

**Matter of Bunis v New York State Div. of
Hous. & Community Renewal**

2007 NY Slip Op 30620(U)

April 4, 2007

Supreme Court, New York County

Docket Number: 0106079/2006

Judge: Judith J. Gische

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

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

HON. JUDITH J. GISCHE
J.S.C.

PART _____

Index Number : 106079/2006

BUNIS, ANDREA

vs

NEW YORK STATE D.H.C.R.

Sequence Number : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ~~motion~~

***motion (s) and cross-motion(s)
decided in accordance with
the annexed decision/order
of even date.***

FILED

APR 11 2007

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 4/4/07

HON. JUDITH J. GISCHE J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 10**

In the Matter of the Application of
ANDRA BUNIS,

Petitioner,

Decision/Order

for a Judgment pursuant to Article 78 of
the Civil Practice Laws and Rules,

Index # 106079/2006
Mot. Seq. # 001

-against-

[Action #1]

the NEW YORK STATE DIVISION of HOUSING and
COMMUNITY RENEWAL,

Respondent.

In the Matter of the Application of
PARTNERSHIP 92 LP and BLDG MANAGEMENT
CO, INC., d/b/a BRISTOL MANAGEMENT CO., INC.

Petitioners,

for a Judgment pursuant to Article 78 of
the Civil Practice Laws and Rules,

Index # 106326/2006
Mot. Seq. # 001

-against-

[Action #2]

the NEW YORK STATE DIVISION of HOUSING and
COMMUNITY RENEWAL,

Respondent.

Hon. Gische, J.:

Pursuant to CPLR §2219(a) the following papers were considered by the court
on the submitted petitions:

PAPERS	NUMBERED
[Action # 1]	
Notice of Petition, Verified Petition, exhibits.....	1
Verified Answer, PH affd., exhibits.....	2
Notice of cross-Motion, GAM affirm, exhibits.....	3
RMO affirm. In opp., exhibit.....	4
GAM Reply affirm., exhibit.....	5

[Action # 2]

Notice of Petition, Verified Petition, exhibits.....	1
Notice of Cross-motion. PH affd.....	2
Verified Answer, PH affd., exhibits.....	3
Notice of Cross-motion, DDL affirm., exhibits.....	4
PH Affd. In response.....	5
Reply affirm., exhibit.....	6
Amended Reply Affirm.....	7

Upon the foregoing papers the decision and order of the court is as follows:

There are two Article 78 petitions before the court. The first petition ["Action #1"] was brought by Andrea Bunis ("Bunis"). The second petition ["Action #2"] was brought by Partnership 92 LP and Bldg Management Co., Inc. (collectively "92 LP"). Bunis and 92 LP are respectively the tenant and owner/managing agent of apartment 3D ("apartment") located at 412 East 55th Street in Manhattan ("building") and garage space 12 ("garage space"), also located at the building. Each petition seeks to challenge the same determination of the New York State Division of Housing and Community Renewal ("DHCR") made on March 7, 2006 ("rent overcharge decision"). 92 LP also seeks leave to intervene in action #1 brought by Bunis. Bunis' petition also challenges a second determination made by the DHCR on March 7, 2006 on a separately filed complaint ("renewal lease decision"). The DHCR opposes both petitions.

By order dated December 16, 2006, made by the Hon. Kibbie F. Payne, action #2 was transferred to this court. At the outset, the court grants 92 LP's motion to intervene in action # 1. This court consolidates both petitions for consideration and determination in this single decision under the caption as set forth above.

The underlying decisions and the primary challenges of the parties are summarized as follows:

Rent Overcharge Decision

The rent overcharge decision denied each party's Petition for Administrative Review ("PAR") of a September 13, 2005 order of the Rent Administrator ("RA"). It thereby confirmed the determination by the RA that Bunis had been overcharged by 92 LP and was entitled to a refund in the amount of \$44,008.76 plus interest for the period June 1, 1995 through July 31, 1998 but otherwise denied her an award of treble damages.

Bunis argues that she is entitled to treble damages on the overcharge award because it was willful. She also claims that the DHCR improperly calculated the rent due based upon "deemed" leases between the parties.

