**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.:KO210050RT** |
| **VARIOUS TENANTS OF 266 THROOP** | : | |
| **AVENUE and 266A THROOP** | : | |
| **AVENUE** | : | **RENT ADMINISTRATOR'S** |
| **PETITIONERS** | : | **DOCKET NO.:IV210005AD** |
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ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

On March 25, 2022, the Petitioner-tenants filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on February 18, 2022 (the "order"), concerning the housing accommodations known as 266 Throop Avenue and 266A Throop Avenue, Brooklyn, New York wherein the Rent Administrator determined, based upon the evidence, including the physical inspections of the subject premises conducted by DHCR, that the subject premises were not part of a Horizontal Multiple Dwelling ("HMD"), and accordingly did not otherwise meet the criteria necessary to be subject to rent regulation under 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.

In this PAR, the tenants, by counsel, claim in substance, that the Rent Administrator's order was incorrect as the subject premises 266 Throop Avenue and 266A Throop Avenue should have been considered an HMD, and subject to the Rent Stabilization Law and Code. The tenants, contend, *inter alia*, that the two buildings were "linked", and that the owner's attempts to separate the two buildings in 2019 by separating the services for the buildings do not negate the buildings' HMD status.

The owner, by counsel, opposes the 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' claim that the owner has or is attempting to separate the two buildings is false.

The Commissioner, having reviewed the record herein, finds that the petition should be granted and the Rent Administrator's order reversed, as set forth herein.

Section 2520.11(d) of the Rent Stabilization Code ("RSC" or "the Code") exempts from regulation buildings containing fewer than six housing accommodations on the date the building first became subject to the Rent Stabilization Law and Code; and a building shall be deemed to contain six or more dwelling units if it is part of a multiple family garden-type maisonette dwelling complex containing six or more units having common facilities such as a sewer line, water main or heating plant and operated as a unit under common ownership on the date the building or building complex first became subject to the Rent Stabilization Law, notwithstanding that certificates of occupancy were issued for portions thereof as one- or two-family dwellings.

Pursuant to the New York City Rent Stabilization Law of 1969, as amended by the Emergency Tenant Protection Act of 1974, rent stabilization in New York City applies to multiple dwellings built before January 1, 1974, that had six (6) or more units as of January 1, 1974, unless exempt. As there is no exemption that applies in this matter, the effective date of the Emergency Tenant Protection Act is January 1, 1974, which also serves as the base date herein.

According to the Matter of Salvati v. Eimicke, 72 N.Y.2d 784 (1988), the New York Court of Appeals held that it was rational for the DHCR to interpret the statute to determine the existence of a regulated HMD where there are sufficient indicia of common facilities, common ownership, management and operation to warrant treating the housing as an integrated unit even though not a garden-type maisonette complex. The courts have long recognized that each HMD case is unique, with its own combinations of configurations and factors, and that no one factor or set of factors can be said to be determinative. See Love Securities Corp. v. Berman, 38 A.D.2d 169 (1st Dept. 1972). Importantly, any subsequent renovations or alterations of the subject premises once subject to Rent Stabilization Laws would not affect the Rent Stabilized status, unless an exemption applies which is not the case herein.

In the proceeding below, on October 15, 2020, the owner, 266-268 Throop LLC, by counsel, commenced an Administrative Determination (AD) proceeding to determine the regulatory status of allegedly two separate buildings, 266 Throop Avenue and 266A Throop Avenue. The owner claimed, in substance, that the subject premises were incorrectly registered with DHCR in 1984, that the two separate buildings have three apartments each as well as separate: water meters; gas meters; boilers; heating systems; electric meters; front entrances; and mailboxes. In support of the owner's application the following was submitted, *inter alia*, a NYC Department of Buildings ("DOB") Certificate of Occupancy ("CO") No. 3000538238 and 245519, for a "new – altered" premises (5 car garage structure converted into a day care) for 266 Throop Avenue (Block 1760 and Lot 41), dated August 29, 1997, and a DOB Letter of Verification dated October 22, 2015, address to 266-268 Throop Avenue LLC, regarding a request for a Letter of No Objection for 266A Throop Avenue and BIN #3048853 wherein the letter stated that Certificate of Occupancy No. 245519 indicated the premise is a three family dwelling with 2 stores and that the Department of Finance ("DOF") records dated 1938 indicated that the premise has a C4 classification with stores and therefore the DOB has no objections to the alteration.

On November 5, 2020, the Administrator served on the parties a "Notice of Commencement of Administrative Proceeding" ("Notice") and along with the Notice, served a copy of the owner's Administrative Review request on the six tenants of the subject premises

and requested that the tenants submit any documentary evidence, *inter alia*, regarding their initial dates of occupancy, history of the rents, and any regulatory status claims, if any.

Subsequently, the tenants, by counsel, submitted their response dated January 15, 2021, opposing the owner's application. The tenants claimed, *inter alia*, that 266 Throop Avenue and 266A Throop Avenue are "two sides of a four story building", that the two sides are not separate and are joined by a party wall, and have a continuous unbroken façade with identical windows and parapets; that the buildings share a single fire escape, boiler, and roof; that while the buildings have separate basements (both having access to the street), as of 2019, one basement was being used exclusively by one of the commercial tenants, and the other basement housed the electrical meters for all of the six residential units; that a single boiler serviced all six residential units until approximately 2019; that work has been done to the piping in 266A Throop Avenue for the installation of a new boiler; that in the past, when there was an electrical or water service disruption both buildings were affected; there is one shared location for garbage collection on the 266 Throop Avenue side, and the layouts of the two buildings are almost identical.

The tenants further claimed, *inter alia*, that 266 Throop Avenue and 266A Throop Avenue are located on one lot (41); share common ownership, management, and financing such as mortgages from at least 1951 to the present; that according to ACRIS records, the properties are jointly registered for water and sewer; that DHCR records show that the subject premises were registered and assigned one Building Registration No. 360642; the subject premises' address has been known as 266-268 Throop Avenue, Brooklyn, New York; that DOB records show that 266 Throop Avenue was assigned BIN # 3048853; that there are additional BINs for the building with a link to BIN #3418278 for 266A Throop Avenue; and that there are no NYC Planning Zoning and Land Use maps for 266A Throop Avenue and that there is a single listing for 266 Throop Avenue wherein the property is described as having six residential units. The tenants further contend that all tenants must contact Sophia McKenzie for repairs, that Sophia Green-McKenzie is listed as the managing agent for both 266 Throop Avenue and 266A Throop Avenue, and Sophia Green-McKenzie is listed in the tenants' submitted leases as the landlord.

The tenants in opposition to the owner's application submitted, *inter alia*,

(1) their affidavits, wherein various tenants attested to, in relevant part: that when there were heat and hot water issues in 2018, both buildings were affected, that prior to 2019, there was a single boiler for both buildings; that the walls of Apartment [redacted] of 266A Throop Avenue and Apartment [redacted] of 266 Throop Avenue were opened to "replace certain connections with the boiler"; the tenant of Apartment [redacted] of 266A Throop Avenue affirmed that in their apartment there is a "window on the Throop side of the building" that opens as if it were an emergency exit; that in the past when water was disrupted it was disrupted for all [redacted] apartments; the subject premises share one garbage collection area which is located at 266 Throop Avenue (on Vernon Street) and a fire escape.

(2) NYC Planning records to support claim that there is one tax lot with three buildings: 266 Throop Avenue, 266A Throop Avenue and 202 Vernon Avenue (day care center).

(3) DOB records for the subject premises to support their claim that the owner installed a new boiler.

The record reveals that the tenants further submitted, *inter alia*,

(1) DOF Office of the City Register records, including a Real Property Transfer Report (RP 5217 NYC), dated March 6, 2008 which showed the building classification as S9.

(2) a Deed dated March 6, 2008 describing a sale of the entire lot as 266 Throop Avenue (Block 1760 and Lot 41) from 266-268 Throop Avenue LLC of 345 East 25th Street, BK, NY 11226 to Devon L. McKenzie and Sophia Green McKenzie, his wife, of 345 East 25th Street, BK, NY 11226.

(3) Numerous purported partial lease agreements for various tenants wherein Sophia Green McKenzie is listed as the landlord.

(4) Numerous purported rent receipts signed by Sophia Green McKenzie for [redacted] which noted: 266A Throop Avenue on receipts dated 10/15; 268 Throop Avenue for receipts dated 7/06, 12/06, and 4/07; "268 Throop Ave (266A)" on the receipt dated 8/06 and 266 Throop Avenue for receipts dated 9/06, 11/13 and 5/14.

(5) a Renewal Lease Form for [redacted] dated May 1, 2015 for apartment [redacted] in "266-266A Throop Avenue" wherein the owner is listed as Devon McKenzie with Sophia Green McKenzie signature appearing above the owner's signature line.

The record reveals that the owner submitted a follow up response dated March 23, 2021 wherein the owner claimed, *inter alia*, that while the buildings share common ownership and a common tax lot, the buildings were erected separately; the subject premises have separate roof access, separate COs; that while there is no CO issued for 266A Throop Avenue, there is a No Objection Letter issued by DOB; that each building is assessed separately for real estate tax purposes and has its own electricity and water bills, heating systems, and gas; and that the tenants failed to prove the two buildings' commonality. The owner submitted in the proceeding, *inter alia*, photographs purportedly depicting the two separate boiler vents, sewer lines, doorbells, and entrances, and two New York City Department of Environmental Protection ("DEP") water bill accounts for 266 Throop Avenue.

The Agency record demonstrates that the Rent Administrator, on April 1, 2021, mailed the owner a Request for Additional Information/Evidence ("RFAI") and sought the following information:

1) According to the NYC DOB, there are three buildings (266 Throop Avenue, 266A Throop Avenue, and 202 Vernon Avenue) located on Block 1760 and Lot 41. Provide the legal description/classification /usage and explanation for each building.

2) An explanation regarding NYC Department of Finance ("DOF") assessment of the property as Tax Class 2B and Building Class S9 (6 residential units and 3 non-residential units).

3) Whether the buildings were on separate lots, and merged into Lot 41?

In response to the April 1, 2021 RFAI, the owner asserted, *inter alia*, that 266A Throop Avenue was formerly known as 268 Throop Avenue, and is a 3-family dwelling with a store front; that 266 Throop Avenue is located on the corner of Throop Avenue and Vernon Avenue; that 202 Vernon Avenue's previous usage was changed when the five garages were converted to a day care center; that with regard to "268" Throop Avenue, that address was given to a new building located on Lot 43 which is the lot adjacent to the subject premises; that the 266 Troop

Avenue's usage includes three residential units, two store fronts and a day care located at 202 Vernon Avenue; that the two subject premises are separate and independent of each other despite being located on the same Block and Lot; and that DOF classifications are used strictly for taxation purposes.

On November 21, 2021, and November 30, 2021, the Agency conducted inspections of all the structures at 266 Throop Avenue and 266A Throop Avenue, Brooklyn, New York and made findings on the buildings' features and systems relative to the horizontal multiple dwelling issue herein. The Agency inspector reported the following findings:

1. Evidence of individual heating systems for each building.
2. Evidence of separate water mains to each building.
3. Buildings have separate sewer pipes.
4. Buildings do not have common lighting systems.
5. Electrical meters are located in the basements of the individual buildings.
6. Separate gas connection are supplied to the buildings.
7. Evidence of party wall separating the basements.
8. Buildings 266 and 266A each have three apartments, one apartment located on each floor.
9. Evidence of separate intercom systems for each building.
10. Separate street entrances provided for each building.
11. Address to the left of 266 is 266A Throop Avenue.
12. Address to the left of 266A Throop is 268A Throop Avenue.
13. Building is located at the intersection of Throop and Vernon Avenues.
14. Evidence of four mailboxes in building 266A Throop Avenue and four mailboxes in building 266 Throop Avenue
15. Front façade of building 266 and 266A is not identical to 268A Throop Avenue, however the façade of buildings 266 and 266A are identical.
16. Buildings 266 and 266A Throop Avenue have separate chimneys.
17. Buildings do not share the same roof space. Evidence of parapet wall approximately 2' high separating 266 and 266A Throop Avenue.
18. All apartments in the buildings are occupied.
19. The commercial space at 266 Throop Avenue is occupied.
20. The commercial space at 266A Throop Avenue is unoccupied.

Thus, relying on the Agency inspections conducted on November 21, 2021 and November 30, 2021, the Rent Administrator, on February 18, 2022, granted the owner's application finding that the subject buildings, built prior to 1974, were not part of a horizontal multiple dwelling and not subject to the Rent Stabilization Law and Code.

The Commissioner notes, that upon review of records obtained from this Agency and other governmental agencies revealed the following:

1. A filed Mortgage dated January 4, 1965 for the subject premises therein described as 266-268 Throop Avenue and 202 Vernon Avenue (Lot 41) which showed the same being commonly owned since December 20, 1951.
2. DHCR Rent Registrations for the subject premises showed a history of rent stabilized registrations for six apartments Nos: [redacted] and Nos. [redacted] since 1984 wherein the address was listed as 266 Throop Avenue.

