

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

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G/kmb

_____AD3d_____

Argued - June 21, 2011

WILLIAM F. MASTRO, J.P.
CHERYL E. CHAMBERS
LEONARD B. AUSTIN
JEFFREY A. COHEN, JJ.

2011-01854

DECISION & ORDER

In the Matter of Fieldbridge Associates, LLC,
appellant, v New York State Division of Housing
and Community Renewal, respondent.

(Index No. 11395/10)

Rosenberg & Estis, P.C., New York, N.Y. (Jeffrey Turkel of counsel), for appellant.

Gary R. Connor, New York, N.Y. (Susan E. Kearns of counsel), for respondent.

In a proceeding pursuant to CPLR article 78, inter alia, to review a determination of the Deputy Commissioner of the New York State Division of Housing and Community Renewal dated March 17, 2010, which denied a petition for administrative review and confirmed an order of the Rent Administrator dated September 3, 2008, revoking a rent increase previously granted for major capital improvements for the subject apartments, the petitioner appeals, as limited by its brief, from so much of an order and judgment (one paper) of the Supreme Court, Kings County (Bunyan, J.), dated January 7, 2011, as denied the petition and dismissed the proceeding.

ORDERED that the order and judgment is affirmed insofar as appealed from, with costs.

The determination of the Division of Housing and Community Renewal (hereinafter DHCR) to uphold a revocation of the petitioner's major capital improvements (hereinafter MCI) rent increase had a rational basis in the record and was not arbitrary and capricious (*see Matter of 41-42 Owners Corp. v New York State Div. of Hous. & Community Renewal*, 295 AD2d 348; *see also*

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Matter of 370 Manhattan Ave. Co., L.L.C. v New York State Div. of Hous. & Community Renewal, 11 AD3d 370, 372; *cf. Matter of Gilman v New York State Div. of Hous. & Community Renewal*, 99 NY2d 144; *Matter of Horowitz v State of New York Div. of Hous. & Community Renewal*, 277 AD2d 382). Contrary to the petitioners' contention, the DHCR properly considered evidence submitted by the tenants that there were outstanding class "C" (immediately hazardous) violations at the subject building, which evidence was not before the Rent Administrator on the original MCI rent increase application. The DHCR rationally determined that the evidence, which had been submitted before the remittal to the Rent Administrator to reconsider her prior order granting MCI rent increases, was part of the administrative record and within the scope of administrative review (*see* Rent Stabilization Code [9 NYCRR] § 2529.6; *Matter of 41-42 Owners Corp. v New York State Div. of Hous. & Community Renewal*, 295 AD2d 348).

Further, it was the petitioner's burden to prove that all such class "C" violations had been removed (*see Matter of 370 Manhattan Ave. Co., L.L.C. v New York State Div. of Hous. & Community Renewal*, 11 AD3d at 372). This, the petitioner failed to do.

The petitioner's remaining contentions are without merit. Accordingly, the Supreme Court properly denied the petition and dismissed the proceeding.

MASTRO, J.P., CHAMBERS, AUSTIN and COHEN, JJ., concur.

ENTER:



Matthew G. Kiernan
Clerk of the Court