

**Matter of 63rd W. Realty LLC v Division of Hous. & Community Renewal**

2004 NY Slip Op 30377(U)

May 18, 2004

Supreme Court, New York County

Docket Number: 100488/04

Judge: Lottie E. Wilkins

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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In the Matter of the Application of 63<sup>RD</sup> WEST  
REALTY LLC,

**PART 18**

Index No. 100488/04

Petitioner,

For a Judgment Under Article 78 of the Civil Practice  
Law and Rules,

DECISION

- against -

DIVISION OF HOUSING AND COMMUNITY  
RENEWAL,

Respondent.

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**Lottie E. Wilkins, J.:**

Between 2000 and 2002, landlord 63<sup>rd</sup> West Realty LLC successfully defended against three rent overcharge proceedings brought before the Division of Housing and Community Renewal (DHCR) by tenants of its apartment building located at 248 West 64<sup>th</sup> Street in Manhattan by showing that the premises had undergone a \$2.2 million rehabilitation in 1994, thereby removing it from rent regulation. In this proceeding, petitioner 63<sup>rd</sup> West Realty LLC claims that DHCR acted arbitrarily and capriciously when it rejected its contention that the same 1994 rehabilitation project actually encompassed a "complex" of buildings that included an adjacent property, 236 West 64<sup>th</sup> Street. For the reasons that follow, this matter should be remitted to DHCR for reconsideration.

There is no dispute that 236 West 64<sup>th</sup> Street and 248 West 64<sup>th</sup> Street are separate properties inasmuch as they are designated by different tax block/lots. Moreover, there is no dispute that in the three prior rent overcharge proceedings before DHCR, each relating to apartments in 248 West 64<sup>th</sup> Street, petitioner submitted no evidence whatsoever that would indicate that 236 West 64<sup>th</sup> Street was part of the 1994 rehabilitation project. It was not until the instant rent overcharge proceeding was commenced by a tenant of 236 West 64<sup>th</sup> Street that petitioner submitted documents purporting to show that the rehabilitation included the adjacent property. One such document was a single-page "addendum" to the 1994 construction contract for 248 West 64<sup>th</sup> Street which states that, due to a typographical error, the name and location of the renovation project was amended to include 236 West 64<sup>th</sup> Street (a/k/a 236-240 West 64<sup>th</sup> Street). Curiously, the document is printed on petitioner's own letterhead and is undated, however, appears to be signed by the landlord and contractor. The other document submitted was a certificate of occupancy for 236 West 64<sup>th</sup> Street issued in 1998. The issue here centers on the certificate of occupancy.

Without detailing intervening events, the DHCR Rent Administrator ruled in favor of the tenant, finding that petitioner failed to show that the property had been rehabilitated and, therefore, was subject to rent regulation. The Rent Administrator pointed specifically to the purported contract addendum, with its indicia of

unreliability, and to the fact that petitioner only submitted the back side of a certificate of occupancy which did not contain the property address. On the petition for administrative review, a DHCR Deputy Commissioner refused to consider the front page of the certificate of occupancy – which included the address – because it was not part of the record before the Rent Administrator.

In a proceeding such as this, the Court is normally called upon to evaluate whether an agency's determination was arbitrary or capricious in light of the factual record before it. In this case, however, DHCR has admitted that the factual record before the Rent Administrator was incomplete. Counsel for DHCR concedes that petitioner did "submit a complete copy of the Certificate of Occupancy, which apparently was not properly routed to the file until it was too late to be considered" (Respondent's Memorandum at 2). Since the decision of the Rent Administrator was based partially on the fact that the certificate of occupancy was incomplete, it is uncertain whether a different conclusion would have been reached had the complete certificate of occupancy been considered. Moreover, the Deputy Commissioner denied the PAR because he would not consider a complete certificate of occupancy that was not before the Rent Administrator.

Since it is now clear that DHCR did not consider all the proof that petitioner provided, the determinations made by the Rent Administrator and Deputy

Commissioner were affected by a material factual error and must be reconsidered.


Accordingly, it is

ORDERED that the petition is granted and the determination of respondent is annulled. It is further

ORDERED that the matter is remitted to the DHCR Rent Administrator for reconsideration based on the complete factual record.

This constitutes the decision and judgment of the Court.

Dated: *May 18, 2004*  
**MAY 18 2004**

  
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Lottie E. Wilkins, J.S.C.  
**Lottie E. Wilkins**

  
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CLERK

**FILED**  
JUN 9 2004  
COUNTY CLERK'S OFFICE  
NEW YORK