3. DHCR order issued under Docket No. BF210163R on June 15, 1990 which granted a tenant's rent overcharge application filed on June 15, 1987.
4. DHCR database shows the owner listed on the Rent Registration as: Sophia Green McKenzie (and as manager): 1986-1988; 1990-1994; and 1998-2014; Sophia Green McKenzie and Devon Green: 1995-1997; Devon Green (Sophia Green McKenzie as manager): 2015; 266-268 Throop Ave LLC: 2016-2017; and 266-268 Throop Avenue LLC: 2019-2020.
5. DOF Property information indicated that the subject premises comprised of two four-story buildings, containing six apartments, with commercial spaces and a day care (converted 5 car garage space located in 202 Vernon Avenue).
6. DOF Property information shows that the subject premises were transferred and mortgaged as an entire lot from December 1951 with the subject premises' address being described as 266-8 Throop Avenue and 202 Vernon Avenue Brooklyn, New York.
7. DOF Property information shows that the subject premises (entire lot) was transferred from Devon Green and Sophia Green McKenzie, his wife, to 266-268 Throop Ave LLC wherein Sophia Green McKenzie was listed as an officer of the Limited Liability Corporation (President on May 23, 2013 and Vice President on April 14, 2017).
8. DOB records, including, *inter alia,* Summons No. 39000767Z issued at 266A Throop Avenue on November 16, 2018, for illegal cellar new gas piping, gas fitting and gas appliance, along with a 2nd floor valve installed without approved Permits and Plans; Work Permit data which indicated that, in and around 2018, the owner filed a permit to legalize the gas piping, gas fitting, gas appliance and 2nd floor valve installed in the cellar of 266A Throop Avenue without prior approval; Summons No. 039000770J issued at 266A Throop Avenue on November 16, 2018 for an illegal active gas meter in the cellar without any gas inspections and gas certification on file; and work permit to subdivide the single Tax Lot into two, filed on September 6, 2017.
9. DOB boiler inspection records from 1998 to 2017 for Boiler # 819454 located at 266 Throop Avenue (BIN # 3048853) (assigned DEP boiler # 30000819454N0001) and a review of DOB boiler records for 266A Throop Avenue returned no boiler records prior to the installation of a new boiler assigned DEP Boiler # 30000001848Y1111 (BIN # 3418278) pursuant to DOB job No. 321903455 filed on December 26, 2016 and DOB job No. 321824353 filed on August 14, 2018.
10. DOF records indicate Tax Class as 2B (7-10 unit Residential Building) for the subject premises.
11. DEP water charge records show there are two accounts for the premise listed therein as 266 Throop Avenue.

In light of the foregoing, the Commissioner finds the tenants' claim that the subject apartments are Rent Stabilized to have merit, warranting a reversal of the Rent Administrator's order. Here, the evidence of record establishes that the subject premises 266 Throop Avenue and 266A Throop Avenue have a long history of being joined and operated as a common unit; have a long history of common ownership, management and financing since as early as December 20, 1951 and share a single tax lot; and (2) share a number of commonalities such as a fire escape at the back of the subject premises, a common facade and parapet with no separation, a basement with a party wall, a common garbage collection area, and prior to approximately 2018, a boiler.

The Commissioner further finds this evidence, in totality, notwithstanding, the owner's assertions as to the number of identified separate characteristics, which included separate mailboxes, intercoms, water main, sewer pipes, and entranceways, support a finding that the subject apartments are subject to rent stabilization pursuant to Section 2520.11 (d) of the RSC, on the grounds that the subject buildings comprised a horizontal multiple dwelling, operated under common ownership, management and financing and shared common features prior to January 1, 1974, the base date for Rent Stabilization in this case.

Moreover, the Commissioner notes that the Agency's records indicates that: (1) an order was issued on June 15, 1990 under Docket No. BF210163R which granted a rent overcharge complaint, and (2) according to the filed Apartment Registrations with DHCR, the owner listed therein at the time of Docket No. BF210163R was Sophia Green McKenzie, an officer of the current owner. The Commissioner notes (1) that the Agency determination issued under Docket No. BF210163R was not appealed and is therefore final and binding on all parties; (2) the subject premises had been registered as rent stabilized in 1984 and 1985 by the prior owner, Juvencid Ildefonse, and registered thereafter by Sophie Green McKenzie until 2014 (with the exception of 1989); and (3) the prior owner never requested an Agency determination, as to the rent regulated status of either or both of the subject buildings at the time of their registering the subject buildings with DHCR in 1984. Although an owner cannot agree to have a building regulated under the Rent Stabilization Law and Code where the circumstances plainly establish that the subject premises do not meet jurisdictional requirements as a matter of law. Here in the instant matter, where the Division is required to investigate events occurring many years ago, the Division may consider the facts that the building has been registered with DHCR over the course of several years as some indicia as to the ongoing rent regulated status of the building as well as the order previously issued by DHCR which granted a rent overcharge complaint for a tenant in the subject premises.

The Commissioner further notes that municipal agency records and databases indicate that: (1) there was one boiler (# 819454) registered at the subject premises since 1998, and that, in or around 2018, the owner installed a new gas boiler in the cellar of 266A Throop Avenue (BIN # 3418278) without a work permit and plans; (2) that this new boiler was later registered and assigned Boiler # 30000001848Y1111; and (3) the owner, in 2017, applied for a DOB permit to subdivide the single tax lot (#41) into two lots.

In light of the above, the Commissioner finds that the record supports the determination that the subject building is subject to the Rent Stabilization Law and Code as the subject building was part of an HMD consisting of buildings, 266 Throop Avenue and 266 Throop Avenue, containing six or more units built before January 1, 1974, on the date the premises first became subject to the RSL. *See also*, Triades v. Mirabel, 172 A.D.2d 541 (2d Dept. 1991); Shubert v. DHCR, 162 A.D.2d 261 (1st Dept. 1990) (...combining apartments, thereby reducing the number of residential units from seven to five subsequent to the base date for rent stabilization purposes, cannot affect an exemption from the regulations... Such a result would be inconsistent with the purpose underlying the legislation regulating rents for multiple dwellings...); Matter of Golden Horse Realty, Inc. v. DHCR, 173 A.D.3d 612 (1st Dept. 2019).

Accordingly, the subject premises are subject to the Rent Stabilization Law and Code and the tenants therein are entitled to all the rights and protections afforded under the Rent

Stabilization Laws. The owner is hereby directed to offer the tenants rent stabilized leases and register the apartments with the DHCR in accordance with the findings of this Order.

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

**ORDERED,** that the petition be, and the same hereby is, granted, and that the Rent Administrator's order be, and the same hereby is, reversed as delineated above.

ISSUED:

OCT 1 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

## 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**
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**92-31 UNION HALL STREET**
**JAMAICA, NEW YORK, 11433**

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| **IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF:** | : | **ADMINISTRATIVE REVIEW** |
| **Various Tenants of 11-15 New Montrose Avenue** | : | **DOCKET NO.:MO210013RT** |
| **PETITIONERS** | : | **RENT ADMINISTRATOR'S DOCKET NO.:LW210022AD** |

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On March 13, 2024, the above-named petitioner-tenants filed a Petition for Administrative Review ("PAR") of an order the Rent Administrator issued on February 7, 2024 (the "order"), concerning the housing accommodation known as 11-15 New Montrose Avenue, various apartments, Brooklyn, New York, wherein the Rent Administrator denied the complainants' application and terminated the proceeding.

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 the order under review, the record revealed that the complainants filed a proceeding on November 13, 2023, to determine the rent regulatory status of the subject premises, alleging that the subject building was subject to rent regulations as it was built prior to 1974; contains at least six (6) units; and was rehabilitated with the assistance of loans provided under the Section 8 Moderate Rehabilitation Program and the Participation Loan Program ("PLP") provided pursuant to Article 15 of the New York Private Housing Finance Law ("PHFL").

The Administrator subsequently denied the application and terminated the proceeding after Agency records revealed that pursuant to an Order under Docket Number LP210020RO, issued on November 16, 2023, the subject building is owned by a Housing Development Fund Corporation ("HDFC") and consequently not under the jurisdiction of this Agency.

In the PAR, various tenants, through their attorney, assert that the order appealed herein should be revoked because the Rent Administrator's determination erroneously failed to address

their claims that the subject building was rent stabilized because it was rehabilitated under the "Section 8 Moderate Rehabilitation Program"; "Rehabilitated under the Participation Loan Program" and that notwithstanding "being owned by a HDFC", the subject building was rent stabilized.

The owner, by counsel, opposes the PAR and contends, in sum, that the Rent Administrator correctly dismissed the complaint.

The complainants' replied on July 18, 2024, claiming that the owner's opposition to their PAR is meritless and that the "exemption for housing accommodations owned, operated and rented or leased with governmental funding exclusively for charitable purposes" does not apply in the instant case.

Based on an earlier DHCR Order, issued on November 16, 2023 and assigned Docket Number LP210020RO, it was determined that the subject building (and the apartments therein), is not governed by the Rent Stabilization Law and Code as the subject building is owned by an HDFC. The Order under Docket Number LP210020RO is a final Agency determination on the issue of jurisdiction. Accordingly, the Commissioner finds that the Rent Administrator's order was correct when issued and that the complainants have not presented any reason to disturb the challenged Administrator's order.

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

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

ISSUED:

OCT 18 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

## Right to Court Appeal

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

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**JAMAICA, NEW YORK 11433**

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**IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF**

**554-11 REALTY LLC C/O PETER LAMBRAKIS**

**PETITIONER**

**ADMINISTRATIVE REVIEW DOCKET NO.:** MR210001RO

**RENT ADMINISTRATOR'S DOCKET NO.:** MM210010AD

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## ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On June 3, 2024, the above-named petitioner-owner timely filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on May 22, 2024 (the "order"), concerning the housing accommodation known as 554 11th Street, Apt [redacted], Brooklyn, New York, wherein the Rent Administrator denied the owner's request to amend the annual DHCR apartment registration for the years 1990-2023.

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 their representative, seeks a reversal of the order asserting the subject apartment was "correctly registered" in 1984 to 1989 but was "incorrectly registered" as rent stabilized in the 1990, 1995 and 1998 apartment registrations. The owner claims that the same tenant has been in occupancy since 1984. The owner resubmits DHCR Registration Apartment Information certified on December 29, 2023 for the years 1984-2023.

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

The record shows that the owner initiated the proceeding below on January 10, 2024, for the purpose of seeking permission to amend the 1990 to 2023 DHCR registrations for the subject

apartment claiming that the registrations incorrectly listed the apartment's status as rent stabilized instead of rent controlled. To support the application, the owner submitted DHCR Registration Apartment Information certified on December 29, 2023 for the years 1984-2023.

Based upon a review of the evidence presented, on May 22, 2024, the Rent Administrator denied the owner's application to amend the DHCR apartment registration for the years 1990-2023 stating that amendments to registrations may be accepted for processing, when such amendment seeks to correct ministerial issues such as a clerical error in the rent amount, misspelling of the tenant's name or an incorrect lease term. The Rent Administrator noted that amendments seeking to re-calculate the rental history of the apartment or other types of changes are not applicable for an application to amend the rent registration. The Administrator also noted that owners are responsible for charging a legal rent and 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; and that registration information provided by the owner during the normal registration cycle is part of the rent history of the apartment and cannot be deleted.

At the outset, the Commissioner notes that a review of the Rent Administrator's proceeding reveals that the documentation and information submitted by the owner was fully investigated and further, that the Rent Administrator's decision was properly predicated on such documentation and the Agency's records.

The Commissioner finds that the Rent Administrator correctly denied the owner's application to amend the registrations as registrations can only be amended for ministerial issues, such as clerical or typographical errors, as indicated by the Rent Administrator's order and in accordance with Section 2528.3(c) of the Rent Stabilization Code ("RSC" or "the Code"). Section 2528.3(c), which provides that an "owner seeking to amend a registration for other than the present registration year must file an application pursuant to section 2522.6(b) and Part 2527 of this Title as applicable to establish the propriety of such amendment unless the amendment has already been directed by DHCR or is directed by another governmental agency that supervises such housing accommodation." Accordingly, the amendment application process, as envisioned by the Code amendments, 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. *See* Matter of OSI LLC v. NY State Div. of Hous. & Community Renewal, 215 A.D.3d 493 [1st Dept 2023].

In the instant matter, the owner requested that the Rent Administrator amend the 1990-2023 DHCR apartment registrations based, in sum, that the status of the subject apartment was incorrectly identified therein as a rent stabilized apartment instead of rent controlled. As the Rent Administrator noted in the determination, amendments seeking to change an apartment's status for any reason claimed are not allowed. Moreover, the owner's application seeking to amend the 1990-2023 apartment registrations based on the claim that the status of the subject apartment was misidentified in the apartment registrations is improper as it goes beyond the scope of an amendment application proceeding. Accordingly, the Commissioner finds that the Rent

Administrator's determination is appropriate, and in compliance with the Division's policy and the RSC.

