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.: MM210009RO

MEI LING PROPERTY LLC

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO.: KS210014AD

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On January 12, 2024, the above-named petitioner-owner timely filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on December 11, 2023 (the "Order"), concerning the housing accommodation known as 711 Evergreen Ave., Apt. [redacted] Brooklyn, NY 11207, wherein the Rent Administrator determined that the subject apartment is subject to the Rent Stabilization Law and Code, and set the legal regulated rent at $450.09 per month as of December 1, 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.

On appeal, the owner alleges that the Rent Administrator's Order should be modified and contends, in substance, that (1) DHCR has previously determined that the apartment in question is subject to rent stabilization and not rent control, (2) the legal rent for 2024 is $852.49 per month, (3) the tenant's claims of a $420 base rent lacks evidence, (4) the current tenant has not paid rent "before 2013" as purportedly evidenced by the three holdover cases that were started before 2013 by the former owner against the former owner's sister/current tenant, (5) the apartment was temporarily exempt since 1984 to present as it was occupied by the former owner and his family member, (6) the apartment's initial rent-stabilized registration occurred in 1984 with a registered rent of $217.12 a month, (7) the current rent of $852.49 should have been calculated by applying two years of Rent Guidelines board increases rate from the initial

registered rent. The tenant was offered an opportunity to respond by service of the PAR on *January 30, 2024.*

On August 12, 2024, the petitioner requested that the Agency expedite the PAR decision.[1]

Foremost, the Commissioner notes that the New York Civil Court has concurrent jurisdiction with the DHCR to determine housing matters. For administrative efficiency, the Agency do defer to the outcome of proceedings in a Civil Court where the causes of action are the same. Here, the issue of rent stabilization was previously adjudicated by the Civil Court, and the Court determined that the building was subject to rent stabilization. Hence, in this case, the Commissioner finds that DHCR is barred by the principles of res judicata and collateral estoppel from addressing the issue of whether the building was subject to rent stabilization.

Pursuant to the Rent Stabilization Code ("RSC") Section 2526.1(a)(3)(iii), "Where a housing accommodation is vacant or temporarily exempt from regulation pursuant to section 2520.11 of this Title on the base date, the legal regulated rent shall be the prior legal regulated rent for the housing accommodation, the appropriate increase under section 2522.8 of this Title, and if vacated or temporarily exempt for more than one year, as further increased by successive two year guideline increases that could have otherwise been offered during the period of such vacancy or exemption and such other rental adjustments that would have been allowed under this code."

Pursuant to the Rent Stabilization Code ("RSC") Section 2526.7(a), with regard to base dates, the base date shall be the date of the most recent reliable annual rent registration statement, filed and served upon a tenant six or more years prior to the filing of a complaint of overcharge or the initiation of a proceeding to determine the legal regulated rent of an apartment.

On July 6, 2022, the owner initiated the AD proceeding, Docket No. KS210014AD, herein below, to determine the rent regulatory status and the legal regulated rent of the subject apartment. On August 10, 2022, the rent agency mailed a notice of commencement of an administrative proceeding to the parties in this proceeding, with the Owner's application and exhibits dated June 23, 2022 attached. The notice afforded the parties an opportunity to submit a reply.

On August 25, 2023, under Docket No. KS210014AD, the owner submitted an answer to the notice, inquiring, in substance, about the apartment status and the legal rent "to register and collect." The tenant was offered an opportunity to respond on August 29, 2022 and on September 27, 2022, June 12, 2023, and July 12, 2023.

On November 10, 2023, the owner provided additional documents, including an affidavit that was provided in support of "Respondent's Motion for Summary Judgement" under Index No. L&T 61639/2019 signed by [redacted] and notarized on May 3, 2019, where the tenant

[1] The Commissioner notes that the tenant's request under the Freedom of Information Law ("FOIL") was processed, and that the requested documents were mailed to the tenant on September 9, 2024. However, no further submissions were received from the tenant during this review proceeding.

indicated that she was paying her brother, who was the owner at the time, $420.00 in cash for the apartment monthly rent.

The record contains documentation indicating that the subject owner, Mei Ling Property LLC, brought a holdover proceeding in Civil Court, Kings County, Housing Part O, Index No. L&T 57926/19, against the tenant(s) of Apartment [redacted] The subject owner alleged that the building contained five apartments and another space that was utilized by a business; that that "space" did not contain cooking facilities and only contained a refrigerator; and thus, the building was not subject to rent stabilization.

The respondent's position was that there was a total of six apartment units in the building, thereby conferring rent stabilized status.

The Court's records showed that the petitioner previously brought two summary holdover proceedings, including one for the "space" that allegedly was a commercial unit.

By order of Hon. Jeannine Baer Kuzniewski, on December 17, 2021, under Index No. L&T 57926/19, the court dismissed the petition based on a digitally-recorded trial held on November 6 and 8, 2019, August 8, 2021, September 23, October 12-13, October 27, and November 2, 2021, and awarded a judgement to the respondents. The Court found that there were at one time or are now, six residential units in the building and that the building is subject to Rent Stabilization.

On December 11, 2023, the Rent Administrator issued an Order Determining Facts or Establishing Rent and noted that pursuant to the Civil Court decision Index No. L&T 57926/19, the subject apartment is subject to the Rent Stabilization Law and Code and the tenant(s) therein are entitled to the rights and protections afforded under rent stabilization. It established the base date of July 6, 2016, with a base date rent of $420.00 per month. The order explained the reasoning for establishing it as follows: "Using this amount and applying corresponding subsequent two (2) year Rent Guidelines Board increases, the legal regulated rent is set at $450.09 per month as of December 1, 2023. All future increases shall be based on the increases authorized by the Rent Guidelines Board.

2016	Base Date Rent on July 6, 2016	$420.00 per month
2018	RGB Increase: 2% for a 2 year lease = $8.40	$428.40 per month
2020	RGB Increase: 2.5% for a 2 year lease = $10.71	$439.11 per month
2022	RGB Increase: 2.5% for a 2 year lease = $10.98	$450.09 per month

The owner is hereby directed to offer the subject tenant a rent stabilized lease and register the apartment with this Agency in accordance with the findings of this Order."

In light of the facts of this case wherein the prior owner did not provide leases to the subject tenant indicative of the rent stabilized rent, the Commissioner finds that the DHCR, pursuant to Section 2526.7(a), properly established the legal regulated rent for the subject apartment. Further, the courts have also ruled that in a case of a rent regulatory dispute, or where the parties have operated outside of the rent regulatory system for decades, the rent agency may use an appropriate method based on the equities involved (see *Matter of Summer Realty Corp.,*

Admin. Rev. Docket No. DM220003RP, which was affirmed by the Hon. Debra Silber, J.S.C., Supreme Court of the State of New York, County of Kings, Ct. Index No. 6085/2016 on September 12, 2017). These principles are seen as applicable to the specific facts of the instant case. The Commissioner therefore finds that the base date of July 6, 2016, with a base date rent of $420.00 per month is reasonable and proper in this case based on the consideration of equities, including the history of the subject unit and the previous ongoing legal disputes.

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

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

ISSUED: FEB 19 2025

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.dhcr.ny.gov

Right to Court Appeal

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

There is no other method of appeal.

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

[redacted]

PETITIONER

ADMINISTRATIVE REVIEW DOCKET NO.: KP120025RT

RENT ADMINISTRATOR'S DOCKET NO.: JR120036AD

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On April 14, 2022, the above-named petitioner-tenant filed a Petition for Administrative Review ("PAR") against JR120036AD, an order the Rent Administrator issued on March 11, 2022 (the "order), concerning the housing accommodation known as 32-15 43rd Street, Apartment [redacted] Long Island City, New York, wherein the Rent Administrator denied the Petitioner's request for succession rights to the rent controlled apartment, finding the tenant failed to provide sufficient evidence to establish that the tenant continuously resided in the subject apartment for at least two years prior to the tenant of record's permanent vacatur, and that the subject apartment was her primary residence during the requisite period.