92 LP argues that the amount of the overcharge was set on an incorrectly determined base rent of \$552.70 per month as of June 1, 1995. It argues that the base rent calculation is not calculated according to the Rent Stabilization laws and code and that it also violates principals of the *res judicata* doctrine. 92 LP also claims any interest component awarded on the amount was improper, because the amounts were only paid after a judgment was issued in a non-payment proceeding on November 20, 1997.

Renewal Lease Determination

The renewal lease decision held that 92 LP made a proper lease renewal offer to Bunis in July 2004, which she was required to accept or reject without modification. Only Bunis challenges this decision.

Bunis claims that the DHCR decision finding that she had been offered a proper lease renewal was in error not only because the lease she was offered contain an incorrectly stated rent, but because it was accompanied by a request to sign a primary residence affidavit. Bunis also claims that the DHCR failed to address the merits of her garage overcharge complaint in its orders and that this court should direct it to do so.

History of the disputes between the Owner and Tenant

Bunis' tenancy at the building began on April 1, 1986 at an agreed rent of \$903.62. The apartment is subject to the rent stabilization laws. Since 1987, the parties have been in continual litigation with one another both before the courts and/or the DHCR. A history of the parties' litigation is germane to the arguments presently before the court.

Bunis filed her first overcharge complaint with the DHCR on May 4, 1987 ("first DHCR complaint"). As more fully set forth below, that first DHCR complaint was not finally resolved at the administrative level until over 17 years later, on February 25, 2004.

Sometime in 1993, Bunis stopped paying rent altogether. Notwithstanding the pendency of the first overcharge complaint, Bunis signed the renewal lease proffered by 92 LP which commenced on August 1, 1994.

In November 1994, 92 LP commenced a non-payment summary eviction proceeding against Bunis. While the non-payment proceeding and the first DHCR complaint were both still pending, Bunis signed another two year renewal lease proffered by 92 LP which commenced on August 1, 1996.

On October 29, 1997, in connection with the non-payment proceeding, Housing

Court Judge Bruce Gould issued a decision after trial, in which the parties stipulated that through July 31, 1996 \$41,600 in rent was owed and that through March 1997 approximately \$52,000 in rent was owed.¹ After hearing what essentially was a trial only on the defense of breach of warranty of habitability, Judge Gould granted Bunis a \$8,000 rent abatement.

Subsequent to Judge Gould's determination, but before any judgment was entered, on September 3, 1997 the RA issued a decision on the first DHCR complaint finding that there had been no overcharge. Bunis filed a PAR.

On November 20, 1997 Judge Gould issued a judgment in the amount of \$44,049.10 representing the balance of rent due 92 LP after the rebate. There is no dispute that Bunis paid that judgment in full after it was issued.

In July 1998 Bunis' renewal lease expired and 92 LP refused to accept her rent, but instead commenced a non-primary residence holdover proceeding against her ("holdover proceeding"). Apparently no rent or use and occupancy was paid by Bunis any time after July 31, 1998. In any event, at some point in time (not clear in these papers) the holdover proceeding was resolved in Bunis' favor, although 92 LP claims she prevailed only on a technical issue of service.

On April 1, 1999 the DHCR granted the PAR of the September 3, 1997 RA determination on the first DHCR complaint. The Commissioner concluded that Bunis had in fact been overcharged during the period April 1, 1986 through February 28, 1993 in the amount of \$68,530.54 (including interest). The decision expressly stated that "as

¹The parties had a slight discrepancy in the amount owed (less than \$600) due to a question about an MCI order.

of March 1993 record reflects that the matter of the tenant's rent payments was subject to a court proceeding so that overcharges are not calculated beyond February 28, 1993 in this proceeding." It set the legal regulated rent as of August 1, 1992 at \$515 per month. Treble damages, however, were denied. The Commissioner reasoned that the genesis of the parties' rent dispute had been the prior owner's illegal use of an illusory tenancy to inflate the rent. When 92 LP first set the rent with Bunis, it made allowance for the prior owner's illegal acts and set the rent using the last legal tenant's regulated rent with permissible rent stabilization increases to bring it up to date. The Commissioner held that the rent, however, should have been set based upon a rent for a comparable apartment at the building. While the DHCR disagreed with the owner's methodology for setting the initial rent, it acknowledged that 92 LP had made a good faith effort to calculate a legal rent under the circumstances. Each party filed Article 78 petitions to challenge the April 1, 1999 decision after PAR.