Based on the foregoing, the Commissioner finds that the Rent Administrator correctly denied the owner's request to amend the 1990-2023 DHCR apartment registrations. 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: OCT 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.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.:** KR210001RT

VARIOUS TENANTS OF
75 MACDONOUGH STREET

**PETITIONERS**

**RENT ADMINISTRATOR'S DOCKET NO.:** DS210029AD

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

On June 3, 2022, the above-named Petitioner-tenants[1] filed a Petition for Administrative Review ("PAR") against DS210029AD, an order the Rent Administrator issued on April 29, 2022 (the "order"), concerning the housing accommodations known as 75 MacDonough Street, Various Apartments, Brooklyn, New York, wherein the Rent Administrator determined that the subject building is subject to the Rent Stabilization Law and Code, and that there was insufficient evidence to determine the subject premises was or is currently being used as transient housing or single room occupancy ("SRO"), and therefore the rent increases for the rent stabilized units are subject to the New York City Apartment/Loft Rent Guidelines Board ("RGB") Orders. The Rent Administrator also determined that: (1) the rent of Apartment [redacted] was set at $1,077.88 per month, (2) the rent of Apartment [redacted] was set at $1,243.83 per month, (3) the rent of Apartment [redacted] as of the lease beginning on August 1, 2019, was set at $1,307.57 per month, (4) Apartment [redacted] was vacant at the commencement of the proceeding and therefore no Legal Regulated Rent ("LRR") was determined, (5) Apartment [redacted] was found to be removed from rent regulation, (6) Apartment [redacted] withdrew from the proceeding, (7) former tenants of Apartment [redacted] were not participating in the proceeding and moved out by the time the proceeding was commenced, and (8) Apartment [redacted] was found to be removed from rent regulation.

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.

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[1] The tenants in Apartment [redacted] and [redacted]

In the PAR, the tenants, through their counsel, seek a reversal of the Rent Administrator's order, asserting in substance that the order is arbitrary, capricious, and made without due regard for substantial evidence within the record below.

In regard to Apartments [redacted] and [redacted], the Petitioner-tenants argue that such apartments were illegally deregulated, and that the tenants of the said apartments are entitled to rent stabilized renewal leases and refunds for all rent overcharges; that DHCR should consider full rent histories for these apartments to determine their regulatory status; and that the Petitioners' overcharge claims are ancillary to their rent stabilization claims; that the subject tenants assert a colorable allegation of fraud by the owner, and have established that the base date rent is unreliable, based upon the substantial evidence of the owner's fraudulent scheme to inflate rents and deregulate apartments throughout the building, which the Petitioners submitted to DHCR.

The Petitioner of Apartment [redacted] also claims that Apartment [redacted] was fraudulently represented to DHCR and tenants as permanently exempt from rent regulation since 2005; that although the owner asserted Apartment [redacted] was temporarily exempt from stabilization from 1998 to 2004 as it was employee occupied and the first rent charged to the tenant after such temporary exemption period was $2,250.00 per month, which is an amount above the high rent deregulation threshold at that time, the apartment could not have been deregulated until, at the earliest, the second tenancy after the temporary exemption period, and that because the owner did not offer any rent stabilized leases after the temporary exemption period, the apartment was never properly deregulated. The tenant of Apartment [redacted] further asserts that the LRR should be set at $252.65 which was the last reliable rent registered in 1985, or alternatively, the base date rent should be set using the default formula.

As for Apartment [redacted], the tenant asserts that Apartment [redacted] was fraudulently represented to DHCR and the tenants as permanently exempt from rent regulation in 2010, claiming that the "purported high-rent vacancy decontrol" of the subject apartment in 2010 was the culmination of a progressive scheme to fraudulently manipulate the LRR and thereby maximize the owner's profits. The tenant asserts that the owner, in 2003, increased the rent from $962.92 to $1,515.00, a 57% increase, which was the amount the maximum rent would have been payable under the then-tenant's Section 8 voucher, and which is more than the amount permitted under a 20% vacancy increase and a longevity increase of 0.6% per year due to the prior tenant's apparent eleven (11) year occupancy, and that there is no evidence of any other valid basis for additional rent increases, such as Individual Apartment Improvements ("IAIs") during that time period. The tenant also claims that the owner again improperly increased the rent in 2006, increasing the rent from $1,515.00 to $1,613.00 to match an increase in Section 8 payment standards. The tenant of Apartment [redacted] further asserts that the default method to set the base rent should be used as the last registered rent for Apartment [redacted] was a "fictitious rent" set by the owner in 2006.

The tenants further argue that Apartments [redacted] and [redacted] should have been subject to the RGB Annual Hotel/SRO Orders since they constitute SRO "facilities". The Petitioner-tenants claim that Apartments [redacted] and [redacted] operated as SROs when the subject tenants commenced their tenancies, and as such, these tenants' apartments' rent increases should be subject to the Hotel/SRO rent increases. The Petitioners further claim that the Administrator did not consider the tenants' evidence, rather the Rent Administrator relied on the subject building's New York

City Housing Preservation and Development ("HPD") registration which states the building contains 8 Class A apartments.

Lastly, the Petitioners' aver that tenants in all of the apartments are entitled to overcharge refunds, interest, treble damages for willful overcharges, and rent freezes at the base rent until the owner files proper rent registrations.

The owner opposes the tenants' petition asserting the tenants failed to show any basis for reversing the Rent Administrator's order. The owner claims that there is no merit to the tenants' contentions; that the tenants failed to show a fraudulent scheme to deregulate as "mere 'bumps'" in the rent are insufficient to demonstrate such claim; that the four-year lookback restriction bars the tenants' claims; that the order correctly determined the facts and rent as the building was never an SRO dating back to when it was constructed based upon the ICard on file with the New York City Department of Buildings ("DOB") which lists the number of apartments with a private bath only as 9 and no apartments listed as having a public bathroom; that the Administrator is required to adhere to the prior Agency determination with respect to the status of Apartment [redacted]; that nothing was submitted in the PAR showing that the order was incorrect for Apartment [redacted] that the order was correct for Apartments [redacted] and [redacted]; that the current tenant of Apartment [redacted] is not the first tenant after the period of temporary exemption and the tenant has not submitted anything with their PAR to show the order was incorrect; and that the tenant of Apartment [redacted] did not submit anything in their PAR to show the order was incorrect.

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

Pursuant to Section 2522.6 of the Rent Stabilization Code ("RSC" or "the Code"), where the legal regulated rent or any fact necessary to the determination of the legal regulated rent is in dispute between the owner and the tenant, or is in doubt, or is not known, the DHCR at any time upon written request of either part, or on its own initiative, may issue an order in accordance with the applicable provisions of the Code determining the facts, including the legal regulated rent.

A review of the underlying record discloses that on July 24, 2015, the tenants of the Apartments [redacted] and [redacted] of the subject premises[2] filed a request with the Agency for an administrative determination on the regulatory status of the subject apartments, the establishment of the legal regulated rents, and finding of overcharge where applicable for various apartments in the subject building. The tenants contended that the building is a Class B Multiple Dwelling ("MD") and thus, subject to SRO rent guideline increases. The tenants claimed that there were several inconsistencies in the registered rents, and that various housing accommodations in the subject building had been fraudulently deregulated or had their rents unlawfully increased. The tenants submitted along with their request, copies of leases and renewals, apartment registrations, proof of rent payments, tenant affidavits, prior DHCR orders, and a floor plan from a 1947 real estate sales advertisement purporting to indicate how the premises could be used as an SRO dwelling.

[2] In a letter received by the Rent Administrator on May 18, 2016, the tenants of Apartment [redacted] withdrew their request under Docket No. DS210029AD, asserting that they settled their dispute.

The owner was afforded an opportunity to review the tenants' submission by service on the owner on November 9, 2015. By various submissions, the owner opposed the tenants' application. The owner averred that the subject building has been comprised solely of Class A apartments, containing 9 Class A units and no Class B units, with each apartment being a separate unit with its own bathroom, kitchen, bedrooms, family room and other rooms commonly found in a Class A unit; that the subject building has never been used as either an SRO or a hotel; that since 1902, New York City has classified the building as an apartment building as shown in the building's ICard; and that DHCR has treated the building as an apartment building in a number of prior orders, although there was an error in the 1984 Initial Rent Registration Form where either a prior owner or DHCR erroneously inputted a classification of 9 Class B units instead of Class A units. The owner also claimed that there was no fraudulent scheme to deregulate any of the apartments in the subject building and the tenants failed to make such a showing; that for Apartment [redacted], the rent has not been raised since the base date of July 24, 2011 and has been properly deregulated, thus an overcharge based on the tenants' claim of inaccuracy in the registrations is without merit; and for Apartment [redacted], there is no evidence of fraud when a "mere" $12,000.00 in improvements made to the Apartment would result from the last LRR of $1,682.04 going to a rent above $2,000.00 per month, and further, that a purported Sales Memorandum prepared by brokers in 2015 attests to the substantial renovations and rehabilitation performed on Apartments [redacted] and [redacted] before being rented to the current tenants (the owner acknowledged that records or invoices were unavailable as the current owner and prior owner were not the owner who performed renovations, see owner's response dated November 4, 2016). The owner further asserted that the tenants of Apartments [redacted] and [redacted] are rent stabilized which the owner has never disputed.

The tenants, in their multiple rebuttal responses, reiterated their claims raised previously, and further asserted that the Administrator should consider the full rent histories for Apartments [redacted] and [redacted] to determine whether they are still subject to rent regulation. The tenants also submitted more documentation including leases and proof of rents paid for the requested periods, and copies of Housing Court documents.

The Rent Administrator, on April 29, 2022, after consideration of the evidence in the record including the tenants' and the owner's supporting documentation, determined that the subject building is subject to the Rent Stabilization Law and Code as the building was constructed prior to 1974 and contains at least 6 Class A housing accommodations. The Rent Administrator also found that there was insufficient evidence to determine the subject premises was or is currently being used as transient housing or single room occupancy, and therefore, rent increases for the subject rent stabilized units are subject to the NYC Apartment/Loft RGB orders. Furthermore, the Rent Administrator found that, as the proceeding was initiated prior to the 2019 Housing Stability and Tenant Protection Act, in determining the LRR and possible rent overcharge, absent evidence of fraud, the base date is set at July 24, 2011, 4 years prior to the commencement of the proceeding on July 24, 2015.

The Rent Administrator determined the following for the subject apartments taking part[3] in the proceeding:

[3] The Rent Administrator noted that, for Apartment [redacted], the apartment was vacant at the commencement of the proceeding and therefore could not determinate a LRR for the apartment, for Apartment [redacted] the tenants withdrew

Apartment [redacted]: The records reveal a prior Agency order effective August 1, 1988 establishing the status of the apartment as subject to the Rent Stabilization Law and Code and setting the rent at $562.00 per month. Applying subsequent rent guideline increases results in a higher rent currently being charged to the tenant, therefore, the tenant's rent is limited to $1,077.88 per month, the amount currently charged and paid.

Apartment [redacted]: The tenant submitted various leases and proof of payments, and after a review of the evidence, the rent is set at $1,243.83 per month, the amount currently charged and paid.

Apartment [redacted]: The current tenant is the successor tenant of the rent stabilized tenant of record at the commencement of the instant proceeding, and that requests for additional information for leases and/or proof of rents charged and paid from 2011 to present were made. However, the tenant failed to submit the documents requested. After a review of the evidence, the rent is set at $1,307.57 per month as of the lease beginning on August 1, 2019.

Apartment [redacted]: The subject apartment was temporarily exempt and the first tenant after the exemption was charged a first rent of $2,250.00 per month, which surpassed the then high rent deregulation threshold of $2,000.00 per month. Upon the first rent tenant's permanent vacatur, the subject apartment is removed from rent regulation.

Apartment [redacted]: Upon the prior tenant's initial occupancy on August 1, 2009, the LRR exceeded the then high rent deregulation threshold of $2,000.00 per month, and therefore the subject apartment is removed from rent regulation.

After a review of the record and all supporting submissions, the Commissioner finds that the Petitioner-tenants' petition is herein granted in part.

At the outset, the Commissioner notes that the Rent Administrator may consider an apartment's rental history beyond four years[4] from the commencement of the proceeding, if it's not for the purpose of calculating a rent overcharge, but rather to determine the regulatory status of a housing accommodation or whether a housing accommodation was improperly removed from rent stabilization. Thus, the issue before the Commissioner is the regulatory status of Apartments [redacted] and [redacted] and whether such apartments were properly removed from rent stabilization as claimed by the owner.[5] See Matter of Kostic v. New York State Div. of Housing. & Community Renewal, 188 AD3d 569, 569 [1st Dept 2020], and Matter of AEJ 534 E. 88th, LLC v NY State Div. of Hous. & Community Renewal, 194 AD3d 464, 469 [1st Dept 2021], finding "[r]egardless of its age, an apartment's rent history is always subject to review to determine whether a unit is rent-regulated."

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from the proceeding in correspondence dated May 16, 2018, and for Apartment [redacted] the former tenants were not participating and moved out by the time the instant proceeding was commenced.

[4] The Commissioner notes that when the subject Administrative Determination proceeding was commenced, the lookback period for overcharge claims was four years from the date of the tenant's filing.

[5] The Commissioner notes that it has not been disputed that Apartments [redacted] and [redacted] are subject to rent stabilization.

In light of the above the Commissioner finds that a review of the rental history of Apartments [redacted] and [redacted] is proper in this case to determine their rent regulation status.

