Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D12041
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_____AD3d_____ Argued - June 12, 2006

ANITA R. FLORIO, J.P.
DAVID S. RITTER
GLORIA GOLDSTEIN
ROBERT A. LIFSON, JJ.

2004-08006 DECISION & ORDER
2004-08007

In the Matter of 38 Park Avenue Association, LLC, et al., appellants, v David B. Tweedy, etc., et al., respondents.

(Index No. 829/04)

Tibbetts Keating & Butler, LLC, New York, N.Y. (Timothy F. Butler and Joseph B. Williams of counsel), for appellants.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Kristin M. Helmers and Susan B. Eisner of counsel), for respondents.

In a proceeding pursuant to CPLR article 78 to review two determinations of the New York City Water Board dated September 16, 2003, and November 7, 2003, respectively, which denied the petitioners' separate appeals seeking reductions in charges on water and wastewater bills dated June 28, 1996, and December 11, 1996, and August 5, 1998, respectively, the petitioners appeal from (1) a decision of the Supreme Court, Queens County (Price, J.), dated June 7, 2004, and (2) a judgment of the same court dated July 21, 2004, which, upon the decision, denied the petition and dismissed the proceeding.

ORDERED that the appeal from the decision is dismissed, without costs or disbursements, as no appeal lies from a decision (*see Schicchi v Green Constr. Corp.,* 100 AD2d 509); and it is further,

ORDERED that the judgment is reversed, on the law, without costs or disbursements, the petition is reinstated, and the matter is remitted to the Supreme Court, Queens County, for further proceedings and a new determination in accordance herewith.

We find it appropriate to remit this matter to the Supreme Court, Queens County, for further proceedings and a new determination to consider whether the rate schedule as amended by

a resolution of the New York City Water Board dated March 4, 2005, was reasonable and complied with due process requirements, or was arbitrary, capricious, or an abuse of discretion and failed to comply therewith (*see* CPLR 7803[3]; *see Brothers v Florence,* 95 NY2d 290, 301; *Matter of Amalgamated Warbasse Houses v Tweedy,* _____AD3d_____ [decided herewith]).

FLORIO, J.P., RITTER, GOLDSTEIN and LIFSON, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court