

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

D12445
E/mv

_____AD3d_____

Argued - September 14, 2006

THOMAS A. ADAMS, J.P.
PETER B. SKELOS
STEVEN W. FISHER
JOSEPH COVELLO, JJ.

2005-03965

DECISION & ORDER

In the Matter of Elizabeth Hogan, etc., appellant,
v New York State Division of Housing and
Community Renewal, et al., respondents.

(Index No. 6612/04)

Robert A. Katz, New York, N.Y., for appellant.

David B. Cabrera, New York, N.Y. (Jack Kuttner of counsel), for respondent New York State Division of Housing and Community Renewal.

Borah, Goldstein, Altschuler, Schwartz & Nahins, P.C., New York, N.Y. (Paul N. Gruber of counsel), for respondent Queens Fresh Meadows, LLC.

In a proceeding pursuant to CPLR article 78 to review so much of a determination of the respondent New York State Division of Housing and Community Renewal dated January 28, 2004, as granted, in part, the owner's petition for administrative review, denied, in part, the petitioner's petition for administrative review, and modified an order of the Rent Administrator issued on August 27, 2002, granting, in part, the owner's application for a major capital improvement rent increase, the petitioner appeals from a judgment of the Supreme Court, Queens County (Golia, J.), dated January 24, 2005, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

October 31, 2006

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MATTER OF HOGAN v NEW YORK STATE
DIVISION OF HOUSING AND COMMUNITY RENEWAL

The respondent New York State Division of Housing and Community Renewal (hereinafter the DHCR) acted within its discretion in rejecting the answer of the petitioner's attorney to the owner's application for a major capital improvement rent increase. The petitioner's attorney failed to submit evidence of his authorization to act, as is required by the DHCR (*see* 9 NYCRR 2523.6, 2529.1[b][2]).

Furthermore, the DHCR rationally determined that the owner was entitled to a rent increase for necessary work performed in connection with, and directly related to, a major capital improvement (*see* 9 NYCRR 2522.4).

The petitioner's remaining contentions either are improperly raised for the first time on appeal or are without merit.

ADAMS, J.P., SKELOS, FISHER and COVELLO, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court