in the apartment after they passed away; that the agreement and the new lease were presented in English, which her parents did not speak, read or write; that her mother had dementia and could not understand the agreement; that they signed the agreement based on representations from the landlord that everything would be the same; that she herself did not review the agreement before her parents signed it; that her mother, [REDACTED], passed away in 2013; that the building was sold in 2014; that the new owner refused to provide a renewal lease in 2016; that her father, [REDACTED], passed away on June 5, 2016; and that the owner refused to give her a renewal lease in her own name. The tenant also annexed a copy of a Lease Extension which her and her father signed on July 11, 2014 which extended their tenancy until June 30, 2016. The Lease Extension provides for a rent of \$541.00 per month and states that said "preferential rent" shall apply to this and all subsequent leases "for as long as the tenants, or either of them shall live and occupy the premises" and shall cease upon the earlier of the death of the last surviving tenant herein or the cessation of at least one tenant occupying the apartment as a primary residence.

### **Owner's Response**

On April 4, 2024, the owner's attorney responded to both the re-opening notice and the tenant's March 6, 2024 submission.

The owner asserts that the parents freely entered into an agreement with the former owner to transfer apartments for the consideration of \$4,300 and a life-time rent of \$541.00 per month; that in judging the agreement, DHCR should consider a two-part test, i.e. (i) whether the move was wholly voluntary and (ii) whether both parties benefited from the transfer or only the requestor benefited; that Courts have held that if an apartment transfer is solely for the owner's benefit, tenants retain their rent-controlled status; that there is no evidence of owner harassment or forcing the move; that the agreement was fair and benefitted both parties; that previous PAR order GU410036RT determined that there was a valid agreement and that Capone did not apply; that the parents waived their rent-controlled status; that the signed agreement specified that the new apartment was not under rent control; that the agreement specified that the tenants had full opportunity to investigate the records of the premises and that the move was precipitated by



payment of \$4,300; and that the prior PAR order found that petitioner was not entitled to the preferential rent arrangement and could not succeed to the apartment.

The owner asserts that without a hearing, [REDACTED] contention that her father did not understand the agreement or did not switch apartments under his own free will cannot be supported. The owner asserts that the prior order, KV410003RP, ignored the fact that both parties benefited from the transfer of apartments; that no hearing was held; that the former tenants are deceased and cannot be questioned; that no proof was submitted that the agreement was not wholly voluntary; that indeed both parties benefitted from the move; that DHCR's argument that the agreement does not clearly state that the tenants were giving up succession rights is baseless; that the parents were not kept in the dark as to rent-control rights; that paragraph 7 of the Agreement specifically provides that the parents were aware, and were specifically advised, that the new premises is not subject to rent regulation of any kind and that they are giving up their rights to the rent-controlled unit; that the Agreement specifically prohibits succession; and that DHCR conflated the two-part Capone test with RSC §2520.13 which applies to rent-stabilized apartments. Finally, the owner asserts that the record does not support [REDACTED] contentions that her father did not understand the agreement and did not move of his own free will.

### **Determination on Remand**

Based on Justice Shahabuddeen Abid Ally' decision, the Commissioner has conducted further fact-finding on the circumstances of the tenant's parents' surrender of the rent-controlled apartment and whether they were sufficiently advised of and understood the rights they were relinquishing in the agreement to switch apartments. The Commissioner has afforded both parties the right to make post-remand submissions and the owner was afforded the opportunity to also comment on the tenant's submission.

Having reconsidered all the evidence and the new submissions of the parties, the Commissioner grants the tenant's PAR.

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

[REDACTED] affidavit establishes that she had first-hand knowledge of at least some of the discussions between her now deceased parents and the landlord prior to the move; that her parents were elderly and infirm at the time; that the offer was presented by the owner multiple times; that the owner stated that the move would be beneficial to them to have a doctor's office

below their apartment; that her parents were promised that nothing would change; that rent control rights were never discussed; that her parents did not understand the agreement; that no translation was offered; and that the landlord assured the father that he already knew that [REDACTED] lived with her parents and could continue to live in the apartment after they passed away.

In contrast, the owner offers nothing by way of first-hand knowledge of the discussions with the parents. Instead, the owner relies on the language of the agreement itself; the fact that a hearing should be conducted; that [REDACTED] assertions are not supported by the record and that the original PAR order ruled in favor of the owner.

