

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

D29419
O/hu

_____AD3d_____

Argued - October 12, 2010

PETER B. SKELOS, J.P.
RUTH C. BALKIN
CHERYL E. CHAMBERS
LEONARD B. AUSTIN, JJ.

2009-06509

DECISION & ORDER

In the Matter of Isabel Gomez, appellant, v New York
State Division of Housing and Community Renewal,
respondent.

(Index No. 24456/08)

Martin S. Needelman, Brooklyn, N.Y. (Joanne Koslofsky and Edward Josephson of
counsel; William Spirer on the brief), for appellant.

Gary R. Connor, New York, N.Y. (Sheldon Melnitsky and Kathleen Lamar 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 June 27,
2008, which denied a request for administrative review and confirmed a determination of the Rent
Administrator dated April 2, 2008, finding that there was no overcharge of rent, the petitioner appeals
from a judgment of the Supreme Court, Kings County (Hinds-Radix, J.), dated March 20, 2009,
which denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

“In reviewing a determination made by an administrative agency such as the New York
State Division of Housing and Community Renewal (hereinafter the DHCR), the court’s inquiry is
limited to whether the determination is arbitrary and capricious, or without a rational basis in the
record and a reasonable basis in law” (*Matter of ATM One, LLC v New York State Div. of Hous. &*

December 14, 2010

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Community Renewal, 37 AD3d 714, 714; see CPLR 7803[3]; *Matter of 508 Realty Assoc., LLC v New York State Div. of Hous. & Community Renewal*, 61 AD3d 753, 754-755; *Matter of Melendez v New York State Div. of Hous. & Community Renewal*, 304 AD2d 580, 581). The DHCR's interpretation of the statutes and regulations it administers is entitled to deference, and must be upheld if reasonable (see *Matter of ATM One, LLC v New York State Div. of Hous. & Community Renewal*, 37 AD3d at 714; *Matter of 85 E. Parkway Corp. v New York State Div. of Hous. & Community Renewal*, 297 AD2d 675, 676).

“A rent overcharge claim, whether made in a judicial or administrative forum, is subject to a four-year statute of limitations” (*Jenkins v Fieldbridge Assoc., LLC*, 65 AD3d 169, 172; see CPLR 213-a; Administrative Code of City of NY § 26-516[a][2]). “[T]he Rent Regulation Reform Act of 1997 (RRRA) (L 1997, ch 116) clarified and reinforced the four-year statute of limitations applicable to rent overcharge claims (see Rent Stabilization Law of 1969 [Administrative Code of City of NY] § 26-516[a])” (*Matter of Thornton v Baron*, 5 NY3d 175, 180), “preclud[ing] a court from examining the rental history of a housing accommodation prior to the four-year period preceding the filing of the rent overcharge complaint” (*Jenkins v Fieldbridge Assoc., LLC*, 65 AD3d at 172 [internal quotation marks omitted]; see *Grimm v Hous. & Community Renewal Off. of Rent Admin.*, 15 NY3d 358, 365), except in situations where there is a substantial indicia of fraud.

Here, the DHCR properly refused to examine the rental history of the subject apartment prior to the four-year period preceding the filing of the rent overcharge complaint because the petitioner's contention that there were substantial indicia of fraud on the record is without merit (see *Matter of Anderson v Lynch*, 292 AD2d 603, 604; *Matter of Sadler v Lynch*, 295 AD2d 436, 437; *Myers v Frankel*, 292 AD2d 575, 576; *Cecilia v Irizarry*, 292 AD2d 557, 558; *Matter of Sessler v New York State Div. of Hous. & Community Renewal*, 282 AD2d 262; cf. *Matter of Grimm v State of N.Y., Div. of Hous. & Community Renewal Off. of Rent Admin.*, 15 NY3d 358).

The DHCR's determination was rational, and was not arbitrary and capricious. Accordingly, the Supreme Court properly denied the petition and dismissed the proceeding.

SKELOS, J.P., BALKIN, CHAMBERS and AUSTIN, JJ., concur.

ENTER:



Matthew G. Kiernan
Clerk of the Court