

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

D25793  
Y/cb

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Argued - September 29, 2009

WILLIAM F. MASTRO, J.P.  
STEVEN W. FISHER  
DANIEL D. ANGIOLILLO  
JOHN M. LEVENTHAL, JJ.

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2008-09081

DECISION & ORDER

In the Matter of Executive Towers at Lido, LLC, et al.,  
appellants, v New York State Division of Housing  
and Community Renewal, et al., respondents.

(Index No. 007114/08)

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Herzfeld & Rubin, P.C., New York, N.Y. (Herbert Rubin of counsel), and Borah, Goldstein, Altschuler, Nahins & Goidel, P.C., New York, N.Y., for appellants (one brief filed).

Gary R. Connor, New York, N.Y., for respondent New York State Division of Housing and Community Renewal.

Lawrence Alexander, New York, N.Y., for respondents Long Beach Tenants Coalition and Robert Rychlowski.

In a proceeding pursuant to CPLR article 78 to review a determination of the New York State Division of Housing and Community Renewal dated February 19, 2008, which denied a petition for administrative review and confirmed a determination of the Rent Administrator dated January 24, 2003, denying the petitioners' applications to adjust certain initial legal regulated rents pursuant to Emergency Tenant Protection Regulations § 2502.3(b) based on the presence of unique or peculiar circumstances, the petitioners appeal from a judgment of the Supreme Court, Nassau County (Iannaci, J.), entered August 20, 2008, which denied the petition and, in effect, dismissed the proceeding.

January 19, 2010

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ORDERED that the judgment is affirmed, with one bill of costs to the respondents appearing separately and filing separate briefs.

The determination of the New York State Division of Housing and Community Renewal denying a petition for administrative review and confirming a determination of the Rent Administrator denying the petitioners' applications to adjust certain initial legal regulated rents pursuant to Emergency Tenant Protection Regulations § 2502.3(b) based on the presence of unique or peculiar circumstances had a rational basis and was not arbitrary or capricious. The petitioners failed to meet their burden of proving, inter alia, that the rents in their apartment buildings differed substantially from the rents generally prevailing in the same area for substantially similar housing accommodations. Therefore, the determination of the Rent Administrator was properly confirmed (*see* CPLR 7803[3]; McKinney's Uncons Laws of NY § 8629[a] [Emergency Tenant Protection Act of 1974]; *Matter of Rowe v Calogero*, 56 AD3d 567; *Matter of DeLillo v New York State Div. of Hous. and Community Renewal*, 45 AD3d 682, 683; *Harding v Calogero*, 45 AD3d 363; *Matter of Melendez v New York State Div. of Hous. & Community Renewal*, 304 AD2d 580; *Matter of Marciano v Roldan*, 294 AD2d 440).

The petitioners' remaining contentions are without merit.

MASTRO, J.P., FISHER, ANGIOLILLO and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court