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 Petitioner-tenant, through counsel, asserts that the order appealed herein should be reversed because the Rent Administrator erred in determining that the petitioner was not entitled to succession rights to the subject apartment. The tenant avers in substance, that the owner harassed and forced the tenant to leave the subject apartment due to disrepair and entered the apartment on multiple occasions without permission or authority. The tenant further avers that the tenant of record, [redacted] (the subject tenant's mother) was evicted from the subject apartment which she lived in with her daughter, [redacted] (the subject Petitioner-tenant). The Petitioner also claims that she lived with her mother at the subject

apartment for more than two years prior to the said eviction. The Petitioner acknowledges that she has "ownership interest in another piece of property", and that she lived at a different address prior to moving back to the subject apartment [redacted] with her mother, at least two years prior to May of 2019.

By correspondence received from the owner's counsel, the owner opposes the Petitioner-tenant's petition asserting, inter alia, that the owner commenced a non-primary residence proceeding against the tenant of record, and that the owner discontinued the proceeding and repossessed the subject apartment upon [redacted] demise in March of 2020. Lastly, the owner asserts that the Rent Administrator correctly determined that the tenant lacks succession rights to the subject apartment as the Petitioner-tenant failed to submit sufficient documentation to substantiate their claim, and as such, the petition should be denied.

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

This proceeding was initially commenced on June 28, 2021 by the tenant alleging that they had succession rights to the subject apartment. The tenant claimed that she lived with her mother, [redacted] the rent-controlled tenant of record, for more than two years prior to the tenant of record's death on March 8, 2020. The tenant further claimed that she lost possession of the subject apartment after the owner changed the locks to the apartment door in December of 2020, and that she could not regain possession of the apartment after the locks were changed.

The owner was afforded an opportunity to respond to the tenant's application by service of the tenant's application on the owner on August 11, 2021. On September 9, 2021, the owner answered and acknowledged that they repossessed the apartment after the tenant of record passed away because the apartment was vacant. The owner disputed the tenant's claim that the tenant resided in the apartment with her mother prior to her mother's demise; and that the owner commenced a non-primary residence proceeding against the tenant of record, which was discontinued, and the owner subsequently repossessed the subject apartment upon [redacted] demise. The owner submitted along with their answer, an affidavit from the building's management personnel, [redacted] and affidavits from the tenants of apartments [redacted] and [redacted] stating that neither [redacted] resided in the premises since at least 2018; a Power of Attorney executed in favor of the tenant; a copy of deed in the name of the tenant, and licensing/professional information of the subject tenant all showing a different address from the subject apartment; and a transcript of deposition in the said non- primary residence proceeding. The record indicates that the Rent Administrator, in facilitating the resolution of this discord, requested additional information from the tenant in order to ascertain the tenant's succession rights to the subject dwelling accommodation.

The Rent Administrator specifically requested from the tenant, a copy of the death certificate of [redacted] and the birth certificate of [redacted]; proof of [redacted] relationship to [redacted]; and proof that the Petitioner occupied the apartment for at least two years prior to the date that the tenant of record vacated the subject apartment. The Administrator specified that such proof may be in the form of voter's registration information, driver's license, utility bills,

income tax returns, mail addressed to the tenant which shows the subject address and apartment number, or any other documentary evidence proving the tenant's occupancy of the apartment.

In the tenant's response to the Rent Administrator's request, the tenant stated that the subject premises was her primary residence until she got married, and that she returned to the apartment to live with her mother around 2017. The tenant attached a copy of her birth certificate, a death certificate of her mother, cable bills ranging in date from December 2017 to March 2020, joint account statements belonging to the tenant and her mother, and cancelled checks for rent payments made in 2017.

Subsequent thereto, the Rent Administrator, based upon the evidence in the record, including the tenant and the owner's submissions and the exhibits supporting their claims, determined that the tenant failed to substantiate her succession rights claim to the subject apartment, as the tenant did not provide sufficient evidence to demonstrate that the tenant resided in the apartment as her primary residence for the requisite period of time immediately prior to the death of [redacted], the tenant of record.

At the outset, the Commissioner notes that it is for DHCR to weigh the evidence in a proceeding before it, and that issues as to credibility and weight of the evidence are for the Rent Administrator to determine, as a fact finder. Here, in consideration of the evidence submitted before the Rent Administrator, it is undisputed that the Petitioner-tenant did not submit the required documentation requested by the Administrator to support her claim of succession rights to the subject apartment, during the processing of the underlying case – evidence that the tenant resided at the apartment for at least two years prior to the date that the tenant of record vacated the subject apartment. The requirement was that such proof could be in the form of voter's registration information, driver's license, utility bills, income tax returns, mail addressed to the tenant which shows the subject address and apartment number. The Commissioner notes that the Petitioner-tenant failed to provide the specific documents requested by the Administrator.

The Commissioner further notes that there was no dispute raised as to the fact that the subject tenant, [redacted] is the daughter of [redacted] the tenant of record. As such, the only issue with respect to succession rights is whether [redacted] maintained a primary residence in the apartment with her mother for at least two years immediately prior to her death in March of 2020. The documentary evidence submitted by the subject tenant does not establish the two-year residency requirement needed to be considered a successor tenant. Thus, succession rights will not be granted where the family member of the tenant of record fails to submit supporting evidence, including, but not limited to, voter's registration information, driver's license, income tax returns, and mail addressed to the tenant showing the subject address and apartment number. Therefore, the Commissioner finds that the subject tenant has not met the burden of proving that she primarily resided with the tenant of record, [redacted] for two years immediately prior to her death in March of 2020 as required for successor tenancy. Accordingly, the Petitioner is not entitled to succession rights in the subject premises. See the Matter of East Prospect Props., LLC v Blakeney, 2019 N.Y. Misc. LEXIS 1967, 2019 NY Slip Op 50602(U), wherein the Court held that the documentary evidence submitted by the tenant did not establish the two-year residency requirement needed to be considered a successor tenant. Additionally, the Commissioner notes that the burden of presenting legally sufficient proof to establish primary

residency rests with the party claiming succession rights (see Gottlieb v Licursi, 191 AD2d 256, 595 N.Y.S.2d 17 [1993]). The Commissioner finds that based on the record, such necessary showing was not made by the petitioner.

Based on the above, the Commissioner finds that the petitioner has asserted no grounds upon which the appealed order may be modified or revoked.

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: MAR 12 2025

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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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO.: LW420008RT

[redacted]

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO.: LN420124AD

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ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

On November 10, 2023, the above-named Petitioner-claimant re-filed a Petition for Administrative Review ("PAR") against LN420124AD, an order the Rent Administrator issued on August 22, 2023 (the "Order"), concerning the housing accommodation known as 175th East 101st Street, Apartment [redacted] New York, New York, wherein the Rent Administrator denied the Petitioner's request for succession rights to the rent controlled apartment, finding that the subject tenant failed to submit evidence necessary to establish the Petitioner's claim of succession rights to the subject apartment.

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

In the PAR, the Petitioner, through counsel, asserts that the order appealed herein should be reversed because the Rent Administrator erred in determining that the petitioner was not entitled to succession rights to the subject apartment. The Petitioner claims that they substantiated their claim that the tenant of record, [redacted] was the Petitioner's father with various documents such as a copy of [redacted] 1987 Tax Return, a copy of a certificate of insurance, letters, and a copy of the Petitioner's 1991 Driver's License. It is the claimant's contention that said documents sustain the Petitioner's claim of their relationship to the tenant of record, and that the Petitioner was unable to obtain more evidence due to time constraints and other technical challenges from certain agencies. Lastly, the Petitioner argues that the

documentary evidence submitted are unrefutably accurate and cites to Section 2204.6(d)(1)(iii) of the New York City Rent and Eviction Regulations ("the Regulations") to support Petitioner's argument that the Petitioner, falling into a protected class[1] under said provision, is excluded from the two-year residency requirement.

By correspondence received from the owner's counsel, dated December 12, 2023, the owner opposed the Petitioner-claimant's petition asserting, in substance, inter alia, that the Petitioner's succession claim was determined in the Housing Court, which DHCR shares concurrent jurisdiction with, and the Court already issued a final judgment on the case, and that DHCR thus lacks jurisdiction to entertain same.

