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

D26577
H/kmg

_____AD3d_____ Argued - February 18, 2010

REINALDO E. RIVERA, J.P.
JOSEPH COVELLO
HOWARD MILLER
CHERYL E. CHAMBERS, JJ.

2009-01332 DECISION & ORDER

In the Matter of 68 Apartment Associates, Inc., appellant, v New York State Division of Housing and Community Renewal, respondent.

(Index No. 7041/08)

Lehrman, Kronick & Lehrman, LLP, White Plains, N.Y. (Mark A. Guterman of counsel), for appellant.

Gary R. Connor, New York, N.Y. (Dawn Ivy Schindelman of counsel), for respondent.

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 February 8, 2008, which, inter alia, denied the petitioner's application for administrative review of an order of the Rent Administrator dated August 23, 2007, directing, among other things, a reduction in the rent payable for a rent-regulated apartment, the petitioner appeals from a judgment of the Supreme Court, Westchester County (DiBella, J.), entered November 24, 2008, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

The respondent determined that there had been a decrease in services with respect to the subject apartment, warranting a rent reduction. Reduction in services is a matter to be determined by the administrative agency (*see Matter of Clarendon Mgt. Corp. v New York State Div. of Hous.*

& Community Renewal, 271 AD2d 688, 688; *Matter of ANF Co. v Division of Hous. & Community Renewal*, 176 AD2d 518, 520). Contrary to the petitioner's contention, the determination in this case, which was based upon a physical inspection of the premises, had a rational basis in the record, and was not arbitrary and capricious (*see Matter of 333 E. 49th Assoc., LP v New York State Div. of Hous. & Community Renewal, Off. of Rent Admin.*, 9 NY3d 982, 983-984; *Matter of Stavisky v New York State Div. of Hous. & Community Renewal*, 204 AD2d 462, 462-463).

The petitioner's remaining contentions are without merit.

RIVERA, J.P., COVELLO, MILLER and CHAMBERS, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court