

**Matter of University Prop. LLC v New York State  
Div. of Hous. and Community Renewal**

2007 NY Slip Op 32267(U)

July 9, 2007

Supreme Court, New York County

Docket Number: 0102077/2007

Judge: Kibbie F. Payne

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

PRESENT: KIBBIE F. PAYNE  
*Justice*

PART 4

In the Matter of the Application of

UNIVERSITY PROPERTY LLC,

INDEX NO. 102077/07

Petitioner,

MOTION DATE 5/22/07

For an Judgment Pursuant Article 78 of the Civil Practice Law and Rules,

- against -

MOTION SEQ. NO. 001

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL,

MOTION CAL. NO. \_\_\_\_\_

Respondent.

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

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

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

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

PAPERS NUMBERED

Upon the foregoing papers, petitioner commenced this CPLR article 78 proceeding for a judgment annulling four separate determinations of respondent, which denied its respective applications for an increase to legal regulated rent on the basis of major capital improvements. As indicated in the memorandum attached, this petition is denied and the proceeding is dismissed.

**UNFILED JUDGMENT**

nis 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 41B)

Dated: July 9, 2007

J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : IAS PART 4**

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In the Matter of the Application of  
  
UNIVERSITY PROPERTY LLC,  
  
Petitioner,

Index No. 102077/07  
  
Motion Seq. 001  
  
**JUDGMENT**

For an Judgment Pursuant to Article 78  
of the Civil Practice Law,

-against-

NEW YORK STATE DIVISION OF HOUSING AND  
COMMUNITY RENEWAL,

Respondents.

**UNFILED JUDGMENT**

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KIBBIE F. PAYNE, J.:

~~his 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 County Clerk's Desk (Room  
41B)~~

In this CPLR article 78 proceeding, petitioner University  
Property LLC is the landlord and owner of a housing accommodation  
known as 18 Abington Square, New York, New York. Petitioner  
submitted four applications to respondent the New York State  
Division of Housing and Community Renewal (DHCR) to increase the  
legal regulated rents of said building, contending in each that  
it made major capital improvements on the structure. The first  
application was based on the installation of a heating control  
device, the second on the installation of a chimney liner, the  
third on the installation of carpeting and treads on the hallway  
stairs and the fourth on the installation of a mahogany cornice.

The DHCR rent administrator denied each application in  
separate orders on the ground that the items constitute repairs

[\*3]  
and maintenance, not major capital improvements. Petitioner filed individual Petitions for Administrative Review (PAR), challenging each order respectively. The deputy commissioner of DHCR issued four determinations, each dated December 14, 2006, denying the PARs and affirming the orders of the rent administrator.

With respect to the heat control device, the commissioner's denial was without prejudice. The commissioner reasoned that the installation of a heat timer alone is insufficient to qualify as a major capital improvement. However, if such installation were "related to and performed in conjunction" with a major capital improvement, petitioner could list it as an item for purposes of an increase in the legal regulated rent. Using similar reasoning, the commissioner denied without prejudice petitioner's application seeking a rent increase based on the installation of the chimney liner. By itself the chimney liner installation was not a capital improvement, but it could be considered for purposes of a rent increase as part of a greater project.

The determination concerning the installation of carpet and treads on the hallway stairs and landings concluded that those changes did not qualify as major capital improvements as they were not made building-wide. Further, petitioner submitted no proof that the installation was necessary. Finally, with regard to the cornice, the commissioner found plainly that it was not a

major capital improvement as contemplated in the rent stabilization code.

Petitioner commenced this CPLR article 78 proceeding, seeking a judgment annulling the commissioner's four determinations on the ground that each is "contrary to law" and "the weight of evidence. . . ." Respondent opposes the application, contending that the commissioner's determinations are rational, not arbitrary or capricious.

"The Rent Stabilization Code provides for adjustment to legal regulated rent on the basis of major capital improvements which are building-wide in nature and inure to the benefit of all tenants in the building" (Matter of Riverside Equities LLC v New York State Div. of Hous. and Community Renewal, 292 AD2d 313, 313 [1<sup>st</sup> Dept 2002] [emphasis added], citing Matter of Garden Bay Manor Assoc. v New York State Div. of Hous. & Community Renewal, 150 AD2d 378 [2<sup>nd</sup> Dept 1989] and 9 NYCRR 2522.4 [a] [2] [i] [c])). When seeking such a rent adjustment, the petitioner has the burden of proving "by documentary support" that its building underwent a major capital improvement, which was necessary and comprehensive (see generally Matter of West Vil. Assoc. v Div. of Hous. and Community Renewal, 277 AD2d 111, 113, 114 [1<sup>st</sup> Dept 2000]; see also Rent Stabilization Code [9 NYCRR] § 2522.4 [a] [2] [i] [d])). A DHCR determination concerning whether "an alteration constitutes [a major capital improvement] necessarily

entails the agency's expertise in evaluating factual data and is entitled to deference if it is not irrational or unreasonable" (Matter of West Vil. Assoc., 277 AD2d at 112, citing Matter of Asonia Residents Assn. v New York State Div. of Hous. & Community Renewal, 75 NY2d 206 [1989]).

On this record, respondent rationally determined that the installation of a heat timer was not a major capital improvement without a showing that petitioner changed the boiler or otherwise performed an upgrade of the building's heating system (see generally 9 NYCRR § 2522.4 [a] [2] [i] [d]). The same is true with regard to petitioner's installation of chimney liners. The rent stabilization code includes a schedule of major capital improvements, listing thereunder the term "chimney." This improvement is described as entailing "complete replacement, or new one where none existed before, including components needed for installation" (see 9 NYCRR § 2522.4 [a] [3]).

To the extent petitioner argues that the chimney liner installation was a part of a general upgrade of the building's heating system, there is no such proof in the record. A rent increase based on a major capital improvement will generally not be granted in a piecemeal fashion (see Matter of Riverside Equities LLC, 292 AD2d at 314, citing Matter of West Vil. Assoc., 277 AD2d at 114). In order to establish that an application is "based on other than routine repair and maintenance, it must be

shown that the work was performed as part of a unified plan or consecutively times project" (id.).

With regard to the installation of carpet and treading, petitioner established only that it made such improvements to the hallway stairs and landings. Petitioner made no showing that the improvement was made building-wide or that the improvement was necessary because the previous floor covering exhausted its useful life (see Rent Stabilization Code [9 NYCRR] § 2522.4 [a] [2] [i] [d] [providing that, "[f]or major capital improvements not listed therein, the owner must submit with the application evidence that the useful life of the item . . . being replaced has expired"]). Given these facts, it cannot be said that the commissioner's determination, denying a rent increase for such installation, was irrational. Finally, the commissioner reasonably determined that a cornice, essentially a decorative molding, does not in and of itself qualify as a major capital improvement warranting a building-wide rent increase.

The court has reviewed petitioner's remaining contentions and finds them without merit.

Accordingly, it is

ORDERED that this petition is denied.

The foregoing constitutes the judgment and order of the court.

DATE: July 9, 2007

  
\_\_\_\_\_  
Hon. Kibbie F. Payne, J.S.C.

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