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

This proceeding was initially commenced on February 9, 2023 by the Petitioner-claimant alleging that they had succession rights to the subject apartment. The Petitioner claimed to have lived with his father, [redacted] the rent-controlled tenant of record at the subject apartment since 1968 until [redacted] on January 24, 2022. The Claimant submitted the following documents to support their claim: [redacted]s 1987 Tax Return, a copy of a certificate of insurance, various lawyer-client correspondences, the claimant's birth certificate, family pictures, and a copy of the Petitioner's 1991 Driver's License.

The owner was afforded an opportunity to respond to the tenant's application by service of the tenant's application on the owner on March 22, 2023. On April 12, 2023, the owner answered asserting that the proceeding should be dismissed as there was already a holdover court proceeding in the Housing Part of the Civil Court of [the City of] New York[2], for the same cause of action (succession rights claim to the subject apartment) pending in the New York County. The owner further claimed that the claimant had not met the requirement of the Regulations, which states that a successor must have lived in the subject apartment for a period two years prior to the vacatur of the tenant of record.

The underlying record of proceeding reveals that on May 23, 2023, the Rent Administrator requested from the claimant, proof of initial date of occupancy and a history of rents paid; conclusive proof of occupancy prior to July 1, 1971, in the form of voter's registration

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[1] "The minimum periods of required residency set forth in this subdivision shall not be deemed to be interrupted by any period during which the "family member" temporarily relocates because he or she:
(i) is engaged in active military duty;
(ii) is enrolled as a full time student;
(iii) is not in residence at the housing accommodation pursuant to a court order not involving any term or provision of the lease, and not involving any grounds specified in the Real Property Actions and Proceedings Law;
(iv) is engaged in employment requiring temporary relocation from the housing accommodation;
(v) is hospitalized for medical treatment; or
(vi) has such other reasonable grounds that shall be determined by the city rent agency upon application by such person.

[2] Matter of 169-75 Operating, LLC v. The Estate of [redacted].., Index No. L&T 313049/2022.

information, driver's license, utility bills, income tax returns, mail addressed to the claimant which shows the subject address and apartment number, or any other documentary evidence proving the claimant's occupancy of the apartment; and proof that the Petitioner occupied the apartment for at least two years prior to the date that the tenant of record vacated the subject apartment. In the claimant's July 6, 2023 response to the Rent Administrator's request, the claimant submitted a copy of [redacted] 1987 Tax Return, a copy of a certificate of insurance, letters, and a copy of the Petitioner's 1991 Driver's License.

Thereafter, the Rent Administrator carefully reviewed the evidence in the record, including the claimant and the owner's submissions and the exhibits supporting their claims, determined that the claimant failed to submit evidence necessary to establish his succession rights claim to the subject apartment.

The Commissioner notes that the Civil Court has concurrent jurisdiction with the DHCR in determining the rent regulatory status of an apartment; and it is an established DHCR policy that where an issue initiated by a Petitioner has been raised in the Civil Court proceeding, the Agency will defer to the outcome of that proceeding for the sake of administrative efficiency.

The Commissioner further notes that per the owner's submissions on appeal, it is undisputed that Honorable Judge, Karen May Bacdayan of the Civil Court of the City of New York, Housing Part F, Index Number: 313049-22, issued an order on August 3, 2023 finding that the Petitioner is not a successor tenant as they claimed in said proceeding. Separate from the *ad idem* findings in the Rent Administrator's order, Docket No. LN420124AD and the Decision/Order of the court referenced above, the Commissioner is additionally constrained to foreclose the consideration of this Petitioner's request as the DHCR is barred by the principles of res judicata and collateral estoppel from addressing the Petitioner's claim that they have succession rights to the subject rent controlled apartment as the Civil Court has determined otherwise. As such, the Petitioner either needs to seek vacatur of the Housing Court decision or pursue an appeal to the Appellate term. Accordingly, this Petitioner's appeal is rejected.

In light of the foregoing, the Commissioner finds that the Petitioner'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: MAR 12 2025

Woody Pascal
Deputy Commissioner

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Right to Court Appeal

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW DOCKET NO.: MS410008RO

1374 THIRD AVENUE CORP.

PETITIONER

RENT ADMINISTRATOR'S DOCKET NO.: MO410004AD

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ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

On July 15, 2024, the above-named Petitioner-owner properly re-filed a Petition for Administrative Review ("PAR") against an order the Rent Administrator issued on May 28, 2024 (the "Order"), concerning the housing accommodation known as 1374 3rd Avenue, Apartment [redacted] New York, New York, wherein the Rent Administrator denied the owner's request to amend the Legal Regulated Rent (LRR) listed for the subject apartment registration for the year 2022 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.

In the PAR, the Petitioner seeks a reversal of the underlying Rent Administrator's order Docket No. MO410004AD[1]. The Petitioner-owner avers, in pertinent part, that the legal rent for the subject apartment for the year 2022 (from April 1, 2022 to March 30, 2023) should be changed from $1.00 to the correct amount of $1,160.09, per the last lease renewal dated March 6, 2018. The owner indicated that the LRR for the years before the 2022 registration year (i.e., 2019, 2020 and 2021) and the 2023 registration year shows $1,160.09. The owner asserts that the Rent

[1] The Commissioner notes that on its refiled PAR, the owner incorrectly states that the order being appealed is MR410012RO – the initial owner's PAR against the underlying Rent Administrator's order which was dismissed for procedural defects; said mistake is noted herein as the appealed order is the Rent Administrator's order Docket No. MO410004AD.

Administrator should not have terminated the proceeding by deferring to the outcome of the Civil Court proceeding given that the DHCR and the Court proceedings pertain to different subject matters, and that the Civil Court proceeding has no correlation with the DHCR matter. Specifically, that in the DHCR proceeding, the owner was requesting an amendment to the apartment registration [LRR] amount, while the New York Civil Court matter under Index No. 306915/2022 pertains to a nuisance action. The Petitioner-owner submitted the following documents as corroborative evidence of claim: renewal lease purportedly executed by the owner and the tenant dated March 6, 2018, for a lease term beginning April 1, 2018 to March 31, 2020; DHCR Apartment Registration Rent Roll Reports from 1990 – 2023[2]; Order of the Civil Court of the City of New York, County of New York, Housing Part R, under Index No. 306915/2022[3]; the rejected PAR Docket No. MR410012RO; and the Rent Administrator's order being appealed.

The tenant did not submit any response objecting to the Petitioner's appeal during this administrative review.

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

The record indicates that the owner initiated the underlying proceeding on March 1, 2024 for the purpose of requesting an amendment to the 2022 apartment registration, requesting that the apartment registration for the subject unit should reflect the correct [undisputed] Legal Regulated Rent ("LRR") amount of $1160.09, instead of the $1.00 listed as the LRR. The owner provided documentation to support this owner's request for administrative determination, including: DHCR Apartment Registration Rent Rolls from 1990 – 2023; 2023 Property Registration form from the New York City Housing Preservation and Development ("HPD"); renewal lease executed by the tenant and the owner showing a commencement date of April 1, 2018 to March 31, 2020; and order of the Civil Court of the City of New York, County of New York, Housing Part R, under Index No. 306915/2022.

The Commissioner notes that the Rent Administrator, on May 28, 2024, denied the owner's application to amend the 2022 apartment registration, based on the fact that there was a pending proceeding in the Civil Court, under Index No. 306915/2022.[4]

At the outset, the Commissioner notes that although the New York Civil Court has concurrent jurisdiction with the DHCR to determine issues pertaining to regulatory status and other rent regulatory matters, the records show that the facts and the subject matters of the stated Civil Court proceeding and the proceeding herein below are not the same and/or distinguishable, such that the outcome of one may not disturb the other, as the Civil Court proceeding under Index No.

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[2] The rent rolls (apartment registration reports) show that the last LRR for the subject apartment prior to April 8, 2019 was $1,137.34; for registration years beginning April 8, 2019 to April 1, 2021, the amount was $1160.09; for 2022 registration, it was $1.00; and the 2023 registration was listed as $1160.09.

[3] Allegations concerning tenant's behavior – nuisance.

