

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

D20472
C/kmg

_____AD3d_____

Submitted - September 4, 2008

ROBERT A. LIFSON, J.P.
ANITA R. FLORIO
RANDALL T. ENG
ARIEL E. BELEN, JJ.

2007-05943

DECISION & JUDGMENT

In the Matter of Patrick Davis, petitioner,
v Paul A. Roldan, Deputy Commissioner
of State of New York Division of Housing
and Community Renewal, respondent.

(Index No. 1209/07)

Patrick Davis, Freeport, N.Y., petitioner pro se.

Gary R. Connor, New York, N.Y. (Susan E. Kearns of counsel), for respondent.

Proceeding pursuant to CPLR article 78 to review a determination of the respondent, Paul A. Roldan, Deputy Commissioner of the State of New York Division of Housing and Community Renewal, dated December 15, 2006, which denied the tenant's petition for administrative review of a determination dated January 13, 2005, of a District Rent Administrator, which provided that the landlord could charge the legal regulated rent instead of the preferential rent when the tenant renewed his lease for the subject apartment.

ADJUDGED that the determination is confirmed and the proceeding is dismissed on the merits, without costs or disbursements.

The Supreme Court should not have transferred this proceeding to this Court because there was no administrative hearing and the petition did not raise any question as to whether the challenged determination was supported by substantial evidence (*see* CPLR 7803[4], CPLR 7804[g]; *Matter of 125 Bar Corp. v State Liq. Auth. of State of N.Y.*, 24 NY2d 174, 180). Nevertheless, this Court will retain jurisdiction and decide the merits of the petition in the interest of judicial economy

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(see *Matter of Jan V. v State of N.Y. Off. of Children & Family Servs.*, 38 AD3d 912; *Matter of Sunrise Manor Ctr. for Nursing & Rehabilitation v Novello*, 19 AD3d 426; *Matter of Frey v O'Reagan*, 216 AD2d 565).

Contrary to the tenant's contention, the challenged determination was neither arbitrary nor capricious (see CPLR 7803[3]). The record reflects that the Deputy Commissioner of the State of New York Division of Housing and Community Renewal properly determined that the landlord could discontinue the preferential rent and charge the previously-established legal regulated rent upon the renewal of the tenant's lease (see Emergency Tenant Protection Act of 1974, § 8630[a-2]; 9 NYCRR § 2501.2; *Matter of Missionary Sisters of Sacred Heart, III v New York State Div. of Hous. & Community Renewal*, 283 AD2d 284; *Cromwell Assoc. v Ortega*, 12 Misc 3d 141[A]; *Les Filles Quartre LLC v McNeur*, 9 Misc 3d 179).

The tenant's remaining contentions are without merit.

LIFSON, J.P., FLORIO, ENG and BELEN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court