

**Matter of Windmere Chateau Inc. v New York State
Div. of Hous. & Community Renewal**

2007 NY Slip Op 30684(U)

April 10, 2007

Supreme Court, New York County

Docket Number: 0100230/2007

Judge: Lottie E. Wilkins

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

PRESENT: Lottie E. Wilkins

PART 18

Index Number : 100230/2007

WINDMERE CHATEAU

vs

HOUSING & COMMUNITY RELATIONS

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

UNRECORDED JUDGMENT
This Judgment is not to be filed with the County Clerk and notice of entry shall not be given. To obtain entry, counsel for the party who must appear in person at the Judgment Clerk's Desk (Room 100).

Petition, pursuant to CPLR article 78, to annul the determination of respondent, DHCR, is denied and the proceeding dismissed in accordance with the attached decision and judgment.

Dated: April 10, 2007

Lottie E. Wilkins

Lottie E. Wilkins 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

-----X
In the Matter of the Application of WINDMERE
CHATEAU, INC.,

PART 18

Index No. 100230/07

Petitioner,

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

DECISION and JUDGMENT

- against -

NEW YORK STATE DIVISION OF HOUSING AND
COMMUNITY RENEWAL and STEVEN GORDON,

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk
and notice of entry cannot be used based hereon. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
141B).

Lottie E. Wilkins, J.:

Petition, pursuant to CPLR article 78, to annul respondent Division of
Housing and Community Renewal's (DHCR) March 30, 2006 final determination
denying administrative review and affirming the Rent Administrator's reduction in rent
for Apartment 5N at the Windmere Chateau is denied. Denial of the PAR was neither
arbitrary nor capricious.

The Rent Administrator reduced the rent on the subject apartment based
on a finding that required services were not being provided, specifically maid and linen
services. The subject premises, Windmere Chateau located at 666 West End Ave in
Manhattan, is a rent stabilized hotel residence. Under Rent Stabilization Code Section
2521.3(a), hotel residences must provide maid and linen services, in addition to other

hotel-like amenities, in order for the building to maintain its hotel classification.

Contrary to the landlord's assertion, the appropriate remedy for a tenant who establishes a reduction in required services is a rent reduction and/or an order that the services be restored, not a reclassification of the building's status (see, RSL, Section 26-514). It seems somewhat disingenuous for petitioner to argue that the correct remedy at this point is to reclassify the building from a hotel to a standard apartment building in light of the landlord's recent admission that maid and linen services were in fact never provided. That is so because the rents charged for hotel units were based upon the landlord's past representations that hotel services were being provided. Thus, if the building were simply reclassified at this point without a wholesale reduction in rents for the hotel units, the landlord would reap a benefit from its own past misrepresentations.

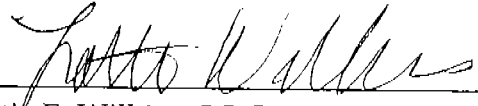
Finally, DHCR properly rejected the landlord's request for the application of a presumption that the services at issue must have been de minimis because the tenant had not complained about their absence in over four years (see, DHCR Rent Administration Fact Sheet #37). DHCR rationally concluded that such a presumption did not apply under these circumstances where provisions of the Rent Stabilization Code specifically require these services to be provided. Accordingly, it is

ORDERED that the petition is denied and the proceeding dismissed.

This constitutes the decision and judgment of the Court.

Dated: APRIL 10, 2007

APR 10 2007



Lottie E. Wilkins, J.S.C.

Lottie E. Wilkins

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).