[4] The Rent Administrator noted that the Civil Court decision may affect the legal rent of the subject apartment, as well as the amendments to the apartment registration; and that it would be premature to allow any changes at present. The Administrator further noted that the Petitioner-owner may be directed concerning the apartment registration in the Court proceeding, and that the owner may refile the application upon the conclusion of the Court proceeding should the facts so warrant.

306915/2022 (submitted by the owner) pertains to a nuisance action and the matter before the Division pertains to the correction of the stated LRR amount for the 2022 registration year in the Division's database, particularly where the three registration years preceding 2022 and the 2023 registration year are showing the same $1160.09.

After the review of the entire record, the Commissioner finds that the owner' appeal has merit, and that the Rent Administrator incorrectly denied the owner's application to amend the apartment registration for 2022. Notably, apartment registrations can be amended for ministerial issues such as clerical or typographical errors, in accordance with Section 2528.3 (c) of the Rent Stabilization Code ("RSC" or "the Code"), Section 2528.3(c) which was added to the regulations by the Rent Code Amendments of 2014, provides that an "owner seeking to file an amended registration statement 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 has already been directed by DHCR or is directed by another governmental agency that supervises such housing accommodation." In reviewing an amendment application, the Rent Administrator is tasked with determining whether sufficient justification has been provided by the owner for amending a specific portion, or portions, of an existing registration to safeguard the integrity of the information currently contained in the registration system.

In the instant case, the owner requested that the Rent Administrator amend the apartment registration for 2022 to reflect the correct LRR amount of $1160.09, instead of the $1.00 listed as the LRR. As noted above, amendment of this nature – to correct ministerial issues such as clerical or typographical error is permissible under Section 2528.3 of the Code

The Commissioner notes that the owner provided sufficient documentation, as indicated above, to support the owner's amendment request and claim that the 2022 registration did not reflect the correct amount of rent for the subject apartment. During the Rent Administrator's proceeding, the owner provided the last renewal lease, and the DHCR rent rolls that showed that the last regulated rent of the subject apartment was $1,160.09.

Based on the foregoing, the Commissioner finds that based upon the entire record, an amendment to the rent amount from $1.00 to $1,160.09 is warranted; and that the owner's petition should be granted to the extent of amending the apartment registration [LRR] amount for the year 2022 to read $1160.09.

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

ORDERED, that this petition be, and the same hereby is, granted, and that the Rent Administrator's order Docket No. MO410004AD be, and the same hereby is, reversed as delineated above.

ISSUED: MAR 19 2025

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 PLA ZA 92-31 UNION HALL STREET JA MAICA, NEW YORK 11433

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IN THE MATTER OF THE ADMINISTRATIVE APPEALS OF

ADMINISTRATIVE REVIEW DOCKET NO.: LM430005RT

Various Tenants of 574 West End Avenue New York, NY

RENT ADMINISTRATOR'S DOCKETNO.: JV430001OD

PETITIONERS

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ORDER AND OPINION MODIFYING THE RENT ADMINISTRATOR'S ORDER

The Petitioners[1] timely filed an administrative appeal against an order issued on December 8, 2022, by the Rent Administrator concerning the housing accommodations known as 574 West End Avenue, New York, NY, which granted the Owner's application for a modification of services, to wit: convert manually operated freight elevator into an automatic passenger elevator; modify the trash disposal procedure; and transition the porter into a part-time doorman, in the subject premises.

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

The Petitioners, individually, request either a reversal or a modification of the Rent Administrator's order and alleging, in substance, that the challenged order improperly granted the Owner's Application to Modify Services (OD).

The petitioners argue severally, all or part of the following contentions: that the owner's three proposals contained errors as they totally misrepresented the nature of the modifications performed in the subject premises; that regarding the owner's request to "Convert manually operated freight elevator into an automatic passenger elevator", the elevator was previously used by the porters, at night, for trash collection, and by movers from time to time; that, however, as of the time of the

[1] [redacted] - Apt. [redacted], [redacted] – Apt. [redacted] and [redacted] - Apt. [redacted]

cited underlying order, the tenants must bring their garbage downstairs to the basement (a decrease in service); that converting the elevator into a self-operated elevator does not alleviate the burden of the two passenger elevators as the elevator can only be reached by climbing three steps which the disabled and the elderly find impossible to navigate; that sorting trash is time-consuming, labor-intensive and unsanitary imposition on tenant-protected rights; that the "Modify the trash disposal procedure" now has the tenant performing the duties of a porter; that per "transition the porter into a part-time doorman..." proposal by the owner, there had been no part-time doorman even though the owner created a sort of doorman station; and that only one of the three elevators gives access to all apartments in the building, but malfunctions frequently, per the FDNY and/or the FDNY records.

The owner responded to the tenants' PAR by submission dated February 8, 2023, that the petitions must be denied per §2529.6 of the Rent Stabilization Code as the issues and allegations raised in all the tenants' PARs were not raised below; that two of the petitions were lately filed, i.e., that tenant [redacted] PAR bears DHCR stamp of January 14, 2023, while tenant [redacted] has a January 13, 2023 DHCR stamp.

The owner argues that on merit basis, tenants [redacted] and [redacted] did not respond before the Rent Administrator; that while tenant [redacted] responded on November 4, 2022, the response merely set forth several questions concerning the proposed service modifications; that the tenants raised issues which they had been previously advised were not subject of the application and could not be addressed in the proceeding; and that the owner had been granted permission in the Rent Administrator's order of December 8, 2022.

At the outset, the Commissioner notes that the owner's allegation that two tenants' petitions were lately filed is incorrect. The United States Postal Service dates on the PAR envelopes indicates that all the three PARs herein were filed before or by January 12, 2023, and thus all timely filed.

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

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

Substantively, the Commissioner has carefully considered the entire record, is of the opinion that the Rent Administrator's order should be modified.

With respect to the review of the tenants' PARs the Commissioner notes that the record shows that tenants [redacted] and [redacted], although served with the notice of the owner's OD application, did not respond before the Rent Administrator, and are thus precluded from raising any issues concerning

the Rent Administrator's order herein. With respect to tenant [redacted] who responded, the Commissioner notes that the tenant objected to the owner's OD application but only asked certain questions, without making specific complaints opposing the proposed modifications. Accordingly, the Commissioner finds that since the petitioner(s) failed to raise any specific objections to the quality or adequacy of the proposed modifications while this proceeding was pending before the Rent Administrator, pursuant to Section 2529.6 of the Code, the issues raised in this PAR may not now be considered.

The Commissioner notes, however, that Section 2527.8 of the RSC permits the DHCR, on application of either party, or on its own initiative, to issue a superseding order modifying or revoking any order issued by it where the DHCR finds that such order was the result of, *inter alia*, irregularity in vital matters. Thus, during the review of the casefile herein, the Commissioner finds that a modification of the Rent Administrator's order was necessary.

To the extent that the owner was granted permission to modify the trash/recycling disposal procedure from the tenants dropping of their trash and recyclables in bins by the freight elevator where the garbage gets picked up by the porter to now having to transport their own garbage to the basement, the Commissioner finds that this change constitutes a decrease in service warranting a concomitant rent reduction. DHCR past precedents dictates that a rent reduction is warranted in this instance. See DHCR orders, Docket Nos. CO110032RT; UJ420012RP. Hence, Section 2527.8 of the Code is invoked in the instant PAR proceeding. Accordingly, the Rent Administrator's order, Docket No. JV430001OD, is herein modified to include a $5.00 permanent rent reduction for all affected rent regulated tenants, effective January 1, 2023, the first rent payment date following the Rent Administrator's order, Docket No. JV430001OD, which granted the owner permission to modify services.

Any arrears that may be due to the tenants as a result of this Commissioner's order may be paid in monthly installments, within six (6) months from the issue date of this Commissioner's Order.

The Commissioner notes that the tenants may commence a rent reduction proceeding for any reduction in individual apartment services, and/or file a building-wide rent reduction application using Form-RA-84 for any [unfulfilled] conditions outlined in the modification of services order and/or for conditions in the common areas of the building, should the facts warrant.

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

ORDERED, that the Rent Administrator's order be modified as delineated above.

