

**MEMORANDUM**

SUPREME COURT QUEENS COUNTY  
IA PART 22

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Matter of Application of  
GARDEN LEASING LIMITED LIABILITY

- against -

DIVISION OF HOUSING AND COMMUNITY  
RENEWAL

X

INDEX NO. 7876/08

MOTION SEQ. NO. 1

BY: LANE, J.

DATED: September 19, 2008

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In this Article 78 proceeding, petitioner Garden Leasing Limited Liability seeks a judgment vacating the decision and order of respondent New York State Division of Housing and Community Renewal (DHCR) dated March 20, 2008, which denied its Petition for Administrative Review (PAR), upheld the Rent Administrator's determination that petitioner failed to maintain essential services in the subject apartment and granted a rent reduction to the complaining tenant.

Petitioner Garden Leasing Limited Liability (Garden Leasing) is the owner of an apartment building located at 62-60 108<sup>th</sup> Street, Forest Hills, New York. On January 10, 2007, Lyudmila and Vyacheslav Mosheyev, the tenants in apartment 2D in the subject building, filed an "Application for a Rent Reduction Based Upon Decreased Building-Wide Service(s)" with the DHCR, in which they stated that the LeFrak Organization was the owner. The tenants also submitted a letter from the Queens Community Civic

Corp. (QCCC), addressed to the LeFrak Organization, dated November 21, 2006, stating that it had been meeting with the tenants in the subject building, and attached numerous non-DHCR "General Complaint Forms," which lists 126 different conditions and check off boxes. Said letter was sent by certified mail to the LeFrak Organization, attention "John Brady." With respect to this apartment, the tenants stated that the owner was LeFrak and checked off the following boxes: "bedroom: floors broken or warped; walls cracked and bulging in all three bedrooms; window defective in two bedrooms; water leaks in bedroom 2 when raining; kitchen: drain stoppage; faucets don't work; bathroom: flushometer defective or broken; wall tiles cracked; living room: holes; floors warped or broken; cracks, bulges in wall; pipes, fixtures leak; bathtub/shower defective; living room: entire apartment: roaches; inadequate heat; radiators defect; a lot of noise coming from tenants above no carpeting an throughout day and night; public areas: inadequate lighting in halls and stairways; garbage in halls and vestibule; hallway needs painting; rats, mice or roaches throughout the building; superintendent never around; backyard dirty, garbage in yard."

On January 30, 2007, notices of the tenants' complaint were sent to the owner, Garden Leasing, to the LeFrak Organization as the agent for the owner, and to Mid State Management Corp., as managing agent for Garden Leasing. On January 31, 2007,

Garden Leasing also received from the DHCR 55 separate individual complaints, as well as one building-wide complaint, all alleging various decreases in services at the subject premises. Annexed to each complaint was a copy of the non-DHCR General Complaint Form.

Cheryl Jensen, Mid State Management Corporation's "Director-Management," in a letter addressed to the DHCR's Office of Rent Administration and written on Mid State's letterhead and dated February 21, 2007, stated that the complaining tenant had wrongly stated that the LeFrak Organization was the owner, and requested that all future correspondence be forwarded to the correct owner, Garden Leasing Limited Liability Company. Ms. Jensen stated that the complaining tenant had failed to notify the owner of the conditions complained of as required by Section 2523.4(c), and that in the attempted notice the tenant did not identify any specific condition requiring repair. She also questioned QCCC's role in the matter, took issue with the form used by the tenant, denied the tenant's allegations and requested that the complaint be dismissed.

Charles Mehlman, Senior Vice President and General Manager of Mid State, in a letter dated February 23, 2007 and written on Mid State Management's letterhead, and addressed to DHCR's Acting General Counsel, stated that his office had received 55 separate tenant service complaints with non-specific allegations. He asserted that the multiple complaints violated

section 2523.4(c) of the Rent Stabilization Code, in that the tenants failed to provide adequate prior notice of any decrease in service and failed to afford the management company an opportunity to make any needed repairs. It also took issue with the general complaint form, the organization Queens Community Civic Corp. and the fact that the DHCR had accepted and processed these complaints. This letter makes several references to the LeFrak Organization in which LeFrak was referred to as a landlord.