In regard to Apartment [redacted], the owner asserts that the first rent set after the temporarily exempt status was that between the owner and the tenant in occupancy as of 2005, and if that rent was set above $2,000.00 per month, it would be "entirely permissible" for that apartment to be deregulated. However, the Commissioner finds that this assertion is without merit. The Agency records reveal that Apartment [redacted] was registered as temporarily exempt with the Agency from 1998 to 2004 due to "owner occupied/employee" and then in 2005, Apartment [redacted] was registered as permanently exempt due to "High Rent/High Income". In response to a Request for Additional Information ("RFAI"), the owner, on January 7, 2021, acknowledged that they did not have a lease from 2005 or an affidavit from an employee that lived in the subject apartment around 2004 to 2005.[6] Moreover, the Commissioner notes that even if the first tenant following the temporary exemption were to agree to a rent above the then high rent vacancy deregulation as the owner claims, such rent must be "regulated" (see 656 Realty, LLC v Jimmy J. Cabrera, 27 Misc 3d 1225[A] [Civ Ct, New York County 2009] aff'd 27 Misc 3d 138(A) (App. Term 1st Dept. 2010)). The record in this case reveals that the subject apartment was instead treated as permanently exempt after the temporary exemption period ended, and there is no evidence offered to support the claim that the subject apartment was properly deregulated.[7] Accordingly, the Commissioner finds that the record does not establish that Apartment [redacted] was properly deregulated; therefore, Apartment [redacted] is subject to the Rent Stabilization Code and Law. The Commissioner therefore finds that the base date rent is what the tenant actually paid four years prior to the date when the tenant filed its request for the Administrative Determination (see Matter of AEJ 534 E. 88th, LLC, 194 AD3d at 465). In this case, the tenant of Apartment [redacted] filed their request on July 24, 2015, therefore the base date in this is July 24, 2011. Based upon the Residential Apartment Lease for the term of February 1, 2009 to January 31, 2011 and the Renewal Form dated August 20, 2011 for the term of September 1, 2011 to August 31, 2013,[8] the legal regulated rent of Apartment [redacted] four years prior to the tenant's filing of the subject Administrative Determination is $2,350.00 per month.[9] The tenant is advised to file a Rent Overcharge Application with this Agency (Form RA-89), if the facts so warrant.

As for the rent regulatory status of Apartment [redacted], the record fails to establish that the subject apartment was properly deregulated. Based upon the Agency's records, it is undisputed that a former tenant's rent was increased from $962.92 per month in 2002 to $1,515.00 per month, and that for the registration year 2010, the owner registered Apartment [redacted] as exempt due to High Rent Vacancy with a prior LRR of $1,682.04. As to the issue of prior improvements to Apartment [redacted] justifying a potential increase in rent, there is no proof that was submitted or offered regarding

[6] The purchaser of a building, or a new owner of a building, steps into the shoes of its predecessor in interest and assumes all liabilities as well as assets of the previous owners.

[7] Pursuant to the Housing Stability and Tenant Protection Act of 2019, high rent vacancy deregulation was repealed as of June 14, 2019. Prior to that date, a vacant apartment with a legal rent that reached the deregulation rent threshold lawfully could become deregulated and the incoming tenant could be charged a market rent.

[8] The "Renewal Form for Apartments Not Subject to the New York City Rent Stabilization Law" signed and dated by both parties on August 20, 2011 notes that the prior lease expired on August 21, 2011, and the tenant's current rent was $2,350.00 per month.

[9] There has not been a showing of substantial evidence of a fraudulent scheme to deregulate Apartment [redacted] in this case as the tenants' claim.

any improvements, or that the former owner complied with the requirements under IAIs to warrant such an increase. The owner in this case has failed to offer any evidence to support that Apartment [redacted] was properly deregulated. Leases and/or any possible rationale for the significant rent increase are absent from the record and were not supplied by the owner.[10] Accordingly, the Commissioner finds that the record does not support that Apartment [redacted] was properly deregulated, and therefore the Commissioner finds that Apartment [redacted] is subject to the Rent Stabilization Law and Code. As the tenant filed the subject Administrative Determination on July 24, 2015, the base date for the purpose of setting the base date rent is July 11, 2011. According to the Rent Administrator's record, including the Residential Apartment Lease for the term August 1, 2009 to July 31, 2011, the Commissioner finds that the legal regulated rent of Apartment [redacted] four years prior to the tenant's filing of the subject proceeding is $2,075.00 per month. The Commissioner notes that the legal regulated rent for Apartment [redacted] is limited to $2,075.00 per month on the base date.[11] The tenant is advised to file a Rent Overcharge Application with this Agency (Form RA-89), if the facts so warrant.

As for the Petitioners' claim that Apartments [redacted] and [redacted] should have been subject to the RGB's Annual Hotel/SRO Orders since the apartments constitute SROs, the Commissioner finds such claim to lack merit. There is nothing in the record establishing that the apartments were or are in fact operating as single rooms in a multiple dwelling. Moreover, pursuant to Section 2520.6 of the RSC, SROs became subject to rent regulations on June 4, 1981, and the affidavit of the tenant in Apartment [redacted] sworn to on November 9, 2016 states that, as of the date the tenant finally received a lease for the entire apartment, "sometime around 1980", all other occupants had moved out. Based on the foregoing, the Commissioner finds that Petitioner-tenants' claim regarding the subject apartments being SROs are unsubstantiated, and the Administrator's order is proper as issued in this regard.

In regard to the Petitioners' claim that the subject tenants are entitled to overcharges, treble damages and interest as "the evidence demonstrates that all of the overcharges were willful", the Commissioner finds such claim to lack merit in this case and unsubstantiated.[12] A review of the Rent Administrator's order reveals that there were no findings of overcharges or an award(s) of overcharges to any of the subject tenants. Instead, the Rent Administrator advised tenants to file an overcharge complaint if the facts so warranted.

In light of the above, the Commissioner finds that Apartment [redacted] and Apartment [redacted] are subject to the Rent Stabilization Law and Code. The legal regulated rent as of the base date, July 24, 2011,

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[10] As previously noted, the purchaser of a building, or a new owner of a building, steps into the shoes of its predecessor in interest and assumes all liabilities as well as assets of the previous owners.

[11] There has not been a showing of substantial evidence of a fraudulent scheme to deregulate Apartment [redacted] in this case as the tenants' claim.

[12] The Commissioner notes that in regard to the rent freeze claim, Section 2528.4 of the RSC provides that the failure to properly and timely comply with the rent registration requirements, until such time as such registration is completed, bar an owner from applying for or collecting any rent in excess of: the base date rent, plus any lawful adjustments allowable prior to the failure to register. The late filing of a registration shall result in the elimination, prospectively, of such penalty, and for proceedings commenced on or after July 1, 1991, provided that increases in the LRR were lawful except for the failure to file a timely registration, an owner, upon the service and filing of a late registration, shall not be found to have collected a rent in excess of the LRR at any time prior to the filing of the late registration.

for Apartment [redacted] is set at $2,350.00 per month. The legal regulated rent as of the base date, July 24, 2011, for Apartment [redacted] is set at $2,075.00 per month. The owner is herein directed to offer the tenants in Apartment [redacted] and [redacted] rent stabilized leases, to calculate future rent increases for Apartments [redacted] and [redacted] based on the legal regulated rent established in this order, as of July 24, 2011, and to amend and/or file all annual rent registrations accordingly.

The tenants are advised to file a rent overcharge application with this Agency (DHCR Form RA-89), if the facts so warrant.

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

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

ISSUED:

DEC 19 2024

Woody Pascal
Deputy Commissioner

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**IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF**

**ADMINISTRATIVE REVIEW DOCKET NO.: MN430016RT**

**VARIOUS TENANTS OF 765 RIVERSIDE DRIVE**

**PETITIONERS**

**RENT ADMINISTRATOR'S DOCKET NO.: KR430009OD**

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

The petitioner timely filed an administrative appeal against an order issued on January 19, 2024 by the Rent Administrator concerning the housing accommodations known as 765 Riverside Drive New York, NY 10032 which granted the owner's application for modification of services by conversion of manually operated elevator to fully automatic self- service elevator eliminating the manual elevator operator.

The Commissioner having reviewed the petitioners' 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 petitioners' appeal does not have merit and should be denied.

The tenants' petition by counsel alleges, in substance, that the Rent Administrator's decision is inconsistent with the long standing DHCR policy for granting or denying elevator conversions; that the order granting the elevator conversion did not impose conditions to assure that the owner provide a meaningful substitute for the security provided by the manual elevator operators such as reassigning the elevator operator to security guard post in the building citing in support, DHCR decisions in prior cases with Docket numbers LE430102RT, KB430161RT, RB430025RT, LQ410010RO, BT430066RT, and KL23156RT; that the order does not also include conditions to address the tenants' concerns with frequent breakdowns of the existing automatic elevator which would be the only operating elevator available for use by the tenants during the manual elevator conversion period to ensure a meaningful and smooth transition from the manned elevator to a self-service elevator; and that the Rent Administrator failed to impose a condition requiring the owner to use the specifically proposed security system.

The owner answered and opposed the PAR stating that the claim by the tenants that the removal of the manual elevator operator would render the building less secure is unfounded and speculative; that the manual elevator operator is not trained in security, is not armed, and is not allowed to leave the elevator post; that the building has a key fob system which enhances the building's security as it ensures that only authorized individuals get into the building; and that the owner will be installing cameras on every floor and all common areas to further enhance the security of the building as part of the elevator conversion.

In reply to the owner's answer, the tenants by counsel asserts that contrary to the owner's claim, the key fob system does not enhance security in the subject building due to security breaches in the building; that the tenants have repeatedly complained that the building's side door is not secured and does not close or lock properly and as such the key fob system does not guarantee that all entry points in the building are secure, and that key fob signals can easily be cloned.

Section 2522.4 (e) of the Rent Stabilization Code permits an owner to modify a required service with the approval of the DHCR, provided that doing so would not be inconsistent with the Rent Stabilization Code and Law. Section 2202.21 of the Rent and Eviction Regulations also permits an owner to apply to the Division to decrease essential services in rent controlled apartments.

It is the established position of the Division that the conversion of an elevator from manual to automatic operation, under certain circumstances and conditions, would not be inconsistent with the applicable provision of the Rent Stabilization code and the Rent and Eviction Regulations, provided the same level of service is maintained. It is not a question of whether the conversion to automatic operation will result in a decrease in vertical transportation, but whether such conversion will result in a material decrease in building security and ancillary services. The conversion to automatic operation is most often sought in buildings serviced by more than one passenger elevator, as in the instant case, for an owner to reduce its payroll costs. Since this often results in a substantial savings to the owner, the conversion process would be approved on the condition that a portion of this savings is passed on to the residential tenants in the form of a waiver of any potential rent increase for what may otherwise qualify as major capital improvements. [ i.e., a waiver of any increase for the conversion costs.[1] The owner can still apply for an MCI for an elevator upgrade minus any conversion costs.]

The record shows that the subject building has two (2) elevators, one fully automatic and one manual elevator manned by an elevator operator; that the elevator operator is not a trained security guard; that the NYC Conciliation and Appeal Board in a decision dated November 4, 1982 determined that manual elevator operator service is a required service with a base date of May 29, 1974 and that with the manual elevator, the owner is required to continue to provide the elevator operator service 6 days a week, 18 hours a day, with coverage for the elevator during the operators' lunch hours, sick days and vacation time. Thus, a rent reduction order Docket No. KS430009B dated February 17, 2023 was issued by the DHCR for the owner's failure to maintain the days and hours of manned service to the manual elevator prior to obtaining the

[1] The Rent Administrator in granting the instant modification application properly imposed the waiver condition that the owner may not file for an MCI rent increase for the conversion portion of the manual elevator to automatic elevator.

DHCR approval.[2] The record also shows that the building consists of 100 dwelling units, and that by order Docket No. HM430001OD dated June 19, 2019, the DHCR granted the owner permission to replace the metal keys with key fob system at the building.

As the record shows that the manual elevator operator is not trained in security, is not armed, and is not allowed to leave the elevator post and as such does not provide any other service than operating the manual elevator, the Commissioner finds that the conversion of the manual elevator to fully automatic self-service elevator eliminating the elevator operator and installing security cameras within all the common areas of the building is not inconsistent with the Rent Stabilization Law and Code, and that the conversion constitutes an adequate substitute for the manual elevator services, including the elevator operator. Accordingly, the Commissioner finds that the owner's services modification application was properly granted by the Rent Administrator.

Regarding the tenants' claim that the Rent Administrator's decision is inconsistent with the long standing DHCR policy of imposing the condition requiring the owner in an elevator conversion case to reassign the elevator operator to security guard post in the building, the Commissioner notes that to the extent that any prior cases appear to indicate that the DHCR policy imposes the condition that the owner reassign the manual elevator operator to security guard post in every elevator conversion situation, the conclusion is not correct. The Commissioner further notes that the decision to impose a condition in granting a modification of services is made on a case-by-case basis contingent on the circumstances and conditions in each case. A condition would be imposed only where it is necessary to ensure that the same level of service that previously existed at the building, prior to the modification, is maintained after the modification. In the instant case, the Commissioner finds that the Rent Administrator properly determined that the same level of services at the building before and after the modification are the comparable.

The claim that elimination of the elevator operator would render the building less secure than it was before the conversion is speculative and without merit. The Commissioner finds pursuant to the record, that installing security cameras within all the common areas of the building, including the entry points, hallways, and lobby as well as within the elevator as part of the elevator conversion, maintains the building's security services not at a lower level than it was before the manual elevator conversion, as the installation of the security cameras at the listed strategic locations will enhance the building's security better than reassigning the elevator operator as a lone untrained security guard in a building with 100 apartment units.