ISSUED: MAR 19 2025

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.: MQ010004RO

23 JOHN STREET LLC.

RENT ADMINISTRATOR'S DOCKET NO.: LS010007UC

PETITIONER X

TENANTS: VARIOUS

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 April 9, 2024 by a Rent Administrator (RA) concerning the premises located at 23-27 John Street, Kingston, New York, 12401. Said Order denied the petitioner's Application to exempt the premises from rent regulation by virtue of substantial rehabilitation because the owner had not established that the building was in substandard condition prior to commencement of the work at issue, because the owner had not established that 75% of building-wide systems and the common areas had been completely replaced as required by Operational Bulletin 95-2 (OB 95-2), and because the owner failed to provide necessary documentation as requested by the RA on November 20, 2023, and January 25, 2024.

On PAR, the owner contends that the RA arbitrarily and capriciously denied the owner's Application for substantial rehabilitation; that the owner did not receive any requests for additional information (RFAIs) from the RA; that the owner was not granted sufficient opportunity to produce additional necessary proof in support of its Application; that DHCR usually takes several years to rule on exemption applications such as the one filed by the owner herein, and the RA issued her Order in less than nine months and without sufficient information to make a proper determination; that the owner provided evidence of substantial rehabilitation that included proof of payment, architectural plans, visual documentation of the condition of the building prior to the substantial rehabilitation, photographs of work as it was allegedly being performed, and photographs of the alleged completed renovations; that [redacted], Director of Operations at Opus management Group, the managing agent for the owner, stated that no RFAI was ever received in connection with the owner's substantial rehabilitation Application; and that

DHCR has permitted cases with similar facts to the instant case to be remanded to the RA for further consideration (citing PAR Order JU210004RP).

In a supplement to the PAR, the owner contends that the subject building was exempt from rent stabilization under Emergency Tenant Protection Act (EPTA) §5(a)(5); that the subject building was vacant, in substandard, and seriously deteriorated condition when it commenced the substantial rehabilitation project; that 93% of the building's apartments systems described in OB 95-2 were replaced; and that [redacted] stated that, while the administrative records include a copy of the Request for Additional Information/Evidence dated January 25, 2014, the owner did not receive this Request in the mail, rather, the owner was able to receive a copy of the RFAI as a result of an owner's telephone call to DHCR's District Rent Office (DRO) inquiring about its substantial rehabilitation Application. Attached to the supplemental PAR, the owner submitted additional documentation including alleged affidavits, and building permits and certificates of occupancy issued by the Kingston Department of Buildings.

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

Contrary to the owner's allegation, the RA's proceeding was not in any way rushed or expedited, but, rather, was properly and timely processed in the ordinary course of Agency operations. Also, contrary to the owner's allegations, and as outlined herein, the owner was afforded ample opportunity to submit necessary evidence and failed to do so.

The Commissioner finds that, despite the fact the RFAIs dated November 20, 2023 and January 25, 2024 were returned to DHCR, the owner did actually received both of these RFAIs and in fact responded to both of these RFAIs. The owner's responses to these RFAIs were fully considered by the RA prior to the issuance of her Order, the Order under consideration herein, and the owner was, accordingly, afforded due process of law. It is noted that, on PAR, the owner concedes that it received the January 25, 2024, RFAI, and that the two RFAIs at issue were identical and requested the same information from the owner. It is further noted that, while the RFAIs asked for 15 items, the owner, in its two responses thereto, only provided information allegedly addressing only one of these 15 items. It is further noted that the above-referenced RFAIs state that "[i]f you are the applicant in this matter, your failure to comply with this request may result in an Order dismissing your application in whole or in part." The owner was therefore on notice that failure to comply with the RFAIs could result in dismissal of the Application.

The owner has submitted additional evidence for the first time on PAR, including building and plumbing permits, certificates of occupancy, a deed, and letters from [redacted] alleging non-receipt of RFAIs and from the owner, alleging that the building was rehabilitated and listing work that was supposedly completed, that 12 of the 15 required building-wide systems (listed by the owner) were replaced, and that the building was substandard or seriously deteriorated prior to the work at issue. Pursuant to Emergency Tenant Protection Regulation (ETPR) §2510.3, the scope of review on PAR is limited to facts and/or evidence before the RA unless the petitioner establishes that said facts and/or evidence could not reasonably have been offered or included in the proceeding prior to issuance of the order being appealed. There is no reason in the record, and

the owner has not provided any reason, why the new evidence submitted on PAR could not have been submitted to the RA below. Accordingly, pursuant to the ETPR, such evidence is beyond the scope of review and may not be considered in the instant proceeding.

While the owner refers to OB 95-2 and to Operational Bulletin 2023-3 (OB 2023-3), the work at issue herein was commenced in 2019, prior to the promulgation of OB 2023-3, and only OB 95-2 applies to the instant case. Pursuant to OB 95-2, in order to exempt a rent stabilized building due to substantial rehabilitation, the owner must establish that such building was substandard or seriously deteriorated when the rehabilitation was commenced. While the owner therefore has the burden of showing that the building was in a substandard or seriously deteriorated condition prior to the work at issue, it has failed to do so in this case as explained below.

Before the RA, the owner failed to establish that the building was in substandard or seriously deteriorated condition prior to the work at issue, submitting only photographs in support of its contention that the building was in such condition. Although such photographs show that some parts of the building were not in good condition, the photographs are not labeled, and therefore they only show that certain portions of said building, at some unknown time, were deteriorated. It is therefore impossible to tell from the photographs if the entire building was in fact seriously deteriorated, as required by OB 95-2. It is noted that, on PAR, the owner submitted a letter from the owner (the owner incorrectly calls this document an "affidavit") stating that the premises were substandard prior to commencement of the work at issue. However, this document is beyond the scope of review, as explained above, and, even if it were to be considered, an unnotarized statement of the owner, supported only by unlabeled photographs, would not be sufficient to establish that the building was substandard prior to the work at issue.

Regarding the owner's allegation that it completely replaced 75% of the building-wide and individual apartment systems and replaced "all ceilings, flooring and plasterboard or wall surfaces in common areas" as required and outlined in OB 95-2, the RA correctly stated that the owner failed to provide work contracts, invoices, proof of payment, full-scale building plans, or an affidavit from the professional who filed the building plans. The RA also correctly stated that these items were requested by the above-referenced November 20, 2023, and January 25, 2024 RFAIs which specifically asked the owner, among other things, "5. What was the total cost of the project? Provide invoices and work contract related to the renovation. 6. Submit proof of payment for the renovation such as cancelled checks...8. Provide a full-scale architectural plan for the project approved by Kingston's Building Department. 9. Provide proof all open permits and jobs filed were inspected and signed off by the City of Kingston. 10. Provide an affidavit (sworn statement) from the Architect or Engineer who filed the job with the City of Kingston. The affidavit must describe in detail the specific building-wide and individual apartment systems replaced, and the nature of the work done in common areas...". While the owner responded to these RFAIs, as explained above, it submitted only a photograph of a computer screen showing a list of permits and of certificates of occupancy issued by the City of Kingston. Accordingly, before the RA, the owner in total submitted only the above-referenced photograph of a computer screen showing permits and certificates of occupancy, the above-referenced unlabeled photographs, a photograph of an unsigned Contractors Invoice for electrical work seemingly for $25,000.00 with

a deposit of $13,600.00, a Transaction List by Vendor and a Payable Register created by the owner allegedly showing payments for work performed, and a reduced copy of plans. The Commissioner finds that this very limited evidence is insufficient to show that 75% of building-wide and individual apartment systems were completely replaced and that sufficient work was done in common areas as required by OB 95-2

Again, despite being asked two times by the RA, as explained above, the owner failed to submit any objective proof of the cost of and payment for the work at issue, failed to submit contracts or invoices for any work except perhaps for some electrical work, failed to submit full scale architectural plans approved by Kingston's Building Department, failed to submit sufficient proof of open permits and jobs, and failed to submit any affidavit from the architect or engineer whole filed the job with the City of Kingston. As stated above, evidence that was not submitted to the RA may not be considered for the first time on PAR (see ETPR §2510.3). However, even if the additional evidence submitted on PAR were to be considered, it would not show that 75% of the building-wide and individual apartment systems were replaced and that adequate work was performed in the common areas. The owner has still failed to submit objective proof of costs of and payment for the alleged work (invoices marked "paid in full", cancelled checks etc), has failed to submit any objective documents from third parties showing work on any the required systems (such as contracts, affidavits, invoices, proposals etc.) (except perhaps the Invoice for work on the electrical system referenced above- it is noted that at no time in this proceeding has the owner submitted any permit for electrical work), has still failed to submit full sized architectural plans, has still failed to submit contracts for the work (excepting at most the one Invoice for electrical work mentioned above), and has still failed to submit any affidavit from a professional involved with the work at issue. In sum, the RA was correct to find that the owner had not shown that it performed the necessary work to exempt the building from rent regulation based on substantial rehabilitation; further, the owner's new supplemental evidence may not be considered for the first time on PAR, and, even if such supplemental evidence were to be considered, it would not be sufficient to exempt the building from rent regulation based on substantial rehabilitation.

