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publication in the New York Reports.

No. 150
In the Matter of Oscar Cintron,
Appellant,
v.
Judith A. Calogero, as
Commissioner of the Division of
Housing and Community Renewal of
the State of New York,
Respondent.

Randolph Petsche, for appellant.
Martin B. Schneider, for respondent.
Fifth Avenue Committee; Met Council, Inc., amici
curiae.

CIPARICK, J.:

On this appeal, we are asked to interpret the Rent Stabilization Law to ascertain the consequences on a current rent overcharge claim of two rent reduction orders issued prior to, but in effect during, the four-year period preceding the filing of an overcharge claim. We conclude that the Division of Housing

and Community Renewal ("DHCR") should, in calculating any rent overcharge, honor rent reduction orders that, while issued prior to the four-year limitations period, remained in effect during that period.

I.

In 1986, petitioner Oscar Cintron became a tenant of 2975 Decatur Avenue, Apartment 5C, in the Bronx, at an initial stabilized rent of \$348.91 per month. The following year, petitioner filed a complaint with DHCR against the building's then owner, alleging a decrease in services related to, among other things, the apartment's refrigerator, door lock and fire escape window. As a result of the complaint, DHCR issued an order reducing petitioner's rent "by the percentage of the most recent guidelines adjustment for the tenant's lease which commenced before the effective date of the rent reduction order," and providing that the owner could not collect any rent increase until a rent restoration order was issued. The rent reduction order did not set a particular level of rent. According to petitioner, the 1987 rent reduction order should have resulted in a reduction of his rent to \$326.23 per month.

In 1989, petitioner filed another complaint with DHCR, alleging a roach infestation of the apartment's stove. DHCR issued another rent reduction order. Despite the 1987 and 1989 rent reduction orders, however, the owner failed to make any repairs and continued to charge petitioner the unreduced rent.

In 1991, when the current owner purchased the building, petitioner allegedly advised him of the rent reduction orders. Although the current owner apparently also failed to make any repairs, petitioner continued to pay the unreduced rent and entered into a series of leases requiring him to pay greater rents.

On December 11, 2003, petitioner filed a complaint alleging that the rent of \$579.99 charged in the lease then in effect constituted an overcharge based on the current and prior owners' failure to comply with the 1987 and 1989 rent reduction orders. A DHCR Rent Administrator determined that the base date to be used was the date four years prior to the filing of the overcharge complaint -- December 11, 1999 -- and established that the legal regulated rent on the base date was \$508.99, which was the rent charged by the current owner and paid by petitioner on that date. Although taking notice of the 1987 and 1989 rent reduction orders, the Rent Administrator in establishing the legal stabilized rent calculated the overcharge using the base date of December 11, 1999. The Rent Administrator awarded petitioner a rent refund of \$1,008.77, which included interest but did not include treble damages, and prospectively froze the rent at the base date level from December 11, 1999 until February 1, 2004. Effective February 1, 2004, the Rent Administrator removed the 1987 and 1989 rent reduction orders and restored the rent to the full amount of \$579.99, which included rent

increases.

Petitioner sought administrative review of the Rent Administrator's order. DHCR granted the petition for administrative review to the extent of modifying the order by (1) reversing the portion of the order that denied treble damages and (2) awarding treble damages beginning two years prior to the filing of the overcharge complaint. DHCR denied the remainder of petitioner's challenges, concluding that the Rent Administrator properly limited recovery to the four years preceding the overcharge complaint and correctly used the base date rent -- \$508.99 as of December 11, 1999 -- rather than the rent established by the 1987 and 1989 rent reduction orders in calculating the overcharge.

Petitioner commenced this CPLR article 78 proceeding seeking to annul DHCR's order. Supreme Court denied the petition and dismissed the proceeding, concluding that DHCR's determination was not arbitrary or capricious and had a rational basis.

On petitioner's appeal, the Appellate Division affirmed, holding:

"The order, finding the base rent date to be December 11, 1999 (four years prior to the filing of the overcharge complaint), establishing the legal base rent as the amount paid on that date, freezing that rent until February 1, 2004, during which time rent reduction orders were extant, and directing the owner to refund overcharges collected from the base rent date inclusive of treble damages, was not arbitrary and

capricious, and had a rational basis" (Matter of Cintron v Calogero, 59 AD3d 345, 346 [1st Dept 2009] [citations omitted]).¹

Petitioner appealed to this Court by permission of the Appellate Division, which certified the following question: "Was the order of this Court, which affirmed the order of the Supreme Court, properly made?" Because the Appellate Division order is final, we need not answer the certified question.

II.