The prior DHCR cases cited by the tenants are distinguishable and do not apply to the instant case. The decisions in LE430102RT and RB430025RT do not apply because the facts in the two cases are dissimilar from the facts in the instant services modification proceeding. In LE430102RT the owner applied and was granted modification permission to move employee from the automatic passenger elevator to the front desk area, and in RB430025RT the owner applied and was also granted modification permission to remove elevator operators from the elevator and station them as doorman in the lobby. The two cases did not deal with conversion from manual to automatic self-service elevator and elimination of the manual elevator operator.

[2] The modification order provides that the rent reduction will remain in effect until owner's Rent Restoration application is approved by the DHCR.

Thus, there was no issue of elevator operator elimination in the two cases as in the instant case where elimination of the manual elevator operator is the issue at bar.

The cases of KL230156RT and KB430161RT do not apply because although the cases involve conversion from manual to fully automatic elevator, the owner's modification application in each of the two cases did not include the adequate measures necessary to ensure that the same level of building security was maintained after the conversion. Thus, in order to maintain the same level of security services before and after the modification, the DHCR imposed the requirement that the owner provide security guard services as a condition of approval in KL230156RT and imposed the requirement that the manual elevator operators be reallocated as a condition of approval in KB430161RT. Unlike the two cases, the owner's application in the instant case includes the proposal to install security cameras within all the common areas of the building, including the entry points, hallways, and lobby as well as within the newly converted automatic elevator maintaining comparable level of building security services at the building before and after the modification. Also, the cited case of LO410010RO does not apply because although the case involved elimination of the elevator operator, it does not deal with conversion from manual elevator to fully automatic elevator as in the instant case. A review of the case reveals that the owner's modification application was properly denied in the case because installation of additional security cameras in conjunction with electronic touch-free sliding doors was found to be inadequate substitute for the combined services of elevator operators and two (2) doormen at the building. Unlike the case, the owner's modification application in the case at hand was properly granted because the conversion to fully automatic unmanned elevator in conjunction with installation of security cameras within all the common areas of the building, including the entry points, hallways, and lobby as well as within the elevator constitutes adequate substitute for the manual elevator and the operator.

The tenant's reliance on the order Docket No. BT430066RT is misplaced. A review of the order shows that it is a remand order and not a decision, and that contrary to the tenants' claim, there was no decision imposing the condition to reassign the manual elevator operator to a security post. In that case, the Commissioner remanded the proceeding to the Rent Administrator for further review and processing because in granting the owner's modification application to convert two manual elevators to automatic elevators and eliminate the elevators' operators, the Rent Administrator did not determine the issue raised by a tenant relating to whether the security provided by the owner after the conversion is an adequate substitution for the level of security previously provided by the elevator operators. As the case was a remand and not a decision, it cannot serve as case precedent under the doctrine of stare decisis.[3]

Regarding the claims that the modification order did not address the tenants' concerns about the existing self-service elevator which is often out of service and will be the only elevator available to the tenants during the conversion work on the manual elevator; and that the building's side door is not secured and does not close or lock properly, the Commissioner notes that the existing

[3] The doctrine of stare decisis states, in essence, that once a principle or decision has been laid down as applicable to a certain state of facts, that principle or decision will be adhered to and applied to all future cases, where the facts are substantially the same.

automatic elevator is not part of the owner's modification application and as such is beyond the scope of this proceeding; and that the alleged frequent break down of the existing automatic elevator, and the alleged unsecured building's side door with defective lock relate to building and housing maintenance issues. The tenants are advised to refer such complaints to the appropriate municipal agencies having jurisdiction over such matters. Also, this order and opinion is issued without prejudice to the right of the tenants to file with the Division application for rent reduction based on the owner's failure to maintain services if the facts so warrant.

Regarding the claim that the Rent Administrator granted the modification application without imposing conditions specifying where the security cameras should be located, the type and the number of cameras to be installed, the Commissioner notes that it is not within the purview of the DHCR to specify the locations, the type and the number of cameras to be installed. The modification order clearly indicates that the modification application was granted based on the owner's proposal to convert from manual to automatic self-service elevator and install security cameras within all of the common areas of the building, including the entry points, hallways, and lobby as well as within the automatic elevator as part of the elevator conversion. Any failure by the owner to fully comply with the modification as proposed will render the conversion to automatic elevator inadequate substitute for the manual elevator and the operator. Such failure will result in a decrease in services warranting a rent reduction. The Commissioner notes that the modification order clearly provides that if the owner fails to meet the requirements provided in the order, the tenants may file applications for rent reductions if the facts so warrant.

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

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

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

ISSUED: OCT 1 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

## 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.: MS410023RO

71ST STREET PROPERTIES LLC

RENT ADMINISTRATOR'S
DOCKET NO: KW410004OE

TENANT: [redacted]

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 June 20, 2024, by the Rent Administrator (RA) concerning the housing accommodation known as apartment [redacted] located at 1343 2nd Avenue aka 248 East 71st Street, New York, NY, 10021. Said Order denied the owner's Application seeking DHCR's approval to refuse renewal of lease and to proceed for eviction of the subject tenant based on demolition of the premises pursuant to Rent Stabilization Code (RSC) §2524.5(a)(2) because the owner failed to provide a fully executed work contract for the proposed demolition and because the owner failed to provide a Letter of Intent or Commitment Letter from a financial institution showing the owner's present ability to access a segregated fixed-income account to complete the proposed demolition.

On PAR, the owner alleges that the project entails the demolition of the subject building and razing it to the ground, as certified by a licensed engineer; that the plans for the project were approved by the NYC Department of Buildings (DOB) on March 2, 2021; that said plans provide for removal and demolition of the entirety of each dwelling unit with no apartment or residential space to remain; that the Application included proof of financial ability to complete the project, including proposals with licensed contractors to complete the demolition at a total cost of $247,500.00, an analysis of tenant stipends and relocation expenses for outgoing rent regulated tenants totaling $83,660.00, and proof of funds in the owner's bank account totaling $499,240.00, which was well over the total aforementioned costs; that the owner affirmed that these funds are dedicated, restricted and earmarked and may not be used for any purpose other than the demolition and stipend/relocation expenses; that the owner also showed that the owner's principal had over $20,000,000.00 in liquid assets with Capital One Bank, which was over and above the amounts set forth for the demolition; that said principal "affirmed to dedicate [such funds] to the Project upon approval from DHCR"; that the Agency requested the owner to submit DOB approved plans and

proof of financial ability to complete the project, to which the owner responded, resubmitting such documentation and further informing the Agency that such documentation had already been submitted; that the Agency acknowledged its error and docketed the proceeding; that, more than six months later, the RA made a second request to the owner, again requesting the same DOB approved plans and proof of financial ability to complete the project; and that the owner again resubmitted the above-referenced documentation.

The owner further alleges that, although the tenant did not file any answer to the Application, the RA issued an Order denying the owner's Application; that RSC Section 2524.5(a)(2) clearly states that an owner needs to "[submit] proof of its financial ability to complete" the demolition, as well as "plans for the undertaking [which] have been approved by the appropriate city agency..."; that Operational Bulletin 2009-1 (OB 2009-1) also states the an owner must submit proof "of financial ability to complete" the demolition, as well as "plans for the undertaking [which] have been approved by the appropriate governmental agency..."; that the owner is, therefore, only required to submit approved plans for the demolition and proof that it has the financial ability to complete the demolition (citations omitted); that the First NY LLC v NYSDHCR, 2022 NY Slip Op 05269 (1st Dept 2022) Court found that DHCR erred in denying a demolition application when the owner submitted detailed plans approved by DOB along with proof of funds to finance the demolition; that said Court was perturbed that DHCR sought to enforce requirements that were explicitly removed from the RSC 20 years prior; that the RSC does not specify any type of evidence necessary to show financial ability to complete a demolition, leaving it open for owner to submit any form of proof demonstrating such ability; and that OB 2009-1 states that such proof "*may* include a Letter of Intent or a Commitment Letter from a financial institution (emphasis added by owner)", which means that these forms of proof are examples and not a mandatory requirement or exhaustive list.

The owner also alleges that the Courts have repeatedly stated that no particular proof is required (citing Mayfair-York Corp. V McGoldrick, 286 AD 154 (1st Dept 1955), Goldsmith v Gabel, 43 Misc2d 286 (S Ct NY Cty 1964), and Matter of Gioeli, 221 NYS2d 568 (S Ct NY Cty 1961)); that cash in a sum greater than the cost of the demolition is acceptable proof of the owner's financial ability to complete such demolition (citing First NY LLC, 2005 WL 6312789 (S Ct NY Cty 2005) affirming PAR Order QK420005RT, Mayfair-York Corp., Gioeli, and Goldsmith); that prior Agency rulings demonstrate that proof of financial ability may be established by liquid funds rather than entering into a debt obligation; that PAR Order XG420040-66RT found that the owner in that case submitted sufficient proof of financial ability because said owner submitted to the RA an affidavit of its CFO stating that the company's balance sheet showed that its financial capacity substantially exceeded the cost of the proposed project without any requirement or the establishment of a specially segregated bank account or letter from the owner's financial institution; that the RA's Order at issue rules that an owner who shows financial ability by submitting evidence that it has sufficient funds to complete the demolition has failed to show such ability; that such a ruling means that an owner who shows that it has sufficient funds has not shown financial ability, but, rather, such owner must show that someone is willing to lend such owner sufficient funds to finance the demolition; and that such ruling is ludicrous, defeats the purpose of RSC Section 2524.5(a)(2)(i), and is contrary to RSC Section 2520.3 which states that the RSC "shall be construed so as to carry out the intent of the Rent Stabilization Law to ensure that such statute shall not be subverted or rendered ineffective".

The Commissioner, having reviewed the entire evidentiary record, finds that the PAR is denied, and that the RA's Order is affirmed.

Pursuant to OB 2009-1 "[N]o **demolition application will be accepted by DHCR unless the owner has submitted proof to the DHCR of financial ability to complete such undertaking, and plans for the undertaking have been approved by the appropriate government agency.** Evidence of financial ability to complete the project may include a Letter of Intent or a Commitment Letter from a financial institution, or such other evidence as DHCR may deem appropriate under the circumstances [emphasis in original]."

The owner was not able to demonstrate that it has the financial ability to complete the demolition project as required by OB 2009-1 and as requested by the RA. The evidence submitted by the owner, namely a bank statement showing a balance of $499,250.00 and a letter from Capital One Bank stating that Nader Ohebshalom has balanced of over $20,000,000.00 on deposit, is not sufficient evidence to show financial ability to complete the project under OB 2009-1. On May 17, 2023, the RA sent the owner a Request for Additional Information/Evidence specifically asking the owner to submit "[a] current commitment letter from a financial institution. And/Or A current bank statement showing a segregated bank account of sufficient size to complete the project." The owner did not submit such evidence, and the RA therefore correctly found that the owner did not provide sufficient evidence of its financial ability to complete the project. It is not the existence of funds alone that meets the requirements for proof of financial ability to complete the demolition under OB 2009-1, but, rather, it is the existence of funds that have been segregated and committed to the demolition that will meet these requirements (*see* Matter of 118 Duane LLC v. New York State Div. of Hous. & Community Renewal, 212 A.D.3d 401 (App Div 1st Dept 2023)). The owner did not provide proof of any segregated and/or committed funds to complete the project. Accordingly, the owner's Application must also be denied based on the owner's failure to provide sufficient evidence of financial ability to complete the demolition.

The owner cites First NY, to support its position. This case, however, deals with the financing of new construction after a demolition, which the Court stated is not required. This case does not make any holding or finding regarding what is needed or required to show financial ability to demolish, only stating that there is no need to show financial ability to do post-demolition construction. Accordingly, First NY is not analogous to the instant case. Mayfair-York, cited by the owner, is also not analogous to the instant case in that it is a 1955 case dealing with the method of financing proposed subdivisions of larger apartments under Section 57 of the then Rent Control Regulations, while the instant case deals with financing of a demolition under the modern Rent Stabilization Law (RSL) and RSC. Nor is Goldsmith, also cited by the owner, analogous to the instant case in that Goldsmith is a 1964 case dealing with rent control demolition while the instant case addresses financing under the modern RSL and RSC; further, the owner in Goldsmith submitted proof of financial ability including "a mortgage *commitment* from Equitable Life Assurance Society of the United States...and a letter of *commitment* from Aluminum Company of America...[emphasis added]"; the owner in Goldsmith therefore submitted commitment letters from other entities with the capacity to finance the project at issue in that case, while the owner in the instant case did not, as outlined above. Gioeli, also cited by the owner, is not analogous to the instant case because in Gioeli the Court addressed a 1961 rent control case dealing with "the

granting of certificates of (sic) demolish a building and contract a new one containing a greater number of self contained [units]", while the instant case is a modern rent stabilization case dealing only with demolition; further, the Gioeli Court did not make any finding regarding what in fact constitutes "sufficient financial resources to undertake and complete the project", finding only that "the Administrator has so found" that the owner had such resources.

