

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

D25143  
O/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - October 30, 2009

PETER B. SKELOS, J.P.  
RANDALL T. ENG  
LEONARD B. AUSTIN  
SHERI S. ROMAN, JJ.

---

2008-10635

DECISION & ORDER

In the Matter of Barmat Realty Company, LLC, v New York State Division of Housing and Community Renewal, respondent, Yvette Quow, appellant.

(Index No. 1490/08)

---

Robert H. Gordon, New York, N.Y., for appellant.

In a proceeding pursuant to CPLR article 78 to review a determination of the Deputy Commissioner of the New York State Division of Housing and Community Renewal dated November 19, 2007, which, inter alia, confirmed a determination of the Rent Administrator dated August 3, 2007, finding that the tenant was entitled to pay a preferential rent for the duration of her tenancy, the tenant appeals from a judgment of the Supreme Court, Kings County (Schmidt, J.), dated September 26, 2008, which granted the petition and vacated the determination.

ORDERED that the judgment is reversed, on the law, with costs, the determination dated November 19, 2007, is confirmed, the petition is denied, and the proceeding is dismissed on the merits.

Contrary to the Supreme Court's determination, the challenged determination was neither arbitrary nor capricious (*see* CPLR 7803[3]). The Deputy Commissioner of the New York State Division of Housing and Community Renewal rationally determined that the landlord had agreed, pursuant to a lease rider which provided the tenant with a preferential rent while specifically excluding successor tenants from the same preference, to charge the tenant a preferential rent for the

November 24, 2009

Page 1.

MATTER OF BARMAT REALTY COMPANY, LLC v  
NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL

duration of her tenancy (*see* 9 NYCRR 2521.2; *Matter of Missionary Sisters of Sacred Heart, III v New York State Div. of Hous. & Community Renewal*, 283 AD2d 284; *Matter of 218 E. 85th St., LLC v Division of Hous. & Community Renewal*, 23 Misc 3d 557, 561-563).

SKELOS, J.P., ENG, AUSTIN and ROMAN, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court