Right after the April 1, 1999 DHCR determination in her favor, on May 20, 1999, Bunis filed a second DHCR overcharge complaint ("second DHCR complaint"). It was based upon the calculation of rent that had been made by the DHCR at that time. It is the final DHCR determination on this second overcharge complaint that is the basis, *inter alia*, for the instant petitions.

On December 13, 1999, Hon. Ed Lehner decided the Article 78 proceeding brought concerning the first DHCR complaint. He remitted the matter back to the DHCR for further proceedings.

After Judge Lehner's remand of the first DHCR complaint, the DHCR did not render a final administrative determination until February 25, 2004. After resolving

some other important disputed issues, the Commissioner ultimately found that the tenant had been overcharged rent in the amount of \$68,530.54 through February 28, 1993. It further found that the overcharge had not been willful, and therefore, was not subject to the penalty of treble damages. In making these findings, the DHCR reasoned consistently with its prior decision of April 1, 1999, that there had been an overcharge. It also held that DHCR had calculated the legal rent for the apartment from the time of the inception of the lease through February 23, 1993. It determined that for the last renewal period from August 1, 1992 until February 28, 1993, the legal rent stabilized rent was \$515.00 per month. The DHCR further found, however, that since the tenant had begun withholding rent, the overcharge order could not be docketed as a judgment.

In July 2004, 92 LP sent Bunis renewal lease offers for the apartment and the garage space. Bunis rejected the renewal leases as being contrary to the rent set forth in the February 25, 2004 DHCR order and for other reasons. On December 13, 2004 Bunis filed two separate complaints with the DHCR respectively challenging: [1] the lease renewal offered on the apartment, and [2] rent charges and lease offered on the garage space. These two complaints were assigned one docket number ("third DHCR complaint").

An Article 78 proceeding challenging the February 25, 2004 DHCR decision on the first DHCR complaint was denied in a June 30, 2005 decision and order made by the Hon. Karen S. Smith (NY Co. Index # 106452/04). 92 LP thereafter filed a Notice of Appeal. No stay has been obtained and the appeal was never perfected.

Bunis claims that 92 LP thereafter filed two non-payment proceedings based

upon monthly rental amounts that exceeded the DHCR February 25, 2004 order, but that those proceedings were respectively dismissed or marked off calendar.

On July 12, 2005, the RA issued an order on the third DHCR complaint, directing the 92 LP to provide a renewal lease to Bunis within 60 days of the order. It reasoned that the prior lease offered was improper because it did not contain the correct rent and demanded that she complete an affidavit of primary residence as a part thereof. No mention was made about Bunis' claims concerning the garage. 92 LP filed a PAR. No PAR was filed by Bunis.²

On September 13, 2005 the RA issued a decision on the second DHCR complaint that for the period of June 1, 1995 through July 31, 1998, Bunis had been overcharged a total amount of \$44,008.76. The legal rent had been derived from the February 25, 2004 DHCR order which set legal rents from the inception of the lease with deemed renewal and MCI increases. The RA also denied treble damages.

On March 7, 2006 the DHCR issued separate orders on the PARs respectively filed on the second and third DHCR complaints. It is these March 7, 2006 orders, which were previously described in this decision, that are the subject of the instant Article 78 petitions.

Discussion

The standard for evaluating the DHCR's determinations is whether they were made in violation of lawful procedure, were affected by an error of law or were arbitrary

²In the March 7, 2006 renewal lease decision the Commissioner noted that because Bunis had not appealed the garage issue, would not be considered as part of the PAR.

and capricious. CPLR § 7803[3]. In order for the court to find that an agency determination is arbitrary and capricious, it would have to find that the action taken was without sound basis in reason and taken without regard to the facts. The question for the court is generally whether the agency determination has a rational basis. Pell v. Board of Education of Union Free School District No. 1 of Towns of Scarsdale and Mamaroneck, 34 NY2d 222 (1974). While pure issues of law should be determined by the court, issues concerning the interpretation of a statute or regulation by the agency responsible for its administration should be upheld, if they are not irrational or unreasonable. Madison-Oneide Board of Compaartive Educational Servicesv. Mills, 4 NY3d 51 (2004); Allstate Ins. Co. V. Libow, 106 AD2d 110 (2nd dept. 1984) affd. 65 NY2d 807 (1985).