The owner is not correct in its allegation that prior Agency Orders have remanded substantial rehabilitation Applications to the RA in analogous situations. The owner refers specifically to Order JU210004RP in which the matter was remanded to the RA under a so-ordered Stipulation entered into pursuant to an Article 78 proceeding in Court challenging a PAR Order. In said Stipulation it was agreed that the matter would be reconsidered by the RA and that such reconsideration would include a review of the RA's record and of new documents submitted in the Article 78 proceeding, specifically a Transcript of Proceedings, buyout agreements, and certain leases. In the instant case there has been no judicial Article 78 proceeding, no transcript of proceedings, no Stipulation, and no buyout agreements or specific leases that have not been considered. Accordingly, Order JU210004RP is not analogous to the instant proceeding and does not mandate remand of this matter by the Commissioner to the RA. The Commissioner notes that

the substantial rehabilitation Application at issue in JU210004RP was ultimately denied under PAR Order LP210003RO issued on July 18, 2023, based on owner's failure to prove that building was substandard or seriously deteriorated.

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:
JAN 10 2025

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
Jamaica, NY 11433
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Right to Court Appeal

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There is no other method of appeal.

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

IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	ADMINISTRATIVE REVIEW DOCKET NO.: MV210003RO
CLARISTA REALTY CORP.,	RENT ADMINISTRATOR'S DOCKET NO.: LO210003UC
PETITIONER	

ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner - owner timely filed an administrative appeal (PAR) against an order issued on September 4, 2024 by the Rent Administrator (RA) concerning all building-wide housing accommodations in the premises located at 502-512 45th Street a/k/a 4501 5th Avenue, Brooklyn, NY which denied the petitioner's application for exemption from rent regulation.

The owner commenced this proceeding on March 30, 2023 by filing an application to determine whether the subject building was exempt from rent regulation due to substantial rehabilitation in accordance with Rent Stabilization Code (RSC) §2520.11(e) and DHCR Operational Bulletin 95-2. The owner purchased the premises in September 2007 and stated that the prior owner performed the substantial rehabilitation in 1988-1989.

RSC §2520.11(e) provides that housing accommodations in buildings substantially rehabilitated as family units on or after January 1, 1974 are exempt from rent stabilization. DHCR Operational Bulletin 95-2 provides that 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 under the Operational Bulletin 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

Under the Operational Bulletin, the rehabilitation had to have been commenced in a building that was in a substandard or seriously deteriorated condition. The fact that the building was vacant at the time of the rehabilitation is proof that the building was in such condition. It goes on to state that all building systems must comply with all applicable building codes and requirements, and the owner is required to submit copies of the building's certificate of occupancy before and after the rehabilitation.

The Operational Bulletin provides that the following documentation will be required from owners in support of a claim for substantial rehabilitation: Records demonstrating the scope of the work actually performed in the building. These 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 government 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.

In support of its application herein, the owner submitted the affidavit of the prior owner Bruce Rabinowitz who stated that the building was vacant when he purchased it in 1988. Rabinowitz stated that the building consisted of a first floor store and six

apartments on floors 2, 3 and 4. Rabinowitz stated that he hired a general contractor and filed for work under Department of Buildings (DOB) permit number 1941 which authorized the demolition of the six apartments and the creation of nine new apartments (three on each of floors 2, 3 and 4). Rabinowitz stated that following the renovations, the building received a new Certificate of Occupancy.

The owner asserts that the building did not have elevators or waste incinerators and that the followings systems were replaced: plumbing (including all new kitchen and bathroom water and waste lines, all new heating elements, new gas piping); electrical (including all wiring and panels); new intercom system installed; new windows installed; roof was replaced; new fire escapes were installed to accommodate the newly added apartments; new interior staircases were installed; new kitchens in all nine apartments; new bathrooms were installed in all nine apartments; all floors, walls and ceilings were replaced throughout the building; all facades were pointed; and all doors and frames were replaced. The owner asserts that all work complied with existing code requirements and that the DOB confirmed same by the issuance of a new Certificate of Occupancy.

The owner stated that original architect for the project died. The owner submitted a signed statement from George Paider, an architect, who inspected the premises on December 10, 2020 and reviewed the DOB documents. He opined that the building underwent a substantial rehabilitation based on the scope of the work performed under DOB permit #1941.

On November 22, 2023, the owner responded to the RA's request for additional information and stated that it did not have proof of payment for the work as said work occurred under a different owner and was performed and paid for over 35 years ago; that requiring the owner to provide documents which are no longer available results in an undue hardship; that proof of payments is not required for a substantial rehabilitation; that work records are not mandated to prove a substantial rehabilitation; that DOB cost affidavits and PW3 forms were not available in 1988; and that the 1988 DOB permit contains a cost affirmation from the architect as well as a statement from the contractor concerning the entire building renovation and affirms that the building was vacant at the time of the work.

The RA denied the application for exemption finding that the petitioner failed to produce substantive evidence to demonstrate

that the scope of the rehabilitation done involved the complete replacement of at least 75% of the building-wide and apartment systems. The RA found that the work permits and independent architect's affidavit do not support a claim for substantial rehabilitation and that the owner failed to submit evidence, including renovation costs, work contracts, invoices, proof of payment and photographs.

On PAR, the owner contends that the RA erred in denying the application. The owner asserts that the evidence submitted proves that it replaced 14 of the systems listed in the Operational Bulletin and that the DOB issued a new Certificate of Occupancy following completion of the work in 1989. The owner states that all common areas' floors, walls and ceilings were also replaced. The owner asserts that the scope of the rehabilitation work was confirmed by an expert architect based on his review of DOB documents and his inspection of the premises. The owner asserts that the RA never sent a request for photographs or work records or invoices. The owner annexed photographs of the premises on file with the DOB and an owner's cost affidavit on file with the DOB. The owner asserts that the RA failed to consider the evidence presented and that, given the rehabilitation took place before the issuance of Operational Bulletin 95-2, the prior owner would not have known to maintain invoices, work records and cancelled checks.

The PAR is granted.

The Commissioner finds that the owner proved the elements of a substantial rehabilitation and that the premises is exempt from rent regulation as of the issuance of the new Certificate of Occupancy in October 1989.

At the outset of the rehabilitation work, the building contained 14 of the 17 systems listed in the operational bulletin (excluding elevators, incinerators and intercoms). The evidence, including the letter from a registered architect, proves that the prior owner replaced 11 of the 14 systems which is 78% and qualifies for a substantial rehabilitation under the law. The owner also installed an intercom system where none existed before. The expert statement explains the fact that plumbing, heating, gas supply, electrical, windows, doors and frames, interior staircase, kitchen, bathrooms and all floors, ceilings and walls in the apartments and common areas were replaced. As the expert does not mention full replacement of the roof, all fire escapes and exterior pointing, these systems will not be counted. The record also

contains documents from the DOB including: the altered building application; the work permit (#1941-88); the building alteration outline; the filing of plans by the original architect (now deceased); cost statement; confirmation that the building was vacant; inspection report and the new Certificate of Occupancy issued in October 1989. The Commissioner finds that these records, along with the expert statement, are sufficient to prove the substantial rehabilitation. The absence of work records, invoices and cancelled checks, particularly records that pre-date the Operational Bulletin and are 35 years old, do not negate the substantial rehabilitation.

