

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

D54558
C/htr

_____AD3d_____

Argued - September 7, 2017

REINALDO E. RIVERA, J.P.
L. PRISCILLA HALL
SHERI S. ROMAN
LINDA CHRISTOPHER, JJ.

2016-09481

DECISION & ORDER

In the Matter of Napa Partners, LLC, petitioner-respondent, v Division of Housing and Community Renewal, appellant, et al., respondent.

(Index No. 11928/15)

Mark F. Palomino, New York, NY (Christina S. Ossi of counsel), for appellant.

Golino Law Group, PLLC, New York, NY (Santo Golino of counsel), for petitioner-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 August 4, 2015, which denied a petition for administrative review and affirmed a Rent Administrator's determination that a rent overcharge had occurred, the New York State Division of Housing and Community Renewal appeals from a judgment of the Supreme Court, Queens County (Raffaele, J.), entered June 29, 2016, which granted the petition, annulled the determination dated August 4, 2015, and remitted the matter to the New York State Division of Housing and Community Renewal for further proceedings.

ORDERED that the judgment is reversed, on the law, with costs, the petition is denied, and the proceeding is dismissed.

In a determination dated August 4, 2015, the Deputy Commissioner of the New York State Department of Housing and Community Renewal concluded that a Rent Administrator had properly taken into account rent reduction orders dated October 9, 1996, and July 7, 1997, in determining a tenant's complaint regarding a rent overcharge. The landlord commenced this

February 7, 2018

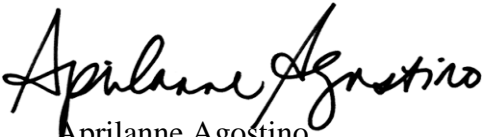
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proceeding pursuant to CPLR article 78 to review the Deputy Commissioner's determination.

The Deputy Commissioner's determination was not made in violation of lawful procedure, affected by an error of law, arbitrary and capricious, or an abuse of discretion (*see* CPLR 7803[3]; *Scott v Rockaway Pratt, LLC*, 17 NY3d 739, 740; *Matter of Cintron v Calogero*, 15 NY3d 347, 355-356; *Matter of JP & Assoc. Corp. v New York State Div. of Hous. & Community Renewal*, 122 AD3d 740, 741). Accordingly, the Supreme Court should have denied the petition and dismissed the proceeding.

RIVERA, J.P., HALL, ROMAN and CHRISTOPHER, JJ., concur.

ENTER: 
Aprilanne Agostino
Clerk of the Court