Before the court turns to the parties' particular arguments, the court recognizes that the DHCR determinations were made based upon DHCR's treatment of the second DHCR complaint as a continuation of the first DHCR complaint. This treatment has created results for both Bunis and 92 LP that each of them likes in part and dislikes in part. Such treatment is neither arbitrary nor capricious. Instead it has allowed the DHCR to make orders that are consistent with one another, the Rent Stabilization Laws and the history of this case. In addition, in evaluating this matter it is important to view the actions of the parties as informed by the information available to them at the time they acted. Parties should not be penalized for not acting in accordance with decisions and orders that had not made when they acted.

Treble Damages

Bunis claims that she should have been awarded treble damages on the second

DHCR overcharge determination. She argues that on February 25, 2004, the DHCR issued a determination that as of August 1, 1992 the legal chargeable rent was \$515. The February 25, 2004 order further provided that 92 LP was to adjust the rent in accordance with that order after that date. 92 LP did not, however, make the adjustment, leading Bunis to argue that any overcharge after August 1, 1994 must be held willful.

The DHCR found, however, that the second DHCR complaint was simply a continuation of the first DHCR complaint. It therefore held that the same reasons why treble damages were not applicable on the first DHCR complaint carried over to this complaint. Since all of the rents which were the subject of the second overcharge complaint were collected by the landlord well before the February 25, 2004 DHCR determination, the DHCR's finding on the issue of treble damages makes perfect sense. Indeed the rents that are the subject of the second DHCR complaint were collected before even the April 1, 1999 DHCR order was issued and at a time that neither party could have known what the rents would turn out to be.

Bunis' argument, that treble damages are warranted because even after the February 25, 2004 DHCR order 92 LP continued to charge a higher rent than allowed by the DHCR, is rejected. It is undisputed that although she was billed for rent that was higher than allowed under the DHCR order, she did not pay any rent to the landlord after the order, not even in the lower amount set by the DHCR. Consequently the DHCR's decision to deny treble damages is sustainable. Waverley Associates v. DHCR, 12 AD3d 272 (1st dept. 2004). Bunis has not proved that the DHCR abused its discretion to not award such fees. Scherbyn v. Wayne-Finger Lakes Bd of Co-op Educ

Svcs, 77 NY2d 753 (1991).

Deemed leases

The second rent overcharge order established the legal rent beginning from June 1, 1995 through December 31, 2006. In establishing the legal rent the DHCR based the initial rent on the February 25, 2004 order which set the legal rent as of August 1992 at \$515 per month. It then increased the rent by the allowable Rent Stabilization guidelines for a two year renewal lease plus any permitted MCI increases. The overcharge, however, was awarded for the period June 1, 1995 through July 31, 1998. There is no dispute that for the period beginning July 31, 1998 through 2004 no renewal lease was offered to Bunis at all. After 2004, Bunis claims that the lease she was offered was improper. Bunis claims that the calculation of rent as if she had been offered renewal leases violates Rent Stabilization Code ("RSC") §2523.5[c][2]. Such code provision permits a landlord to deem a lease to be renewed if the tenant does not respond to a renewal lease offer. Since no offer was made, Bunis argues there cannot be any deemed lease. Of course, during the time period that the overcharge was awarded for, Bunis had an actual lease, albeit not in the amount that the DHCR determined the rent eventually to be. That was because the DHCR had not yet issued any order on the first DHCR complaint setting the legal rent. Thus, Bunis' argument about deemed leases fails on this basis alone.

In any event, while RSC §2523.5[c][2] provides one circumstance when a landlord can deem a lease renewed, it does not restrict the DHCR from deeming leases under proper circumstances in calculating the legal rent to be charged. In this respect, RSC § 2522.7 permits the DHCR to take into consideration all factors bearing upon the

equities involved when adjusting or establishing any legal regulated rent. That includes the authority to deem that the parties have entered into renewal leases. Kramer v. DHCR, 306 AD2d 172 (1st dept. 2003). Although not expressly articulated by the DHCR, the fact that the matter had been pending before it for many years before the initial legal rent was established by them had to have been a consideration by them in bringing the rent up to date with appropriate increases as if the parties had an ongoing uncontroversial landlord-tenant relationship. This analytic approach was not arbitrary or capricious, nor was it preempted by legislative changes to the RSC. Frost v. Tausik Brothers, 290 AD2d 234 (1st dept. 2002). The DHCR has "specialized knowledge and understanding" of its own underlying operational practices and it is in a better position to evaluate the facts, and draw any necessary inferences that may need to be drawn therefrom, DHCR's interpretation of the Rent Stabilization Law is entitled to great deference by this court. I/M/O Dworman v. New York State Division of Housing and Urban Renewal, 94 NY2d 359, 371 (1999).