Regardless of the forum in which it is commenced, a rent overcharge claim is subject to a four-year statute of limitations (see Rent Stabilization Law of 1969 [Administrative Code of City of NY] § 26-516 [a] [2] [hereinafter "Rent Stabilization Law"]; CPLR 213-a).² The Rent Regulation Reform

¹ The Appellate Division further held that "DHCR appropriately limited the amount of rent overcharges recoverable to the four years prior to the filing of the overcharge complaint" (59 AD3d at 346). This is not an issue on this appeal as petitioner has abandoned his claim for rent overcharges in excess of four years prior to the filing of his rent overcharge claim with DHCR. Petitioner is merely seeking to have the base rent date set at an earlier time.

² Rent Stabilization Law § 26-516 (a) (2) states: "[A] complaint under this subdivision shall be filed with [DHCR] within four years of the first overcharge alleged and no determination of an overcharge and no award or calculation of an award of the amount of an overcharge may be based upon an overcharge having occurred more than four years before the complaint is filed . . . [t]his paragraph shall preclude examination of the rental history of the housing accommodation prior to the four-year period preceding the filing of a complaint pursuant to this subdivision," and

CPLR 213-a states: "An action on a residential rent overcharge shall be commenced within four years of the first

Act of 1997 ("RRRA") "clarified and reinforced the four-year statute of limitations applicable to rent overcharge claims . . . by limiting examination of the rental history of housing accommodations prior to the four-year period preceding the filing of an overcharge complaint" (Thornton v Baron, 5 NY3d 175, 180 [2005], citing Matter of Gilman v New York State Div. of Hous. & Community Renewal, 99 NY2d 144, 149 [2002]; see also Matter of Grimm v New York State Div. of Hous. and Community Renewal, __ NY3d __ [decided today]). Notably, the term "rental history" is not defined in the relevant statutes or in DHCR regulations and we need not attempt to define it here. As we have previously explained, the purpose of the four-year limitations or look-back period is to "alleviate the burden on honest landlords to retain rent records indefinitely" (Thornton, 5 NY3d at 181, citing Matter of Gilman, 99 NY2d at 149; see also Jenkins v Fieldbridge Assoc., LLC, 65 AD3d 169, 174 [2d Dept 2009], appeal dismissed 13 NY3d 855 [2009]).

Moreover, Rent Stabilization Law § 26-514, which addresses rent reduction orders, states:

"[A]ny tenant may apply to [DHCR] for a

overcharge alleged and no determination of an overcharge and no award or calculation of an award of the amount of any overcharge may be based upon an overcharge having occurred more than four years before the action is commenced. This section shall preclude examination of the rental history of the housing accommodation prior to the four-year period immediately preceding the commencement of the action."

reduction in the rent to the level in effect prior to its most recent adjustment and for an order requiring services to be maintained as provided in this section, and [DHCR] shall so reduce the rent if it is found that the owner has failed to maintain such services. The owner shall also be barred from applying for or collecting any further rent increases. The restoration of such services shall result in the prospective elimination of such sanctions" (emphasis added).

Rent reduction orders thus place a "continuing obligation" upon an owner to reduce rent until the required services are restored or repairs are made (Thelma Realty Co. v Harvey, 190 Misc 2d 303, 305-306 [App Term, 2d Dept 2001]; see also Matter of Condo Units v New York State Div. of Hous. & Community Renewal, 4 AD3d 424, 425 [2d Dept 2004], lv denied 5 NY3d 705 [2005]; Crimmins v Handler & Co., 249 AD2d 89, 91 [1st Dept 1998]). Here, it is alleged that the landlord failed to fulfill his continuing obligation by willfully flouting DHCR rent reduction orders.

The Rent Stabilization Law and Code are unfortunately silent as to the effect that a rent reduction order, issued prior to the four-year limitations period but still in effect during that period, as is the case here, has on a subsequent overcharge complaint based on that order. Petitioner argues that DHCR rent reduction orders must be considered by DHCR in establishing the legal stabilized rent for an apartment for the purposes of an overcharge complaint and that, because the rent reduction orders here remained in effect -- and imposed a continuing duty on the landlord to reduce rent -- during the relevant four-year period,

the four-year look-back rule is no bar to considering those orders for the purposes of calculating the amount by which petitioner was overcharged (see Thornton, 5 NY3d at 180; see also Matter of 508 Realty Assocs., LLC v New York State Dept. of Hous. and Community Renewal, 61 AD3d 753, 755-756 [2d Dept 2009]; Jenkins, 65 AD3d at 173). DHCR, on the other hand, argues that its determination is supported by a rational basis and is consistent with the statute as the legislature intended the four-year limitations/look-back period to be absolute, prohibiting the consideration of earlier rent records for the purpose of calculating a rent overcharge.