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

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

ISSUED:
JAN 21 2025

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.: MO410019RO
228 WEST 132ND STREET LLC.,	RENT ADMINISTRATOR'S DOCKET NO.: KX410001UC
PETITIONER X	TENANT(S): VARIOUS

ORDER AND OPINION GRANTING PETITION FOR ADMINISTRATIVE REVIEW

The petitioner, the current owner of the premises, timely filed an administrative appeal (PAR) against an order issued on February 6, 2024 by the Rent Administrator (RA) concerning various housing accommodations in the building located at 228 West 132nd Street, New York, NY which denied the petitioner's application for exemption from rent regulation.

The prior owner commenced this proceeding on December 5, 2022 by filing an application to determine whether the subject building was exempt from rent regulation by virtue of substantial rehabilitation in accordance with Rent Stabilization Code (RSC) §2520.11(e) and DHCR Operational Bulletin 95-2. The prior owner asserted that the premises underwent a substantial rehabilitation starting in September 2008 and ending in 2011 and that the building was inspected by the Department of Buildings and a final Certificate of Occupancy was issued in April 2016. The prior owner asserted that the former three-story single room occupancy (SRO) was converted into an eleven unit multiple dwelling.

The petitioner purchased the premises on December 21, 2022, shortly after the former owner commenced the proceeding.

The RA denied the application for exemption finding that the evidence presented failed to establish that the building underwent a substantial rehabilitation in that the owner failed to provide necessary evidence to substantiate the claim that 75% of building-

wide and individual apartment systems were replaced. The RA found that the owner failed to provide necessary documentation such as work contracts, invoices, proof of payment and work permits.

On PAR, the petitioner asserts that the subject building was substantially rehabilitated since a new Certificate of Occupancy (C of O) was issued in 2016; that the owner replaced every system in the subject building since it was a vacant shell except for foundations and existing exterior walls; that the owner replaced the plumbing, heating, boiler, gas supply, electrical wiring, windows, roof, new sprinkler system (installed), interior stairways, kitchens, bathrooms, floors, ceilings, wall surfaces, pointing and exterior surface repair as needed and all doors and frames; that two affidavits (dated October 27, 2022 and June 6, 2023 respectively) were provided from a professional engineer hired by the owner; that said engineer filed renovation plans with the Department of Buildings (DOB); that the engineer attested to the state of disrepair of the building at the commencement of the rehabilitation; that the building was vacant; that the work started on September 9, 2008 and was completed in 2011; that a temporary C of O was obtained on August 9, 2011; that the first C of O inspection passed on May 12, 2011 which meant all renovations were completed by that date; that the final C of O was issued years later due to delays caused by the DOB; and that DOB approved architectural plans were included in the application as well as a NYC certificate of no harassment.

The petitioner also alleges that DHCR was arbitrary and capricious in determining that the owner did not prove substantial rehabilitation; that the RA incorrectly determined that the lack of work records and proof of payment was dispositive of the issue when the other evidence proved a substantial rehabilitation; that the RA did not provide sufficient credit to the DOB records; and that the lack of proof of payment or invoices has not been a barrier to granting substantial rehabilitation applications (citations omitted).

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

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 two job numbers, a new C of O; DOB applications and cost affidavits, and two affidavits of the engineer, Saverio Tarantino, who filed the plans with DOB on the owner's behalf. Mr. Tarantino's affidavits demonstrate the scope of the work performed, that the building was a vacant shell that only contained outer walls, possibly due to a fire and he outlines the building systems involved.

Specifically, with respect to the building systems, the expert affirms that four of the seventeen systems were not present, including intercoms, elevators, fire escapes and waste incinerators. He states that a sprinkler system was installed for fire prevention and that all thirteen of the existing systems were replaced, including floors, walls and ceilings of the common areas. The new systems include plumbing (also a new sanitary system installed), heating (old boiler replaced with HVAC system), gas supply; electrical wiring, windows, roof, interior stairways, kitchens, bathrooms, floors, ceiling and wall surfaces, pointing or exterior surface repair as needed and all doors and frames including the replacement of non-fire rated items with fire rated ones.

The lack of work records and proof of payment, particularly in cases where work was done by a prior owner, are not a bar to granting a substantial rehabilitation application where DOB submissions and expert affidavits support same.

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 April, 2016.

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:
FEB 11 2025

Woody Pascal
Deputy Commissioner

State of New York
Division of Housing and Community Renewal
Office of Rent Administration
Gertz Plaza, 92-31 Union Hall Street
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X

IN THE MATTER OF THE
ADMINISTRATIVE APPEAL OF

ADMINISTRATIVE REVIEW
DOCKET NO.: MQ110023RO

RENT ADMINISTRATOR'S
DOCKET NO.: KO110003UC

JLG QUEENS HOLDING, LLC.

TENANTS: VARIOUS

PETITIONER X

ORDER AND OPINION DENYING PETITION FOR ADMINISTRATIVE REVIEW

The above-named petitioner-owner timely filed an administrative appeal (PAR) against the above-referenced Order issued on April 30, 2024 by a Rent Administrator (RA) concerning various apartments located at 53-04 to 53-06 108th Street, also known as 53-09 106th Street, Corona, New York, 11368. Said Order denied the petitioner's Application to exempt the premises from rent regulation by virtue of substantial rehabilitation because the owner failed to establish that the building was substandard or seriously deteriorated prior to the work at issue as required by Operational Bulletin 95-2 (OB 95-2), and because the owner failed to present any substantive evidence to show the complete replacement of building-wide and individual apartment systems also as required by OB 95-2. As a result, the RA denied the owner's exemption Application pursuant to Rent Stabilization Code (RSC) §2520.11 (e) and instructed the owner to offer rent stabilized leases to all of the tenants in the subject building and to file annual registrations with DHCR.

There has been another administrative determination proceeding under Docket Number IN110024AD in which the owner sought a determination as to whether the subject building is rent stabilized. The RA in that case found that the building is in fact subject to rent stabilization. The owner filed a PAR against IN110024AD which was denied by PAR Order JW110003RO. The owner challenged Order JW110003RO in the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules, and said challenge resulted in a so-ordered Stipulation remanding the matter to DHCR. Pursuant to this remand, the Commissioner issued PAR Order KX110003RP which Order revoked the prior Orders in that proceeding and consolidated the issue of jurisdiction, which was the issue of said proceeding, with the instant proceeding for a single determination. Accordingly, the instant PAR Order will determine whether the building is subject to rent stabilization, and, if so, whether it has been exempted from rent stabilization pursuant to the above-

referenced substantial rehabilitation Application. It is noted that the pleadings leading up to and prior to issuance of Order KX110003RP have been summarized in the proceedings leading up to said Order, both parties have been served with said pleadings and have had adequate opportunity to respond thereto, and said pleadings are incorporated herein by reference.

In the administrative determination proceeding under IN110024AD, and PAR Docket Number JW110003RO, the owner alleged that, because the subject building was not subject to rent stabilization on the base date of 1974, it could not subsequently become subject to rent stabilization even if it was subsequently converted from a building containing commercial units into a building containing more than six residential units.