PAR Order QK420005RT, issued April 8, 2004, and cited by the owner, does in fact state that "the landlord submitted copies of bank statements indicating sufficient funds to cover the cost of the project". This was, however, prior to promulgation of OB 2009-1 in 2009, and prior to the issuance of 118 Duane in 2023. PAR Order XG420040-66RT, also cited by the owner, was issued on 12/28/2009, after the promulgation of OB 2009-1 but before the issuance of 118 Duane in 2023; while said Order found that the owner in that case did show financial ability to conduct the demolition in that case, said owner showed that it had $308,000,000.00 in "restricted" cash and a revolving credit capacity of $1,873,000,000.00 for a demolition estimated to cost $407,772,205.00; the owner in that case, therefore, showed that it had more than ¾ of the cost of the demolition that was restricted to use for the demolition, and a large reserve of credit for the last ¼ cost of the demolition, and, under these unique circumstances, and prior to the issuance of 118 Duane, the owner was found to have shown financial ability to conduct the demolition in that case; this case is not analogous to the instant case in which the subject owner has not shown any restricted, earmarked, or committed funds for the demolition herein.

Since the promulgation of OB 2009-1 the Agency has required owners seeking to prove demolition under the RSC to show that they have funds that have been earmarked, segregated and/or committed to the demolition. Simply showing bank balances, "cash on hand", or "available" funds is not considered sufficient because these forms of resources can be used or depleted prior to the demolition and are therefore insufficient to show that the owner will have the necessary resources at the time of the demolition. Nor is an owner's statement that there are funds earmarked or committed to the demolition sufficient, as this is not a binding commitment. A commitment or other document from a financial institution that is holding sufficient funds for the owner which funds have been earmarked, committed, or dedicated funds is therefore required.

PAR Order JX410038RO denied the owner's appeal on 7/22/22 finding that the owner's showing of an account with $2,663,300.59, a brokerage statement with a total value of $3,438,518.00, and an account with a value of more than $15,000,000, was not sufficient to show financial ability to perform the demolition in that case because the owner did not show that there were funds that were "segregated and unconditionally and irrevocably earmarked to fund the project." PAR Order KQ410027RO/KQ410028RO, issued March 24, 2023, found that a Fidelity account that the owner alleged contained approximately $4,000,000.00 for a demolition estimated to cost $1,011,000.00 did not shown financial ability to complete the project because it had "not submitted a firm commitment letter from a financial institution or a bank statement showing a segregated account with sufficient funds to complete the project...[and the Fidelity documents submitted by the owner] do not indicate actual commitment to use such funds nor guarantee the funds would remain available and marked for this specific project"; nor was an additional affidavit from the owner in that case affirming that sufficient funds were available for the demolition found to be sufficient for the same reasons set forth above. PAR Order LM410018RO, issued 9/6/23, found that a letter from "The Asset Preservation Strategies" stating that there was an account with

$10,000,000.00 in available funds, and documents from Charles Schwab showing a balance of $28,563,691.60, were insufficient to show that the owner had financial ability to complete the demolition in that case; said PAR Order found that"[i]t is not the existence of funds alone that meets the requirements for proof of financial ability to complete the demolition under OB 2009-1, but, rather, it is the existence of funds that have been segregated and committed to the demolition that will meet these requirements." These three PAR Orders are representative of the Agency's practice and policy regarding what is required to show financial ability to carry out a demolition after promulgation of OB 2009-1. It is noted that this practice and policy has been upheld by 118 Duane, in which the Appellate Division of the First Department found that "DHCR had a rational basis [in that case] for finding that the bank records submitted by petitioner, standing alone, were insufficient to show that petitioner had the financial ability to complete the undertaking.

Because the owner in the instant case has not submitted sufficient proof of its financial ability to complete the demolition at issue, as explained above, the RA was correct to deny the owner's Application herein.

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

**ORDERED**, that the owner's petition is denied.

**ISSUED**:
NOV 06 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

## 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**

**Park 50 West Properties LLC**

**PETITIONER**

**ADMINISTRATIVE REVIEW DOCKET NO.: MW210004RO**

**RENT ADMINISTRATOR'S DOCKET NO.: MV210018OP**

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## ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On November 4, 2024, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on October 23, 2024 (the "Order"), concerning the housing accommodation known as 50 Westminster Road, Apartment [redacted] Brooklyn, New York, wherein the Rent Administrator found that, in response to the owner's request for Certification to Establish Eligibility to Recover Costs on Proposed Individual Apartment Improvements ("IAIs") Completed in a Vacant Housing Accommodation, the owner was not eligible to recover costs for IAIs up to an aggregate amount of $50,000.00.

After careful consideration of the entire evidence of record including the Agency's records, the Commissioner is of the opinion that the petition should be denied.

In the PAR, the owner requests a reversal of the Rent Administrator's Order, asserting that the apartment was registered as vacant in 2024.

A review of the Agency's records reveals that the subject apartment, [redacted] was not timely registered as vacant for the years 2022, 2023, and 2024. Accordingly, the Commissioner finds that the Rent Administrator properly denied the owner's request, and the owner's PAR has not established any basis to 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 08 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

## Right to Court Appeal

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There is no other method of appeal.

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

----------x

**IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF**

**ADMINISTRATIVE REVIEW DOCKET NO.: MW210009RO**

**2205 Foster LLC**

**PETITIONER**

**RENT ADMINISTRATOR'S DOCKET NO.: MV210014OP**

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

On November 8, 2024, the above-named petitioner-owner filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on October 25, 2024 (the "Order"), concerning the housing accommodation known as 2205 Foster Avenue, Apartment [redacted], Brooklyn, New York, wherein the Rent Administrator found that, in response to the owner's request for Certification to Establish Eligibility to Recover Costs on Proposed Individual Apartment Improvements ("IAIs") Completed in a Vacant Housing Accommodation, the owner was not eligible to recover costs for IAIs up to an aggregate amount of $50,000.00.

After careful consideration of the entire evidence of record including the Agency's records, the Commissioner is of the opinion that the petition should be denied.

In the PAR, the owner requests a reversal of the Rent Administrator's Order, asserting that the apartment was registered as vacant in 2024.

A review of the Agency's records reveals that the subject apartment, [redacted], was not timely registered as vacant for the years 2022, 2023, and 2024. Accordingly, the Commissioner finds that the Rent Administrator properly denied the owner's request, and the owner's PAR has not established any basis to 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 13 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
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## Right to Court Appeal

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

There is no other method of appeal.

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

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| IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF | ADMINISTRATIVE REVIEW DOCKET NO.: MQ210009RO |
| ZG COURT LLC, | RENT ADMINISTRATOR'S DOCKET NO.: LS210001UC |
| | TENANTS: VARIOUS |
| **PETITIONER** | |

## ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner - owner timely filed an administrative appeal (PAR) against an order issued on April 18, 2024 by the Rent Administrator (RA) concerning various housing accommodations in the building located at 449 Court Street, Brooklyn, NY which denied petitioner's application for exemption from rent regulation based on a substantial rehabilitation.

The owner commenced this proceeding on July 5, 2023 by filing an application to determine whether the building located at 449 Court Street, Brooklyn, NY was exempt from rent regulation based on a substantial rehabilitation in accordance with Rent Stabilization Code (RSC) §2520.11(e) and DHCR Operational Bulletin 95-2.

The owner submitted a deed indicating it purchased the premises on January 19, 2022. The owner stated that the renovations began on April 29, 2022 and ended on February 1, 2023. The owner stated five out of the six apartments were vacant when it purchased the premises and that it reached a buyout agreement with the sixth tenant prior to commencement of the work. The owner asserted that the premises was vacant at the outset of the work which satisfies the presumption of substandard condition and also

that said condition is supported by expert opinion in the form of a pre-construction architects' affidavit as well as pre-renovation photographs. The owner asserted that the work was to combine 6 apartments into 3 (one on each floor) and according to the architect's opinion involved replacement of 13 out of 15 existing building systems to qualify as a substantial rehabilitation. The owner annexed a construction contract, proof of payment to the contractor for $450,000, pre and post work architect affidavits, architectural plans, pre and post work photographs, seven Department of Building (DOB) permits, cost affidavits, and Letters of Completion from the DOB.

The RA denied the owner's application finding that the owner did not establish that the building was substandard or seriously deteriorated in accordance with DHCR Operational Bulletin 2023-3; that the building was occupied just prior to the commencement of the renovation; that the owner failed to explain how the building became vacant; that the owner failed to prove that 75% of the building-wide and apartment systems (including common areas) were replaced; that full scale architectural plans were requested and not submitted and that work contracts, proof of payment and cost affidavits were requested and not submitted.

On PAR, the owner asserts that the RA incorrectly applied the recent rent law amendments of November 8, 2023 and the newly amended Operational Bulletin to work that commenced before their enactment; that Operational Bulletin 95-2 governs this case; that the owner was entitled to a presumption of substandard condition when it proved that the building was 100% vacant prior to the work; that in addition to the vacancy rate, the owner also submitted an expert affidavit and photographs to prove the substandard condition of the building; that the RA improperly created a new standard by denying the application because apartments were "occupied just prior to the work"; that the owner did in fact submit work contracts, cost affidavits and proof of payment; that the evidence submitted proves that 75% of the building-wide and apartment systems, including the common areas, were rehabilitated; and that the exemption application should have been granted.

The Commissioner agrees with the owner's contentions and grants the PAR.

RSC amendments promulgated in November 2023 eliminated the presumption of substandard or seriously deteriorated condition when

a building was 80% vacant of tenants. Operational Bulletin 2023-3 published on November 21, 2023 replaced Operational Bulletin 95-2 and likewise eliminated the vacancy presumption leaving owners with actually having to prove that the premises was substandard or seriously deteriorated even if no tenants were living there when the renovations commenced.

According to the evidence in this case, the substantial rehabilitation work took place between April 2022 and February 2023. The Commissioner finds that said work and the owner's application for exemption must be governed by the pre-amendment version of RSC §2520.11(e) and Operational Bulletin 95-2. Therefore, the presumption of substandard or seriously deteriorated condition provided when a building was 80% vacant of tenants applies to this case. The RA erred in retroactively applying the rent law amendments of November 2023 and Operational Bulletin 2023-3 to the owner's substantial rehabilitation application.

The Commissioner finds that the owner set forth evidence that the building was 83.3% vacant upon its purchase with five out of six apartments being vacant and then was 100% vacant prior to the renovations. The fact that the last vacancy was secured via a buyout agreement does not preclude the substantial rehabilitation because the owner had already achieved the 80% vacancy rate before said buyout. The owner also submitted sufficient evidence in the form of photographs and a pre-work expert affidavit that the condition of the building was substandard and seriously deteriorated.

The Commissioner finds that the RA had no justification for denying the application based on the fact that the "building was occupied just prior to the commencement of the renovation." No such standard exists under the law.

DHCR Operational Bulletin 95-2, in relevant part, outlines the criteria an owner must meet to prove substantial rehabilitation as follows:

> At least 75% of the building wide and apartment systems must have been completely replaced; and all ceilings, flooring and 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 are:

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

Limited exceptions to the extent of the rehabilitation work may apply where the owner demonstrates that a particular component of the building or system has recently been installed or upgraded 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.

Operational Bulletin 95-2 goes on to state that the following documentation will be required by owners in support of a claim for substantial rehabilitation: records demonstrating the scope of the work actually performed which may include an itemized description of replacements and installation; copies of approved building plans; architect's or general contractor's statements; contracts for work performed; appropriate governmental approvals and photographs of conditions before, during and after the work was performed. Proof of payment by the owner for the rehabilitation work may also be required.

The Commissioner finds that the owner has produced sufficient documentation to support its claim of substantial rehabilitation, including documents specifically described in DHCR Operational Bulletin 95-2. The owner has produced DOB permits under seven job numbers, Letters of Completion by the DOB for the specific jobs; cost affidavits, construction contract, proof of payment, architectural plans, before and after photographs and pre-work and post-work expert affidavits from Vincente Varela, a licensed

architect. Mr. Varela's affidavit demonstrates the scope of the work performed. He affirms that two systems, elevators and incinerators, were not present in the building. Mr. Varela established that 12 of the 15 building-wide and apartment systems or 80% of the systems were replaced with new systems, including plumbing, heating, gas services, electrical, intercoms, windows, doors and frames, interior stairway, kitchens, bathrooms and that all walls, floors and ceilings in the apartments and common areas were replaced. Mr. Varela's affidavit states that the roof was patched, fire escapes were scraped and painted, and that pointing/exterior repair was not performed. The Commissioner finds that these three systems must therefore be excluded. In addition to proving that 80% of the systems were replaced, the owner demonstrated that it obtained required DOB permits for plumbing, electrical, gas lines and general construction and that DOB signed off on the completion of all work associated with the permits. The Commissioner finds that the owner therefore satisfied all requirements of Operational Bulletin 95-2 for a substantial rehabilitation. The lack of enlarged architectural plans, by itself, is not enough to deny the owner's application based on the other evidence in the file.

Based on the foregoing, the Commissioner grants the owner's application and finds that the premises is exempt from rent regulation based on a substantial rehabilitation completed in February 2023.

**THEREFORE**, in accordance with the relevant Rent Regulatory Laws and Regulations and Operational Bulletin 95-2, it is

**ORDERED**, that this petition be, and the same hereby is, granted, and that the RA's order be, and the same hereby is, revoked.

**ISSUED:**
OCT 08 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

## 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

1819 GROVE LLC

ADMINISTRATIVE REVIEW
DOCKET NO.: MR110021RO

RENT ADMINISTRATOR'S
DOCKET NO.: LW110010UC

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 May 28, 2024 by a Rent Administrator (RA) concerning the premises located at 18-19 Grove Street, Flushing, NY 11385. Said Order found that the owner did not submit sufficient evidence to substantiate its claim that 75% of building-wide and individual apartment systems were completely replaced; that the owner has not established that the building was substandard or seriously deteriorated when the work commenced in accordance with Operational Bulletin 2023-3 (OB 2023-3); and that the owner's Application to deregulate the subject premises based on substantial rehabilitation was therefore denied.