QCCC, submitted certain documents to the DHCR on May 6, 2007 in support of its claim of an association between the LeFrak Organization, Mid State Management and Garden Leasing. QCCC also submitted a letter to the DHCR, dated May 21, 2007 in which it asserted that the LeFrak Organization was the derivative owner of the property through a chain of entities, and that certain individuals listed as officers of Garden Leasing, including Mr. Mehlman, were also listed in the lobby directory of the LeFrak Organization as executive officers of the LeFrak Organization. The tenant asserted that the LeFrak Organization was the owner, as a plate bearing its name had been installed in the elevator.

Ms. Jensen, in a letter dated June 1, 2007 and received by the DHCR on June 8, 2007, stated that Garden Leasing was the registered owner of the property and that Mid State Management was the registered managing agent, and that the tenant's and QCCC's

attempt to find a connection between these entities and the LeFrak Organization was based upon speculation and innuendo. She stated that neither the label on the elevator cab, nor the fact that the companies may have some common officers, nor a common address, constitutes proof of the LeFrak Organization's ownership of Garden Leasing. She asserted that Garden Leasing was not served with the required prior notice of the conditions complained of, and that service on the LeFrak Organization was improper.

Ms. Jensen, in a letter dated June 20, 2007, noted that the tenants, in their response, admitted that they pay their rent to Garden Leasing and that it is mailed to Mid State Management. She stated that the tenants were, thus, aware of both the actual owner and managing agent, and reiterated that the fact that Garden Leasing and LeFrak Organization may share the same address and have some officers and employees in common, is completely irrelevant as the Rent Stabilization Code expressly requires that the owner or managing agent be served with the required prior notice.

The DHCR inspected the subject apartment on August 15, 2007. The inspector, in a report dated July 31, 2007, found that there was evidence of a defective flushometer in the bathroom toilet; that there was evidence of a crack in the tiles behind the wall by the rise, but no evidence of missing tiles; that there was evidence of a defective window balance in bedroom 1; and that there

was evidence of a warped/broken floor in the living room. Photographs were attached to the report.

The Rent Administrator, in a decision and order issued October 25, 2007, determined that based upon the inspector's report the following services were not maintained: bathroom toilet flushometer, bedroom window, and living room floor, and ordered a rent reduction. The Rent Administrator made no determination as to whether prior notice was properly served on the owner or its agent.

Garden Leasing filed a petition for administrative review (PAR), on November 16, 2007, in which it stated the tenant did not properly notify the owner of the conditions at issue, pursuant to Section 2523.4(c) of the Rent Stabilization Code; that the prior notice was not adequate to advise the owner of the repairs needed; that the alleged tenant's representative never submitted an authorization from the tenants to represent them; and that the owner was not required to respond to the notices from QCCC.

The tenants, in their answer to the PAR, asserted that the owner's arguments concerning prior notice and the manner in which the tenants listed their complaints were specious; that the allegations regarding QCCC should be disregarded; that the DHCR was obligated to investigate LeFrak's connection to the building; and that the claim that there is insufficient evidence to support a rent reduction should be rejected.

Deputy Commissioner, Leslie Torres, in an order and

opinion issued on March 20, 2008 denied the PAR and upheld the Rent Administrator's order. Deputy Commissioner Torres stated, in pertinent part, that:

"Pursuant to Section 2523.4(c) of the Rent Stabilization Code '(b)efore filing an application for the reduction of the legal regulated rent pursuant to subdivision (a) of this section, a tenant must have first notified the owner or the owner's agent in writing of all the service problems listed in such application.' Here the Queens Community Civic Corporation (QCCC) submitted complaints on behalf of fifty-five tenants in the subject building, including apartment 2D at issue here. Each complaint form was signed by each of the fifty-five tenants. Attached to each complaint was a form denominated "General Complaint Form" which contained a checklist of problems, with various boxes checked by the various tenants and the corresponding form signed by each tenant. Additionally, a certified letter dated November 21, 2006 addressed to John Brady of the LeFrak Organization at 97-77 Queens Boulevard, Rego Park, New York 11374 from QCCC was attached to each complaint. The letter referenced the attached complaint forms and asked the owner to attend to these complaints within ten days.

