

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

D30939
Y/hu

_____AD3d_____

Argued - March 31, 2011

PETER B. SKELOS, J.P.
ARIEL E. BELEN
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2010-04744

DECISION & ORDER

In the Matter of Metropolitan 118-80 Limited Partnership, etc., appellant, v New York State Division of Housing and Community Renewal, respondent.

(Index No. 23356/09)

Erez Glambosky, New Hyde Park, N.Y. (Olga Someras of counsel), for appellant.

Gary R. Connor, New York, N.Y. (Sandra A. Joseph of counsel), for respondent.

In a proceeding pursuant to CPLR article 78 to review a determination of the New York State Division of Housing and Community Renewal dated July 3, 2009, modifying an order of the Rent Administrator dated December 8, 2008, by finding the existence of a willful rent overcharge and imposing a penalty of treble damages, the petitioner appeals from a judgment of the Supreme Court, Queens County (Brathwaite Nelson, J.), entered February 18, 2010, which denied the petition and, in effect, dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

Pursuant to section 26-516(a) of the Rent Stabilization Law (Administrative Code of City of NY § 26-501 *et seq.*), “once the occurrence of a rent overcharge has been established, it becomes incumbent upon the landlord to establish by a preponderance of the evidence that the overcharge was not willful” (*Matter of Obiora v New York State Div. of Hous. & Community Renewal*, 77 AD3d 755, 756; *see Matter of 508 Realty Assoc., LLC v New York State Div. of Hous. & Community Renewal*, 61 AD3d 753, 754; *Matter of Ador Realty, LLC v Division of Hous. &*

April 19, 2011

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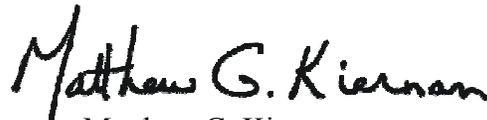
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Community Renewal, 25 AD3d 128, 140-141). Where the landlord fails to carry that burden, treble damages are properly imposed (see Administrative Code of City of NY § 26-516[a]; *Matter of Obiora v New York State Div. of Hous. & Community Renewal*, 77 AD3d at 755-756; see *Matter of 508 Realty Assoc., LLC v New York State Div. of Hous. & Community Renewal*, 61 AD3d at 754; *Matter of Ador Realty, LLC v Division of Hous. & Community Renewal*, 25 AD3d at 140-141). Contrary to the contention of the petitioner landlord, the determination of the New York State Division of Housing and Community Renewal that the petitioner failed to carry that burden was not arbitrary and capricious, and had a rational basis (see *Matter of Obiora v New York State Div. of Hous. & Community Renewal*, 77 AD3d at 756; *Matter of 508 Realty Assoc., LLC v New York State Div. of Hous. & Community Renewal*, 61 AD3d at 754-755; *Matter of Naim 111-46 76th Drive, LLC v New York State Division of Hous. & Community Renewal*, 38 AD3d 555, 556).

The petitioner's remaining contentions are without merit.

SKELOS, J.P., BELEN, LOTT and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court