In this matter of statutory construction, where deference to an agency's interpretation is not required (see e.g. Roberts v Tishman Speyer Props., L.P., 13 NY3d 270, 285 [2009]), we find petitioner's argument more persuasive as it best reconciles and harmonizes the legislative aims of both the four-year limitations/look-back period as set forth in Rent Stabilization Law § 26-516 (a) (2) and CPLR 213-a and the "continuing obligation" of a landlord to reduce rent and make repairs as per Rent Stabilization Law § 26-514 (see McKinney's Cons Laws of NY, Book 1, Statutes §§ 95, 96 [in interpreting statutes, the goal is to further the intent, spirit and purpose of a statute, to harmonize all parts of a statute to give effect and meaning to every part])).

Certainly, DHCR can take notice of its own orders and

the rent registrations it maintains to ascertain the rent established by a rent reduction order without imposing onerous obligations on landlords. Moreover, refusing to give effect to a rent reduction order's direction to roll back rent in cases where the order remained in effect during the statutory four-year period would countenance the landlord's failure to restore required services and thwart the goals of the Legislature in enacting Rent Stabilization Law § 26-514, namely, to "motivate owners of rent-stabilized housing accommodations to provide required services, compensate tenants deprived of those services, and preserve and maintain the housing stock in New York City" (Jenkins, 65 AD3d at 173, citing Matter of Hyde Park Assoc. v Higgins, 191 AD2d 440, 442 [1st Dept 1993]). In short, rent reduction orders impose a continuing obligation on a landlord and, if still in effect during the four-year period, are in fact part of the rental history which DHCR must consider.

We conclude that the purposes of the relevant statutes are best served here if DHCR calculates the amount of rent overcharge by reference to the 1987 and 1989 rent reduction orders, which remained in effect during the four-year limitations period and, accordingly, were part of the rental history that the Rent Stabilization Law permits DHCR to consider.

Accordingly, the order of the Appellate Division should be reversed, with costs, and the case remitted to Supreme Court with directions to remand to respondent DHCR for further

proceedings in accordance with this opinion. The certified question should not be answered upon the ground that it is unnecessary.

Matter of Oscar Cintron v Judith A. Calogero, as Commissioner
No. 150

SMITH, J. (dissenting):

The relevant provisions of the Rent Regulation Reform Act of 1997 seem as clear to me as they did when I dissented in Thornton v Baron (5 NY3d 175 [2005]). "[N]o determination of an overcharge and no award or calculation of an award of the amount of an overcharge may be based upon an overcharge having occurred more than four years before the complaint is filed This paragraph shall preclude examination of the rental history of the housing accommodation prior to the four-year period preceding the filing of a complaint pursuant to this subdivision" (Rent Stabilization Law [RSL] of 1969 [Administrative Code of the City of NY] § 26-516 [a] [2]; see also id., § 26-516 [a] ["Where the amount of rent set forth in the annual rent registration statement filed four years prior to the most recent registration statement is not challenged within four years of its filing, neither such rent nor service of any registration shall be subject to challenge at any time thereafter"]; Rent Stabilization Code [9 NYCRR] § 2526.1 [a] [2]). In Thornton, this Court, unjustifiably I thought, wrote an exception into the statute, and in this case it writes another one, which I also think unjustified.

I grant that there is some tension between the command of the 1997 Reform Act that rental history going back more than four years may not be considered and the provision of RSL § 26-514 that rent reduction orders based on a failure to provide required services remain in effect until the deficiency in services is cured. There is not such a stark conflict, however, as to justify the majority's choice to let one statute nullify the other. DHCR has, it seems to me, found a fair solution by ordering that, where the non-compliance goes on for more than four years, the rent is in effect frozen for a rolling four-year period -- so that the tenant cannot get the advantage of a rent level more than four years old, but the landlord is never free from the reduction order's effect. This works no undue hardship on the tenant, who need only file a complaint within four years of being overcharged to avoid any time bar.

It is thus unnecessary to resort to the fiction embraced by the majority that a rent level existing more than four years earlier is transformed by the rent reduction order into a "part of the [more recent] rental history which DHCR must consider" (majority op at 9). I would affirm the order of the Appellate Division.

* * * * *

Order reversed, with costs, and case remitted to Supreme Court, Bronx County, with directions to remand to respondent for further proceedings in accordance with the opinion herein. Certified question not answered upon the ground that it is unnecessary. Opinion by Judge Ciparick. Chief Judge Lippman and Judges Graffeo, Read, Pigott and Jones concur. Judge Smith dissents and votes to affirm in an opinion.

Decided October 19, 2010