Res Judicata

92 LP argues that because Bunis stipulated before housing Court Judge Gould in 1997 to the amount of rent due under the existing lease [the lease had been renewed through July 31, 1998] principals of res judicata prevent her from arguing that any rents paid for that period of time constitute an overcharge. 92 LP claims that it was contrary to law for the DHCR to have rejected this argument.

The DHCR Commissioner reviewed Judge Gould's decision and held that the issue of the legally regulated rent for the apartment was not before the court and no determination of such was made. It held that the DHCR, which has concurrent

jurisdiction, retained the right to determine issues not decided by the court.

“Res judicata” includes as a doctrinal part thereof “claim preclusion” which is also known as res judicata. Claim preclusion prevents a party from litigating any part of a claim that was or could have been litigated in an earlier proceeding. Schylkill Fuel Corp. v. B & C Nieberg Realty Corp., 250 NY 304 (1829). Siegel, New York Practice, §442 et seq. (4th Ed. 2005). It requires an identity of parties and a final judgment which disposes of a claim on the merits.

92 LP claims that at the time Judge Gould tried the issue of whether Bunis was entitled to a rent abatement, the Housing Court had jurisdiction to determine the issue of rent overcharge. 92 LP also claims that before reaching the issue of a rent abatement, the landlord necessarily had the burden of first proving the rent due. Thus it concludes that by Bunis agreeing to the rent outstanding at the time, which agreement formed the basis for Judge Gould’s 1997 judgment, she is precluded from claiming that the rent is other than what she agreed to. 92 LP points to the DHCR’s 1999 order for support that the after 1993 the matter of overcharge was with the courts.

92 LP’s argument is rejected. In 1994 through 1996 while the non-payment proceeding was pending before Judge Gould, there was a previously commenced DHCR proceeding on the issue of the permissible rent regulated rent that could be charged. That DHCR complaint had not been withdrawn by Bunis as part of any agreement in the Housing Court. When Judge Gould signed and entered his judgment, the only DHCR determination that had been made on the first DHCR complaint was the RA’s determination that there was no rent overcharge. Thus Bunis “agreement” was consistent with the extant DHCR orders. Only two years later (in 1999) did the DHCR

find that the initial rent had been incorrectly set. In 1997 Bunis could not have known that she would be successful on her PAR, nor could she have known that the DHCR would not calculate what the legal rent should have been up until 1999, the time of the order.³ It would be simply unfair to suggest that a judgment based on an agreement as to the amount of outstanding rent made in connection with a Housing Court rent abatement trial, which was agreement was consistent with extent DHCR orders, was *res judicata* on the legal level of rent that an owner could charge, while there was still an ongoing previously filed DHCR rent overcharge pending as the administrative agency.

Base Rent

92 LP also argues that the when the DHCR set the rent for the period beginning 1995, it improperly relied on information that was more than four years old in contravention of CPLR §213-b and RSL §26-516(a)(2)(ii). In fact 92 LP argues that the DHCR improperly calculated the rent based upon information from 1993.

In 1995, when 92 LP registered the rent of the apartment, there was still the first overcharge complaint pending before the DHCR. There had been no determination of an overcharge and 92 LP was still registering rents in accordance with rents calculated from the initial leases. These rents were not finally found to be invalid at the

³In this respect the 4/1/99 and 2/25/04 DHCR orders on the first DHCR complaint were inconsistent with the orders on the second DHCR complaint. The orders on the first complaint declined to calculate the legal rent up to the date of the orders because they believes that Bunis had stopped paying rent. The DHCR orders on the second complaint calculated the legal rent up to the date of such orders, notwithstanding that the DHCR knew that Bunis stopped paying rent after 1998. This inconsistency, however, was somewhat alleviated by the fact that the DHCR chose to treat the second DHCR complaint as a continuation of the first DHCR complaint.

administrative level until February 2004. In this respect the DHCR considered the second DHCR complaint to be a continuation of the first complaint. The rents are calculated consistently with the February 25, 2004 DHCR decision and are based upon information that was only resolved as of that date. The court finds that this was neither arbitrary nor capricious.