In the PAR against KO110003UC, the owner contends that the RA mistakenly overlooked the fact that the building has been substantially renovated and rehabilitated; that, because the building was not subject to rent stabilization on the base date of June 20, 1974, it could not subsequently become subject to rent stabilization; that currently there is no tax abatement in effect for the subject building; that the first Certificate of Occupancy (C of O) for the subject building was dated 1934 and indicated that the subject building contained "stores and one dwelling"; that the second C of O, dated March 2, 1999, indicated that the subject building became a two-story building and contained two commercial retail stores and one residential dwelling; that the building was therefore certainly not subject to the Rent Stabilization Law (RSL) in 1999; that, subsequent to the 1999 C of O, the subject building underwent a major renovation, which was completed on November 7, 2001 and resulted in the last and current C of O which was issued on May 22, 2002; that said C of O indicates that the subject building now has three-stories and that the number of residential dwelling units has been increased to eight units; that the subject building has eight dwelling units to this day; and that, in Bartis v. Harbor Tech, LLC. 147 AD3d 51 (2nd Dep't 2016), the Appellate Division held that, since the building in that case had been rehabilitated and went from commercial use to residential use, there was a creation of new residential units where none had existed before, and the newly constructed apartments in that case were therefore exempt from rent stabilization (the owner further cites 22 CPS Owner LLC v Carter, 84 AD3d 456 (1st Dept 2011), Gonzalez v Div. of Hous. & Community Renewal, (erroneously cited as Omar v. DHCR by owner) 95 AD3d 681 (1st Dept 2012), and 867-871 Knickerbocker, LLC v Poli, 65 Misc 3d 15 (App Term 2nd Dept 2019)).

The owner also contends that the RA's finding that the owner did not establish that the building was substandard or seriously deteriorated prior to the rehabilitation at issue is grossly unfair to the owner because the owner herein purchased the building 10 years after the completion of substantial rehabilitation; that denying this petition under these circumstances would constitute a serious injustice; that there is no doubt that the subject building was in a substandard condition prior to the work at issue; that the building was 70 years old when the work began so it must have been in a substandard condition at that time; and that, because new housing units were created, which was necessary given the housing shortage, and which was in keeping with the intent of the Rent Stabilization Law (RSL), and because the current owner was not the owner when the work at issue was performed and cannot therefore be expected to produce evidence of the condition of

the building prior to the work at issue, it would not be reasonable to find that the building was not substandard prior to such work.

Finally, the owner contends that more than 75% of the building-wide and apartment systems have been completely replaced with new systems; that the ceilings, walls and floors in the building's common areas and the individual apartment units have also been completely replaced; and that a registered architect has affirmed, after an inspection of the subject building and of DOB documents, that more than 75% of the building was rehabilitated (the architect's affidavit is attached to the PAR).

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

Regarding the administrative determination proceeding, the Commissioner finds that the building at issue became subject to rent stabilization when the number of housing accommodations in the building was increased to six or more units. Pursuant to RSC §2520.11(d), while buildings containing fewer than six housing accommodations are generally exempt from rent stabilization, the addition of housing accommodation(s) to such a building resulting in the building containing six or more such accommodations render the entire building subject to rent stabilization at that time (see, Commercial Hotel, Inc. v. White, 752 N.Y.S.2d 779 (App. Term 2002), Duane Thomas Loft Tenants Association v. Sylvan Lawrence Co., 117 Misc. 2d 360 (Sup Ct. NY County, 1982) ("...whether the sixth dwelling unit was created on or before July 2, 1974 is without dispositive effect. To be entitled to rent stabilization protection, all that the statute requires is that the multiple dwelling contain six dwelling units"), and 2042a Pac. LLC v. Kelley, 2017 NYLJ LEXIS 2611 (Kings County Civ Ct. 2017) ("[t]he appellate case law is clear that once a building contains six or more units, all the units in the building are subject to rent stabilization" (quoting Gandler v. Halperin, 232 A.D.2d 637, 648 N.Y.S.2d 998 (2nd Dep't 1996)).

Further, the Commissioner finds that owner's reliance on Bartis, 22 CPS, and Gonzalez is misplaced and that the facts of these cases are not analogous to the facts of the instant proceeding. These cases pertain to buildings that were used exclusively for commercial purposes and then converted into residential buildings with six or more housing units. Here, however, the record shows that the subject building had a residential unit prior to the work at issue, and was not, therefore, exclusively commercial prior to such work. Accordingly, the cases relied on by the owner do not apply and the building became subject to rent stabilization when residential units were added and the total number of such units met (and in fact exceeded) six units (see Commercial Hotel., Duane Thomas, and 2042a Pac.). Therefore, the subject building is subject to rent stabilization and is under the jurisdiction of DHCR.

Given that the building at issue is subject to rent stabilization, we turn to the issue of whether said building should be exempted from rent stabilization pursuant to the owner's substantial rehabilitation Application. 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 each 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....

B. The rehabilitation was 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.

Therefore, in order to exempt a building from rent stabilization, an owner must show that such building was substandard or seriously deteriorated prior to the beginning of the work alleged to constitute a substantial rehabilitation.

The owner fails to submit sufficient evidence that the building was in a substandard or seriously deteriorated condition when the work at issue was commenced. The only evidence regarding the condition of the building when the work at issue commenced is the owner's affidavit and some photographs. However, the owner admits that it did not have first-hand knowledge regarding the condition of the building or regarding the rehabilitation because it did not own the building when the work at issue was performed, only buying the building in 2012, which was 10 years after the 2002 C of O was issued. The owner in fact alleges that it should not be required to show that the building was seriously deteriorated when the work at issue commenced because it did not own the building at that time, because new housing units were created at a time when there was a shortage of housing, and because creation of new housing is a central reason for the RSL and RSC. However, OB 95-2 requires an owner to show that a building was seriously deteriorated prior to the commencement of work if such work is to qualify for exemption from rent stabilization due to substantial rehabilitation. There is no exception to such requirement due to an owner having bought a building after the work at issue and therefore not having access to information regarding the condition of such building prior to that work. Nor is there an exception to this requirement based on the creation of "needed" housing units. The photographs submitted by the owner are not probative, as they are not labeled and are allegedly photographs of the building after the work at issue was performed.

It is noted that, although the owner was asked by the RA whether the sole residential unit was occupied or vacant at the time of the commencement of the work at issue, the owner failed to submit a substantive and definitive answer to this request, rather stating that it was unable to obtain the answer to this request. A failure to be able to show that a building was 80% vacant of residential tenants at the time work begins (which would trigger the presumption that such building was in a substandard condition) is not a substitute for such a showing under OB 95-2. Accordingly, the owner did not establish that the building was at least 80% vacant of residential tenants at the time such work began.

The owner's allegation that the building was in substandard or seriously deteriorated condition because it was constructed 70 years ago and had not been renovated in those 70 years, so it must have been in a substandard condition, is not persuasive . The owner in fact states that

the building was completely renovated in 1999 and submits a C of O issued in 1999. Because the subject building was renovated, and a new C of O was issued in 1999, it is very unlikely that said building, or the apartment in said building, would have been in a substandard or seriously deteriorated condition two years later in 2001, when the work at issue commenced. Nonetheless, the owner is required by the RSC and by OB 95-2 to show that the subject building was in a substandard condition prior to commencement of the work at issue, and the age of the building is not sufficient to make such a showing. It is noted that the owner failed to provide any statement from any person actually involved in the 2001 renovation, or who had first-hand knowledge at that time, attesting to the condition of the subject building at the commencement of the alleged rehabilitation. The Commissioner further notes that the subject building has been registered as rent stabilized since 2002, that the current owner bought the building in 2012, and that the current owner did not initiate the administrative determination proceeding until 2020 and did not file the substantial rehabilitation Application until March of 2022.

867-871 Knickerbocker upheld the denial of an owner's substantial rehabilitation Application in that case, finding that the owner "failed to establish that the Code's precondition that the building had been in substandard condition prior to the construction was met, because it failed to produce any records demonstrating the condition of the building prior to the construction and relied solely on testimony that was conclusory". In the instant case, the owner has also failed to produce any records demonstrating the condition of the building prior to the work at issue and also relies on conclusory statements of the owner (who, again, was not present prior to the work at issue). The owner's Application herein was therefore correctly denied by the RA pursuant to the holding of 867-871 Knickerbocker.

The Commissioner will not consider whether the work at issue was sufficient under the RSC and OB 95-2 to qualify as a substantial rehabilitation because the owner has failed to establish that the subject building was substandard or seriously deteriorated prior to such work. Because a substantial rehabilitation Application may not be granted when an owner has not shown that such work was performed in a building that was seriously deteriorated or substandard, and because the owner failed to make such a showing, as explained above, the owner's Application is denied and the issue of the scope of work performed need not be reached.

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:

FEB 13 2025

Woody Pascal
Deputy Commissioner

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