"The Administrator properly determined that the November 21, 2006 letter addressed to the LeFrak Organization met the requirements of Section 2523.4(c) of the Code, as the evidence indicates that LeFrak was an agent of the owners, Mid State Management Corporation and Garden Leasing Limited Liability Company. John Brady of Mid State Management is registered as the managing agent with HPD and Garden Leasing is registered with the DHCR as the owner. Mid State Management is registered with the DHCR as the manager of the subject premises. Both companies are listed as being located at 97-77 Queens Blvd., Rego Park, New York 11374. As noted in the file, in a mortgage agreement filed by Garden Leasing Limited Liability Company on July 28, 2004, its address and principal place of business is listed 'c/o LeFrak Organization, 97-77 Queens Boulevard, Rego Park, New York, 11374.'

"Further in a letter to DHCR's Acting General Counsel, dated February 23, 2007, in response to the

fifty-five service complaints, Charles Mehlman, Senior Vice President and General Manager, on the letterhead of Mid State Management Corporation, repeatedly referred to the owner of the premises as the LeFrak Organization. For example, he writes... 'the LeFrak Organization has no reason to believe that it is a legitimate complaint from a tenant with real problems that need to be addressed... Obviously it was impossible for the LeFrak Organization to respond to fifty-five generalized complaints involving non-specific allegations in ten days... The LeFrak Organization works hard to maintain its reputation as a conscientious landlord....'

"Here the preliminary letter was provided to John Brady, the registered managing agent at the address registered with DHCR and HPD. Although the letter was addressed to the LeFrak Organization as opposed to Garden Leasing Limited Liability Company or Mid State Management Corporation, the evidence of record indicates that LeFrak was an agent of those companies. As such, the tenant has complied with the notice requirements of Section 2523.4(c)."

Petitioner thereafter commenced this proceeding and asserts that the DHCR's decision and order of March 20, 2008 is arbitrary and capricious, in violation of law and not in accordance with the facts and evidence presented to the agency. Petitioner asserts that the LeFrak Organization is not the owner of the subject premises and, therefore, there was no basis for the QCCC to notify it of the tenants' complaints; that there is no evidence that the QCCC was authorized to act on behalf of any tenant in the subject premises; that the complaining tenant never notified Garden Leasing or its managing agent Mid State Management with prior notice of the conditions complained of, or afforded them an opportunity to make repairs, prior to filing her complaint with the

DHCR, as required by Section 2523.4(c) of the Rent Stabilization Code; and that the DHCR's determination that the LeFrak Organization is an agent of Garden Leasing or Mid State Management has no basis in fact or law, as there is no evidence that the LeFrak Organization had any actual or implied authority to act as an agent for Garden Leasing or Mid State Management. It is asserted that the DHCR cannot ignore its own rules and regulations regarding prior notice and, therefore, the notice provided by QCCC to the LeFrak Organization was ineffective and in violation of Section 2523.4(c) of the Rent Stabilization Code. Petitioner further asserts that the prior notice, which consisted of a form with check-off boxes, created by QCCC and not the DHCR did not provide it with sufficient notice to determine what repairs, if any, were required. Finally, it is asserted that the visual inspection of the apartment was insufficient to determine when the apartment was last painted, and, therefore, no basis exists for imposing a rent reduction.

Respondent DHCR, in opposition, asserts that its decision and order of March 20, 2008 is neither arbitrary nor capricious, nor an abuse of discretion and that it has a rational basis in the law and the record and should be upheld.

It is well settled that the court's power to review an administrative action is limited to whether the determination was warranted in the record, has a reasonable basis in law and is

neither arbitrary nor capricious (Matter of Colton v Berman, 21 NY2d 322 [1967]; Matter of 36-08 Queens Realty v New York State Div. of Hous. and Community Renewal, 222 AD2d 440 [1995]). An agency's interpretation of its own regulations "is entitled to deference if that interpretation is not irrational or unreasonable" (Matter of Gaines v New York State Div. of Hous. & Community Renewal, 90 NY2d 545, 549 [1997]; see Samiento v World Yacht Inc., 10 NY3d 70, 79 [2008]). "Put another way, the courts will not disturb an administrative agency's determination unless it lacks any rational basis" (see Matter of IG Second Generation Partners L.P. v New York State Div. of Hous. & Community Renewal, 10 NY3d 474 [2008]; see also Matter of Gilman v New York State Div. of Hous. & Community Renewal, 99 NY2d 144, 149 [2002]).