Interest

The DHCR also awarded interest on the overcharge amount. It was not, however, calculated to a dollar amount. 92 LP claims that no interest should be awarded because the money was paid pursuant to the 1997 judgment. Interest is merely a function of the time for holding money belonging to someone else. Love v. State of New York, 78 NY2d 540 (1991). It is a recognition that if you held your own money you could put it to a productive use. Thus there is nothing arbitrary about an award of interest. In calculating the amount of interest, the parties should take into consideration that by Bunis withholding rent, she effectively recouped (much if not all of⁴) the overcharge over time. The interest due should thus be calculated based upon the declining balance.

Offer of Renewal Lease

Bunis argues that the DHCR incorrectly found that the renewal leases offered in July 2004 were appropriate. She claims that they were non-conforming in two respects: [1] first that the rent did not comport with the DHCR's February 25, 2004 order and [2] second that 92 LP improperly sent an affidavit of primary residence for her to sign along

⁴The parties have been so embroiled in contesting the permissible rents to be charged that the math based upon the extent orders has not been done.

with the lease.

The DHCR properly found that the primary residence affidavit, although sent with the lease, was not sent as a condition to or part of the lease. Thus it did not make the lease offer improper. This is neither arbitrary nor capricious,

Admittedly the rent stated in the lease was above what the DHCR ultimately found it to be. In this case, the February 25, 2004 order that was extant at the time the lease renewal offer was made only set the legal rent through 1993. Neither party knew at that time what the DHCR would do in setting the rent for 2004. The initial order by the RA on the second DHCR complaint determining the rent for 2004 was first made in September 2004. The final DHCR order was not issued until March 7, 2006, well after the renewal lease had been offered. The DHCR's finding that since Bunis had an ongoing rent overcharge complaint pending before it, her rights with respect to the level of rent were fully preserved, and that she should have signed the lease the landlord offered, is neither arbitrary nor capricious.

Failure to Address Garage complaint

Both the DHCR and Bunis agree that the DHCR never made any determination on the aspect of her complaint that addresses the garage space. The DHCR argues that it is therefore premature for Bunis to have brought this proceeding to review a determination it has not yet made.

This mis-perceives the nature of the relief requested. Bunis wants this court to remand the garage dispute to the DHCR with a direction that they render a determination. Not only does Article 78 of the CPLR permit a court to review a determination of an administrative agency, but it also permits the court to compel an

agency to make a determination. CPLR § 7801. Here, the DHCR had failed to make any determination whatsoever on the garage aspect of Bunis' complaint. While acknowledging that they have yet to make a decision on this complaint, DHCR fails to offer any explanation for why it has not done so, or when (or even whether) it will. The court therefore grants the petition to the extent that any issues raised by the garage space complaint is remanded back to the DHCR for it to render a decision thereon.

Stays

92 LP seeks a stay of these proceeding pending determination of the appeal of Justice Smith's determination of the Article 78 petition of the first DHCR complaint. This relief is denied. There is no indication that the appeal is being actively pursued, and in any event, no stays of enforcement were obtained in that action.

Conclusion

In accordance herewith it is hereby:

ORDERED that Partnership 92, LP and BLDG Management Co, Inc, d/b/a Bristol Management Co., Inc. are permitted to intervene in the article 78 proceeding brought under Index # 106079/06, and it is further

ORDERED that the court consolidated the Article 78 proceedings brought under index #s 106079/06 and 106326/2006, and it is further

ORDERED that the Article 78 petition brought under index # 106079/06 is granted only to the extent that the DHCR is directed to render a decision on the complaints raised by petitioner Andrea Bunis in connection with her complaints concerning the garage space only, and it is further

ORDERED that Article 78 petition brought under index # 106079/06 is otherwise denied, and it is further

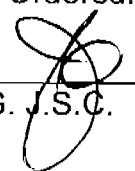
ORDERED that the article 78 petition brought under index # 106326/2006 is hereby denied in its entirety, and it is further

ORDERED that any requested relief not expressly granted herein has nonetheless been considered and is hereby denied, and it is further

ORDERED that this constitutes the decision and order of the court.

Dated: New York, New York
April 4, 2007

So Ordered:



J.G. J.S.C.

FILED
APR 11 2007
NEW YORK
COUNTY CLERK'S OFFICE