The Commissioner finds that the tenant's evidence is more persuasive than the agreement signed by the parents should be void. Under Capone and the two-part test therein, the Commissioner finds that the agreement to switch apartments was neither wholly voluntary, nor mutually beneficial. The evidence weighs in favor of the fact that the parents did not fully understand that they were waiving their rent control rights, particularly the right of their daughter to succeed to the apartment. It is obvious that their daughter's future status would have been keenly important to the parents given their age and that their daughter had already been living with them and the fact that she herself was in poor health. The owner merely points to the language of the agreement and says there was an understanding, but [REDACTED] affidavit delves deeper into the conversations that took place over the course of two months and establishes that her parents did not fully understand the agreement. Indeed, the evidence establishes that the owner "guaranteed" them a rent of \$541 (which was their current rent-controlled rent) and stated nothing would change so as to entice the decision to move, but explained nothing else regarding rent control rights that may pass to their daughter. Moreover, other than continuing the \$541 rent for the length of tenancy of two people already in their eighties and in poor health, the record is devoid of any other "mutual benefit" afforded to the parents. The benefit to the owner given what transpired with the former apartment is of course apparent on the record.

Based on the foregoing, the Commissioner finds that tenant's parents retained their rights as rent-controlled tenants into the subject apartment. Moreover, given the unchallenged evidence that the tenant, as a disabled person, resided with her father one year prior to his death, the Commissioner finds that she has succession rights to the subject rent-controlled apartment. The rent for said apartment should be based on \$541 per month.<sup>2</sup>

Finally, the Commissioner finds that given the sufficiency of the written evidentiary record, including [REDACTED] affidavit and the owner's written post-remand submission, a hearing is not necessary to determine this matter.

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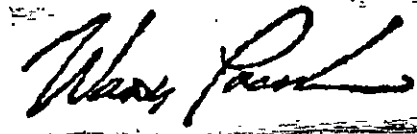
<sup>2</sup> Based on a review of DHCR records and orders, the owner's applications for rent-controlled Maximum Based Rent (MBR) increases for 2016-2017 (DR422308BR), 2018-2019 (FR422218BR), 2020-2021 (HR421337BR) and 2022-2023 (JR420913BR) were denied.

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

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

ISSUED:

JUN 20 2024

A handwritten signature in black ink, appearing to read "Woody Pascal", written over a horizontal line.

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](http://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**

.....X  
IN THE MATTER OF THE ADMINISTRATIVE  
APPEAL OF

ADMINISTRATIVE REVIEW  
DOCKET NO. MP210014RT



RENT ADMINISTRATOR'S  
DOCKET NO.:MM210002RK

PETITIONER

OWNER: MMC Mgmt. Corp

.....X

**ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW**

The above-named tenant filed a timely petition for administrative review (PAR) against an order of the Rent Administrator (RA) issued on March 13, 2024 concerning apartment [REDACTED] at 983 46<sup>th</sup> St., Brooklyn NY 11219 which found, in sum, that the tenant's occupancy was contingent upon his employment with Maimonides Medical Center (MMC) and was subject to an Occupancy Agreement and that, pursuant to Rent Stabilization Code §2520.11(f), said apartment was not subject to rent regulation.

On PAR, petitioner asserts that the charitable exemption does not apply to MMC; that petitioner moved into the subject premises in 2001; that petitioner lost his eyesight in 2008; that in 2018, the building was sold to a new owner; that MMC and the new owner entered into a Master Lease Agreement (MLA), wherein the tenant paid rent to the new owner, Maimo I Holdings, LLC (Maimo), which maintains the building and collects rent; that since the MLA takes increases more than the legal regulated rents, MMC's exemption from rent stabilization skirts the rent laws; that petitioner had been an MMC employee but has not worked with MMC for years and his tenancy no longer aids any charitable purpose; and that MMC and Maimo serve no charitable purpose and seek only financial gain. as these owners are involved in housing violations and court eviction proceedings against tenants.

The owner opposed the PAR.

The PAR is denied.

The Civil Court, following a trial between another similarly situated tenant in the same building and the owner, made findings that such tenant's occupancy of the apartment was pursuant to an Occupancy Agreement related to employment at MMC; that the Occupancy Agreement provided for termination of occupancy upon termination of employment for whatever reason; that

said tenant retired from MMC in 2012; that he was not entitled to a renewal lease; and that MMC was entitled to take possession of the apartment. See Maimonides Medical Center v. Joseph, Civil Court of the State of New York, Housing Part R, Kings County, Index No. L&T 77536/19-KI. DHCR affirmed these findings in dismissing a similar lease violation complaint filed by Joseph. See also Maimonides Medical Center v. Eduardo Silva-Fierro, Civil Court of the State of New York, Housing Part F, Kings County, Index No. L&T 308207-23.

In other cases where the occupant was a former employee of the hospital and continued his/her occupancy after retirement or termination, the agency has found that the occupants are not rent stabilized tenants. See IV210014RT, LO210001RP, KP210009RT. In each case, the agency has held that continued occupancy in the apartment beyond the employment with MMC does not confer rent stabilized status on the occupant.

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

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

ISSUED:

JUN 24 2024



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.her.ny.gov](http://www.her.ny.gov)

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There is no other method of appeal.