On PAR, the owner alleges that the RA's Order was in error in denying the owner's Application because it did not consider all the evidence presented by the owner, and, because said Order required the owner, *ex post facto*, to present documents which are outside the scope of what is generally required.

Each tenant was served with the owner's PAR, and, as of the date of issuance of this instant Order, no tenant has made any submission in response thereto.

The Commissioner, having thoroughly reviewed the record, finds that the PAR is denied.

First, the RA properly and completely considered all evidence submitted by the owner and came to the proper conclusion as explained below. Further, the RA required and requested only documentation that was directly relevant and that was or should have been obtainable by the owner. Much of the documentation requested and required was in fact asked for after the work at issue was completed, but this was in no way "*ex post facto*" or not "relevant". All of the documentation requested by the RA was or should have been generated in the ordinary course of the work at issue, was or should have been in the owner's control and accessible by the owner, and was directly relevant to a determination of the owner's Application.

Because the work at issue was completed, and the Application was filed, prior to promulgation of OB 2023-3, the prior effective Operational Bulletin, namely Operational Bulletin 95-2 (OB 95-2), controls in this case. OB 95-2 outlines as follows the criteria an owner must meet to prove substantial rehabilitation pursuant to Rent Stabilization Code (RSC) Section 2520.11(e):

A. At least 75% of the building-wide and apartment systems contained on the following list must have been completely replaced with new systems. Additionally, 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 as determined by DHCR.

List of Building-wide and Apartment Systems:

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 items 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 upgraded 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.

B. The rehabilitation [must have been] commenced in a building that was in a substandard or seriously deteriorated condition. The extent to which the building was vacant of residential tenants when the rehabilitation was commenced shall, in addition to the items described in III "Documentation", constitute evidence of whether the building was in fact in such condition. Where the rehabilitation was commenced in a building that was at least 80% vacant of residential tenants, there shall be a presumption that the building was substandard or seriously deteriorated at that time.

In the instant case, it is undisputed that there are no elevators. Accordingly, the owner had to show that at least 12 of the 16 remaining systems were replaced or made as new to satisfy the 75% requirement. Review of the record reveals that the owner did not submit sufficient evidence to show replacement of at least 75% of the building-wide and apartment systems and therefore the RA finding that there was no substantial rehabilitation is affirmed.

On February 27, 2024, the RA requested that the owner submit, among other things, "a copy of a detailed work contract describing the scope of work...", and "an Affidavit (sworn statement) from the Architect or Engineer who filed the job with the DOB" which affidavit must "describe in detail the specific building-wide and individual apartment systems replaced, and the work done in common areas...". The owner did not submit either of these documents. In response to this RA request, the owner stated that it was "unclear" as to what DHCR was requesting regarding a work contract as the general contractor used subcontractors and the work performed is documented by invoices and by sworn statements provided by the owner and "supporting documentation." The documents submitted by the owner are not a substitute for a work contract and they are insufficient to prove the scope of the work necessary for a substantial rehabilitation.

The owner submitted an affidavit from an engineer, dated November 2, 2023, which was almost a year after completion of the work at issue, and which states that the building was vacant prior to commencement of the work, and that all systems were replaced. There is no assertion that the engineer was involved in any aspect of the project. Rather, the engineer states that his affidavit is based on his review of "DOB filings and plans for a substantial rehabilitation" and on his performance of "a site visit of the premises." However, as explained more fully below, documentation of DOB filings submitted by the owner do not cover the entire scope of the work that would have required DOB permits to be issued, and, in at least the case of the roof, while the engineer affirmed that the "entire roof was replaced with a brand new roof...", documentation submitted by the owner and outlined below shows that the roof was not in fact completely replaced with a brand new roof. Nor does the documentation in the record show that many of the systems were completely replaced despite the engineer's affirmation that they were all in fact completely replaced, also as further explained below. In short, the expert affirmation is not reliable, and cannot, standing alone, support the exemption Application.

The owner also submitted an affidavit from the general contractor dated October 20, 2023, which states that he "first visited the premises in autumn 2020" at which time "the building was completely vacant." The affidavit goes on to state that each system needed complete replacement including the roof which was "in serious need of replacement...the roof was compromised...[and] could not be fixed and thus required replacement" Yet the roof was repaired and was not replaced

as shown by the Proposal from Aroof submitted by the owner which stated among other things that there would be installed a "new layer of rubber APP 180 on the **existing** layer of the roof (emphasis added)". As said Proposal is accompanied by roof of full payment from the owner, the roof did not need complete replacement and was not in fact completely replaced. Further, the contractor did not make any statements at all regarding work that was in fact performed, even though his affidavit was sworn out roughly 10 months after completion of the project. It is noted and repeated that, despite a specific request from the RA for "a copy of a detailed work contract describing the scope of work...", the owner did not submit such contract and the general contractor's affidavit did not in any way touch on the scope of work performed.

The owner also swore out an affidavit in which he states that the building "needed replacement of nearly all systems" and that the cost of the "project was approximately $505,000.00". The owner's attestation that "nearly all systems" needed replacement is contrary to the contractor's affidavit which specifically states that **all** of the applicable systems needed replacement. Finally, the owner attests that the cost of the project was approximately $505,000.00 while proof of only $388,322.86 in expenditures was submitted. There is further possible proof of an additional $42,000.00 in expenditures in the form of checks made out to RRR Piping and Heating and to Hazi, which payments match the Proposals from these companies but which checks are all stamped "VOID". Therefore, the total proof of payments is between $388,322.86 and $430,322.86, which is well short of the $505,000.00 that the owner attested was spent on the project. It is noted that the owner alleges that the project was completed in December of 2022, so there is no reason that all contracts, proposals, invoices, and proof of payment for such work could not be provided less than a year and a half later. In sum, the inconsistencies in the owner's affidavit as compared to the rest of the evidence make it less reliable and it certainly does not support the claim for exemption.

The owner submitted DOB Permits for plumbing, for partial electrical work ("Service Work/Notify Utility General Wiring"), and for General Construction. The owner also submitted two DOB PW3 Cost Affidavits, one for "MODERATE INTERIOR RENOVATION" at a total cost of $40,000.00 and another for Plumbing at a "Total Job Cost (Final) of $104,150.00" which amounts are far less than the $505,000.00 that the owner alleges was spent on the project. There were no permits submitted for gas, for heating, for the roof work, or for conversion of gas or of heating to electric. The only sign-off submitted is for the Application Details signed-off on 12/07/2022 which is for General Construction at an estimated cost of $400.00.00. Nor has the owner submitted any Letters of Completion from DOB. Accordingly, the owner has not provided documentation that the entire project was fully permitted by DOB or found thereafter to have been completed by DOB in accordance with applicable laws, both of which are requirements for a substantial rehabilitation.

Regarding the specific systems, the owner presented objective, tangible and material evidence in the form of invoices, proposals, and proof of payment for complete replacement of the following systems: the intercom system; the doors building-wide and in all apartments; the windows building-wide and in all apartments; the kitchens; the bathrooms; the plumbing; and the

ceilings and wall surfaces in common areas and in the apartments. In sum, therefore, the owner has shown complete replacement of these **seven** systems pursuant to OB 95-2.

The owner submitted an Invoice from and proof of payment of $2,600.00 to NY Khalsa Iron Works for fabrication and installation of "straight steel pan, closed riser, staircase" which does not prove the replacement of interior staircases because the DOB plans show that there are actually three internal staircases, and it is therefore unlikely that internal stairways were completely replaced throughout the building. The owner submitted a Proposal and proof of payment of $15,000.00 for what seems to be the installation of flooring, however said proposal does not describe the scope of the flooring work or its location. The owner only submitted a permit from DOB for electrical work delineated as "Service Work/Notify Utility General Wiring" which, by itself, does not support the complete replacement of the electrical system building-wide and in all apartments, especially since the owner alleges that the gas system and heating system were replaced by electric systems. It is further noted that the owner did not submit any DOB sign-off or Letter of Completion for any electrical work and did not submit proof of payment for electrical work or any proof from any company or entity stating that electrical work was performed in the building. In sum, therefore, while the owner submitted some proof regarding these **three** systems (internal stairways, floors and electrical systems), such evidence is insufficient to prove their complete replacement under OB 95-2.

The Proposal from Aroof states that it was to install a "new layer of rubber APP 180 on the **existing** layer of the roof (emphasis added)", among other partial work on the roof, so, although there is proof of (full) payment of $21,750.00 to Aroof, it cannot be found that the roof was in fact completely replaced. The owner did not submit any permit, any evidence of any entity contracted, or any proof of monies paid to any entity for heating, so this system cannot be found to have been completely replaced. The owner did not submit any permit, any evidence of any entity contracted, or any proof of monies paid to any entity for gas supply or for conversion of this system to electricity, so this system cannot be found to have been completely replaced. The owner did not submit any evidence of any entity contracted, or any proof of monies paid to any entity for work on the fire escapes, so this system cannot be found to have been completely replaced. The owner did not submit any evidence of any entity contracted, or any proof of monies paid to any entity for replacement of the trash compactor, so this system cannot be found to have been completely replaced. The owner did not submit any evidence of any entity contracted, or any proof of monies paid to any entity for work on the pointing or exterior surfaces, so this system cannot be found to have been completely replaced. In sum, therefore, the owner has not submitted sufficient evidence to show that these **six** systems were in fact completely replaced as required by OB 95-2.

Accordingly, the owner has only submitted acceptable proof of complete replacement of seven of the applicable 16 systems. Even if it were found that the three systems for which the owner submitted partial yet inconclusive evidence of complete replacement (interior stairways, floors, electrical system), were in fact completely replaced, the owner would only have shown that 10 of the required 16 systems were completely replaced. Therefore, the required 75% pursuant to OB 95-2 has not been established and the RA was correct to deny its Application.

While both the owner and an engineer affirmed that all 16 relevant systems were completely replaced, the proof in the record, coupled with the lack of other evidence requested by the RA, does not support a substantial rehabilitation. This includes DOB documentation that does not have all required permits or Letters of Completion; lack of a work contract detailing the scope of the work performed; discrepancies in proof of payment; lack of an affidavit from any expert who was involved in the planning or performance of the project; and lack of invoices, contracts or proposals for work on several of the systems allegedly replaced. The Commissioner further notes that the photographs submitted are not labelled and it is impossible to tell contextually from such photographs the extent of the deterioration of the premises prior to the work at issue or the scope of the work done.

Accordingly, the owner has not shown complete replacement of 75% of the relevant systems as required by OB 95-2.

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

**ORDERED**, that the owner's petition denied.

**ISSUED:**
OCT 09 2014

**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/ executive orders. No additional time can or will be given. In preparing your papers, please cite the Administrative Review Docket Number which appears on the front page of the attached order. If you file an Article 78 appeal, the law requires that a full copy of your appeal papers be served on each party including the Division of Housing and Community Renewal (DHCR). With respect to DHCR, your appeal must be served on DHCR Counsel's office at 641 Lexington Ave, New York, NY 10022.

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.: MN210018RO

RENT ADMINISTRATOR'S
DOCKET NO.: KU21005UC

CREAS, INC.

TENANTS: VARIOUS

PETITIONER X

**ORDER AND OPINION DENYING ADMINISTRATIVE REVIEW**

The petitioner-owner timely filed an administrative appeal (PAR) against an Order issued on January 11, 2024, by a Rent Administrator (RA) concerning the premises located at 117 North 4th Street, Brooklyn, NY, 11211. Said Order denied the owner's Application, which was filed on September 15, 2022, to determine whether the subject building is exempt from rent regulation based on substantial rehabilitation pursuant to Rent Stabilization Code (RSC) §2520.11 (e). Said Order found that the owner failed to establish that the building was substandard or seriously deteriorated prior to the work at issue as required by Operational Bulletin 2023-3 (OB 2023-3); that three out of eight units ([redacted], [redacted] and [redacted]) in the subject building were vacated due to surrender agreements; that two out of those eight units ([redacted] and [redacted]) were occupied by the owner immediately prior to the renovation; and that the owner has failed to submit sufficient evidence to support its claim that the building was substandard or seriously deteriorated.

On PAR, the owner contends that the RA erred in denying its substantial rehabilitation Application based on DHCR's Operational Bulletins and that such denial is arbitrary and capricious; that, although Operational Bulletin 95-2 (OB 95-2) has been approved by the Courts, such approval does not give DHCR carte blanche to use OB 95-2 as a blunt weapon to deny substantial rehabilitation applications; that an architect verified that more than 75% of the building-wide and apartment systems were in substandard condition; that the owner's Application also documented significant evidence of the substandard conditions in the subject building which conditions have resulted from over 100 years of wear and tear and from the lack of replacement of building-wide systems since the building was built in 1910; that the subject building was 100% vacant at the time of the commencement of the construction in 2021; that OB 95-2 creates a presumption that a building is substandard if it is more than 80% vacant; that, because the building was 100% vacant at the time the work was commenced, it should therefore be found that such building was substandard pursuant to OB 95-2; that OB 95-2 only provides for two instances in which a vacancy would not be considered towards the 80% presumption: 1. when the vacancy was secured by arson or another criminal act by the owner or its agent, or 2. when the tenants vacated

the building based on harassment; and that the RA's denial Order did not find that any vacancy was secured by arson, by any other criminal act, or by harassment, so the building was therefore legitimately 100% vacant prior to the work at issue and should therefore have been found to have been in a substandard condition.

