

**Matter of Brown-Allen v DHCR Admin.
Review**

2007 NY Slip Op 31415(U)

May 15, 2007

Supreme Court, New York County

Docket Number: 0405250/2006

Judge: Lewis Bart Stone

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SCANNED ON 6/1/2007
SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
HON. LEWIS BART STONE

PRESENT: _____

PART _____

Index Number : 405250/2006

BROWN-ALLEN, CYNTHIA

vs

DHCR ADMINISTRATIVE REVIEW

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 _____

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *is denied in accordance with the annexed Decision and Order*

FILED

JUN 01 2007

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 5/15/07

Lewis Bart Stone
HON. LEWIS BART STONE 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: PART 50S

----- X
 In the Matter of the Application :
 CYNTHIA BROWN-ALLEN, :
 : DECISION AND
 Petitioner, : ORDER
 :
 - against- : INDEX NUMBER
 : 405250/06
 Administrative Review DHCR #UE410015 RT Doc. :
 Rent Administrator DHCR #410146 RT Doc. :
 Malcom X Apartments Inc./Shinda Management, :
 :
 Respondents.

FILED

Hon. Lewis Bart Stone:

JUN 01 2007

NEW YORK COUNTY CLERK'S OFFICE

This proceeding was commenced on December 28, 2006, and is by Cynthia Brown-Allen ("Brown-Allen"), the tenant of Apartment 6D, (the "Apartment") 250 West 146th Street, Manhattan (the "Building") pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR") to challenge a decision (the "Decision") of Respondent, the Commissioner of New York State Division of Housing and Community Renewal ("DHCR") issued on October 13, 2006 which affirmed and partially modified a determination by the Rent Administrator of DHCR, ruling that the rent charged for the Apartment by Malcolm X Apartments, Inc., the owner of the building ("Owner") was not an overcharge.

The Building was originally a low-income "Section 8" cooperative. The cooperative failed and was foreclosed upon by the Federal Department of Housing and Urban Development, and conveyed to its present owner, Owner, a not for profit corporation on May 30, 2000, subject to a deed restriction under which the Owner agreed to maintain 96 of the units as affordable housing for 25 years. The restrictions defined "affordable" to include cases where the tenant received a Section 8 subsidy. Brown-Allen was offered the opportunity to apply for such subsidy, but did not do so. Where such a foreclosure has occurred the Rent Stabilization Law ("RSL") provides that the apartments in the building could be set at any level the Owner chose. Rent Stabilization Code ("RSC") §2520.11(1)(ii)(a). In fact, the Owner set the initial rent as the fair market rent established by the Federal Department of Housing and Urban Development that year.

On January 17, 2001 the Owner, acting pursuant to and as required under the RSL, filed an initial rent registration of the Apartment with DHCR using the fair market rent as determined by HUD for such filing. Such filing registered the Initial Legal Regulated Rent for the Apartment as \$1,150. That month, as further required by the RSL, the Owner advised Brown-Allen of such filing and such amount.

Brown-Allen spent the next few years litigating over her rent and her Section 8 subsidy without much success. Having not succeeded, Brown-Allen filed an overcharge complain relating to the rent on the Apartment on September 30, 2005

with DHCR. It was the Decision of DHCR on such complaint which is the basis for this Article 78 proceeding.

Unfortunately for Brown-Allen, under the RSL the applicable Statute of Limitations is four years. Under such statute no application to challenge a rent may look beyond the registered rent set forth on the DHCR records and known to the tenant four years prior to the commencement of the overcharge proceeding. As this proceeding was commenced on September 30, 2006, the rent registered on September 30, 2001 was no longer assailable. As the initial legal regulated rent was filed prior to such date, the statute of limitations has run.

The last time for Brown-Allen could, under law to challenge the Initial Legal Regulated Rent on the grounds that it was imperfectly set was four years after the filing of such registration and the advising of Brown-Allen of such rent in January 2001, or January 2005. As her challenge was made subsequently, DHCR properly dismissal of her rent overcharge on Statute of Limitations grounds was certainly neither arbitrary nor capricious.

As the decision of DHCR was not arbitrary and capricious, there is no basis for this Court to set aside the Decision of DHCR, the petition is dismissed.

This is the Decision and Order of the Court.

DATED: MAY 15, 2007
NEW YORK, NEW YORK



Hon. Lewis Bart Stone
Justice of the Supreme Court

FILED
JUN 01 2007
NEW YORK
COUNTY CLERK'S OFFICE