At issue here is whether the Deputy Commissioner's determination that the tenant's representative complied with the provisions of Section 2523.4 (c) of the Rent Stabilization Code and that the LeFrak Organization is an agent of Garden Leasing and Mid State Management, is supported by the administrative record. The evidence in the record establishes that the tenant's representative, QCCC, sent a letter by certified mail to the LeFrak Organization, attention John Brady, regarding the service problems. It is noted that the tenant's complaint form, however, identified the owner as Garden Leasing. The Deputy Commissioner, based upon the evidence in the record, including the registration

statements on file with the DHCR, properly determined that the building is owned by Garden Leasing and that Mid State Management is its managing agent. There is also evidence in the record that John Brady was listed with the HPD as the agent for Mid State Management. There is, however, no evidence in the administrative record which links John Brady to the LeFrak Organization, or establishes that the LeFrak Organization is an agent for either Garden Leasing or Mid State Management. Moreover, the mere fact that QCCC mailed a letter to the LeFrak Organization, attention John Brady, does not establish the existence of an agency relationship between Garden Leasing or Mid State Management and the LeFrak Organization.

It is noted that neither the Rent Stabilization Law nor the Rent Stabilization Code define the term agent. Therefore, the Deputy Commissioner was required to review the evidence in the administrative record in order to determine whether an agency relationship exists between the LeFrak Organization and Garden Leasing or Mid State Management. It is well settled that a principal-agent relationship may be established by evidence of the "consent of one person to allow another to act on his or her behalf and subject to his or her control, and consent by the other so to act...The agent is a party who acts on behalf of the principal with the latter's express, implied, or apparent authority" (Time Warner City Cable v Adelphi Univ., 27 AD3d 551 [2006], quoting Maurillo v

Park Slope U-Haul, 194 AD2d 142, 146 [1993]; see also Dynas v Nagowski, 307 AD2d 144, 147-148, 762 NYS2d 745 [2003]).

Here, the evidence in the administrative record establishes that QCCC, the tenant's representative, mailed a written notice dated November 21, 2006, to the LeFrak Organization, rather than the building's owner, Garden Leasing or Mid State Management, its registered managing agent. Although the LeFrak Organization, Mid State Management and Garden Leasing all have the same address, there is no evidence in the record which supports the Deputy Commissioner's finding that the LeFrak Organization is an agent of the owner, Garden Leasing, or its registered managing agent, Mid State Management. The fact that Garden Leasing listed its address "c/o LeFrak Organization" on a mortgage, only establishes its address for mailing, and is not an indicia of an agency relationship. There is no evidence in the record of any relationship between Mr. Brady and the LeFrak Organization which could give rise to an agency relationship between the owner or its managing agent and the LeFrak Organization.

The court further finds that there is simply no evidence in the administrative record that either Garden Leasing or Mid State Management authorized the LeFrak Organization to act on its behalf. In addition, as there is no evidence that the tenant or QCCC relied upon any misrepresentation by either Garden Leasing

or Mid State Management which would lead them to believe that the LeFrak Organization was its agent, the doctrine of apparent authority is inapplicable here (see Hallock v State, 64 NY2d 224, 231 [1984]). Finally, although the letter from Mr. Mehlman may have led the DHCR to initially believe that the LeFrak Organization was the landlord, there is nothing in this letter that could lead the Deputy Commissioner to conclude that the LeFrak Organization is the agent of the registered owner, Garden Leasing, or the registered agent, Mid State Management.

The court, therefore, finds that the Deputy Commissioner's determination that the LeFrak Organization is the agent of the owner Garden Leasing and its managing agent, Mid State Management lacks a rational basis in the law and the record. Since there is no evidence that the tenant or her representative properly served the owner or its agent with notice of the claimed service deficiencies, as required by Section 2523.4(c) of the Rent Stabilization Code, a precondition to filing a complaint with the DHCR, the agency lacked the authority to entertain the tenant's complaint.

Accordingly, petitioner's request to vacate the DHCR's decision and order of March 20, 2008 is granted.

Settle order.

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**Howard G. Lane, J.S.C.**