The owner further contends that the RA erroneously relied on OB 2023-3 to determine that the owner failed to establish that the premises were in substandard condition; that the RA failed to explain the deficiencies in the owner's documentation that led to the determination that the building is not exempt from rent regulation due to substantial rehabilitation; that the RA failed to explain why apartments that were occupied by a prior owner, but which became vacant prior to the work at issue, were not allowed by the RA to count towards the 80% presumption; that the current owner acquired the building on or about September 13, 2023, and the construction began on or about October 13, 2021 which was well before the current owner took possession of the building; that the RA failed to explain why the tenants' voluntary surrender agreements precluded their apartments from being considered as vacant and as counting towards the 80% presumption; that, given that the 110-years old building-wide and apartment systems had not been previously replaced, the owner submitted ample documentary evidence establishing the substandard condition of the premises; that the owner has established that the building was 100% vacant at the time that the work commenced; and that there is no law, regulation, or Operational Bulletin which authorizes DHCR to disregard vacancies based upon the RA's rationale, or that provides any basis for DHCR to deny owner's Application herein.

The owner also contends that the RA's Order made reversible error in retroactively applying OB 2023-3; that said Operational Bulletin was issued on November 8, 2023; that the prior owner acquired the building and submitted the Application at issue to DHCR upon completion of the work in 2022, which was more than a year prior to the issuance of OB 2023-3; that the RA's Order made reversible error in discrediting the voluntary vacancies occurring prior to the rehabilitation; that OB 95-2, in effect at the time of the renovation and of the Application, had a presumption that the building is in a substandard condition when 80% of the building is vacant at the commencement of the construction, provided that the vacancies were not secured by a criminal act or harassment, but rather were secured by voluntary decisions of the tenants and owner; that such voluntary vacancies were in fact secured in this case in connection with the sale of the building which is allowed by OB 95-2; that RSC §2520.11(e)(3), as it was in effect at the time of the Application, does not preclude an owner from obtaining vacancies in a building as a result of duly negotiated surrender agreements or from obtaining such vacancies to facilitate the sale of such building; and that there is simply no way to know if a vacancy occurred due to the substandard conditions of the building, or due to other personal reasons of a tenant.

Finally, the owner contends that the fact that an apartment may be occupied immediately prior to substantial rehabilitation work is not grounds for finding that the building is not "substandard" or "deteriorated"; that the RSC and OB 95-2 are clear that the determination as to whether a building was in substandard condition is not based on whether a tenant(s) vacated because of a buyout agreement(s); that the DHCR is engaging in impermissible rulemaking without consideration for precedent and without regard to logic; that the owner's color photographs, submitted to DHCR on July 31, 2023, demonstrate that the subject building has not been renovated in decades and was indeed in substandard or seriously deteriorated condition; that

the Application contained a sworn affidavit from an architect which stated that the building was in substandard and deteriorated condition and has not been renovated in 110 years; that the Application provided that the prior owner expended more than $700,000.00 to rehabilitate a 110 year old, eight unit, building; and that, and for all of the reasons stated above, the RA's Order must be reversed in its entirety.

On August 22, 2024, the owner submitted a supplement to the PAR in which it contends that Eli Hechet, the licensed general contractor (GC), swore out an affidavit stating that the subject building was substandard and in seriously deteriorated condition when said GC inspected the building; and that the subject building required substantial rehabilitation from roof to cellar.

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

The Commissioner finds that the owner is correct to point out that OB 2023-3 is not applicable to the instant proceeding. Because the work at issue was completed in 2022, prior to the promulgation of OB 2023-3, the prior Operational Bulletin, namely OB 95-2, applies. It is noted that the RA applied the relevant provisions of OB 95-2 in her analysis even though she cited OB 2023-3.

In order to exempt a building from rent regulation based on substantial rehabilitation, an owner has the burden of showing that the building was in substandard or seriously deteriorated condition prior to the commencement of substantial rehabilitation work. OB 95-2, which was effective at the time of work at issue, establishes a presumption that a building is in substandard or seriously deteriorated condition when the rehabilitation work "was commenced in a building that was at least 80% vacant of residential tenants." This presumption has long been established and used by DHCR in substantial rehabilitation situations and is reasonably based on the fact that such degree of vacancy usually shows that most of the apartments in a building are not habitable, that the building is likewise uninhabitable, and that this lack of habitability shows the deteriorated conditions of the building.

In this case, the owner secured the vacancy of three out of the eight apartments by buyout agreements ranging from $150,000.00 ([redacted]) - $175,000.00 ([redacted] and [redacted]). The Commissioner finds that these buyout agreements, providing for the large sums paid pursuant to such agreements, show that these three apartments had substantial value, that they were therefore habitable, and that the building was not substandard given that three of the eight apartments therein (or 37.5% of the apartments) were habitable and of some considerable value. Nothing in these buyout agreements implies or establishes that substandard conditions had any bearing on the tenants' acceptance of such buyouts.

The Commissioner further finds that the fact that two units (Apt. [redacted] and [redacted]) were occupied by the owner immediately prior to the renovation shows the said units were also habitable at that time, further showing that the premises were not seriously deteriorated. In sum, five of the eight apartments in the building (or 62.5% of the apartments) were habitable prior to the work at issue, which supports the RA's conclusion that the building was not substandard at such time. The substantial rehabilitation provisions of the RSC are to encourage the rehabilitation of buildings

that are essentially uninhabitable and are not to facilitate a formal removal of otherwise habitable buildings from rent regulation. For this reason, the presumption that a building is substandard when 80% of the apartments in such building are vacant, is not a formal formula, but, rather, is based on reasoning that, if 80% of such apartments are not habitable, the building itself is very likely to be substandard. When vacancies occur, as they did in this case, pursuant to buyouts for large sums, and when an owner vacates two apartments prior to the commencement of work, such vacancies do not indicate that these apartments were uninhabitable, or that the building was therefore substandard, as explained above, and the presumption will not be applied.

The owner's allegation that the subject building was substandard because it had not been worked on for over 100 years is unsupported and is belied by the fact that five of the eight apartments were habitable and occupied, and that at least three of them had substantial value as habitable apartments, immediately prior to the work at issue, as explained above. The owner also alleges that the large amount expended on the work at issue proves that the building was in substandard condition prior to such work. However, the amount spent to improve or renovate a building does not in any was evidence the condition of the building prior to such work as even a new building in near perfect condition can be completely renovated. Further, the affidavits of the owner's architect and of the owner's GC are insufficient to show that the building was substandard. Such affidavits are less persuasive than the objective fact that five of eight apartments were habitable immediately prior to the work at issue and that the building was therefore not substandard as explained above.

The photographs submitted by the owner are insufficient to show that the building was substandard or seriously deteriorated pursuant to OB 95-2. These photographs were not labeled, there is no indication when the photographs were taken, and no indication regarding what part of the premises are the subject of the photographs. Nor did the photographs shows that the entire subject building was deteriorated. Further, again, these photographs are not persuasive in light of the objective fact that five of the eight apartments in the subject premises were habitable, which shows that the building was not substandard immediately prior to the work at issue.

**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:**
OCT 30 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

## 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.: MO210004RO |
| FREEHOLD 1333 LLC., | RENT ADMINISTRATOR'S DOCKET NO.: LO210004UC |
| **PETITIONER** | TENANT(S): VARIOUS |

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

The petitioner timely filed an administrative appeal (PAR) against an order issued on January 30, 2024 by the Rent Administrator (RA) concerning various housing accommodations in the building located at 122 29th Street, Brooklyn, NY 11232 which denied the petitioner's application for exemption from rent regulation by virtue of substantial rehabilitation.

The petitioner commenced this proceeding on March 30, 2023 by filing an application to determine whether the building located at 122 29th Street, Brooklyn, NY was exempt from rent regulation by virtue of substantial rehabilitation in accordance with Rent Stabilization Code (RSC) §2520.11(e) and DHCR Operational Bulletin (OB) 95-2. The petitioner purchased the premises in April 2019. The petitioner stated that the substantial rehabilitation commenced January 2020 and was completed January 2022. The petitioner claimed that the building was renovated under DOB Job Number 340700085 at the cost of $600,000.

The RA denied the owner's application for exemption finding that the evidence presented by the petitioner does not substantiate the owner's claim that 75% of the building-wide and individual apartment systems were replaced; that five out of six units in the building were occupied immediately prior to the renovation; that the owner has failed to submit sufficient evidence pursuant to DHCR OB 2023-3 to show that the building was in substandard or seriously deteriorated condition prior to the renovation of the building; and

that the owner is required to file annual registrations with DHCR and offer regulated leases to all tenants.

On PAR, petitioner asserts that the substantial rehabilitation of the building was completed in January 2022 at a cost of $600,000; that the exemption application was filed with DHCR in March 2023 and that the building rehabilitation was completed more than a year before the November 2023 code amendments and the issuance of OB 2023-3; that the application should have been processed under the old law and OB 95-2; that the petitioner completed the substantial rehabilitation in accordance with the law and regulations in effect prior to the November 2023 RSC amendments and OB 2023-3; that undue hardship results from application of the new laws; that application of the new law is a violation of the owner's due process rights; that the RA erred in determining that the building was not in sub-standard condition despite the fact the petitioner provided an affidavit from an architect attesting to same; that the building had four of six vacancies when the owner purchased the building in 2019; that the building was completely vacant at the time of the work; that the RSC does not require a building to be completely vacant to qualify for the substantial rehabilitation exemption; that the architect's affidavit submitted indicates that the building was vacant prior to the work being done and no documentation was submitted by the petitioner to suggest that the subject building had 5 occupied apartments before the work commenced; and that the work performed qualified for a substantial rehabilitation.

The Commissioner agrees with the owner's contentions and grants the PAR.

RSC amendments promulgated in November 2023 eliminated the presumption of substandard or seriously deteriorated condition when a building was 80% vacant of tenants. OB 2023-3 published on November 21, 2023 replaced OB 95-2 and likewise eliminated the vacancy presumption leaving owners with actually having to prove that the premises was substandard or seriously deteriorated even if no tenants were living there when the renovations commenced.

According to the evidence in this case, the substantial rehabilitation work took place between January 2020 and January 2022. The Commissioner finds that said work and the owner's application for exemption must be governed by the pre-amendment

version of RSC §2520.11(e) and OB 95-2. Therefore, the presumption of substandard or seriously deteriorated condition provided when a building was 80% vacant of tenants applies to this case. The RA erred in retroactively applying the rent law amendments of November 2023 and OB 2023-3 to the owner's substantial rehabilitation application.

The Commissioner finds that the owner set forth evidence that the building had four of six vacancies upon its purchase in 2019 and then was 100% vacant prior to the renovations. The owner also submitted an expert affidavit that the condition of the building was substandard and seriously deteriorated prior to commencement of the work.

The Commissioner finds that the RA had no justification for denying the application based on the fact that the "building was occupied just prior to the commencement of the renovation." No such standard exists under the law.

OB 95-2, in relevant part, outlines the criteria an owner must meet to prove substantial rehabilitation as follows:

> At least 75% of the building wide and apartment systems must have been completely replaced; and all ceilings, flooring and 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 are:
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> 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

Limited exceptions to the extent of the rehabilitation work may apply where the owner demonstrates that a particular component of the building or system has recently been installed or upgraded 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.

OB 95-2 goes on to state that the following documentation will be required by owners in support of a claim for substantial rehabilitation: records demonstrating the scope of the work actually performed which may include an itemized description of replacements and installation; copies of approved building plans; architect's or general contractor's statements; contracts for work performed; appropriate governmental approvals and photographs of conditions before, during and after the work was performed. Proof of payment by the owner for the rehabilitation work may also be required.

The Commissioner finds that the owner has produced sufficient documentation to support its claim of substantial rehabilitation, including documents specifically described in OB 95-2. The owner has produced DOB records, including work permits, cost affidavits and Letters of Completion by the DOB for the specific job; construction contracts and invoices, proof of payment, architectural plans and an expert affidavit from Charles Diehl, a licensed architect. Mr. Diehl's affidavit demonstrates the scope of the work performed and that the building was vacant and sub-standard. Mr. Diehl affirms that an elevator, incinerator and gas system were not present, thereby leaving 14 of the 17 systems outlined in OB 95-2. According to Mr. Diehl, 12 of said 14 systems were completely replaced (excluding fire escapes and pointing) or 86% of the systems were replaced with new systems, including plumbing, heating, electrical, intercoms, windows, roof, interior stairway, kitchens, doors and frames, bathrooms and that all walls, floors and ceilings in the apartments and common areas were replaced. The Commissioner finds that the owner therefore satisfied all requirements of OB 95-2 for a substantial rehabilitation.

Based on the foregoing, the Commissioner grants the owner's application and finds that the premises is exempt from rent regulation based on a substantial rehabilitation completed in January 2022.

**THEREFORE**, in accordance with the relevant Rent Regulatory Laws and Regulations and Operational Bulletin 95-2, it is

**ORDERED**, that this petition be, and the same hereby is, granted, and that the RA's order be, and the same hereby is, revoked.

**ISSUED:**

DEC 12 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

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