

**Matter of Highbridge House Ogden, LLC v New York
State Div. of Hous. & Community Renewal**

2007 NY Slip Op 32511(U)

August 14, 2007

Supreme Court, New York County

Docket Number: 0104395/2007

Judge: Eileen A. Rakower

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

EILEEN A. RAKOWER
J.S.C.

PART Part 5

PRESENT.

Index Number : 104395/2007
HIGHBRIDGE HSE OGDEN LLC
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 _____

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

PAPERS NUMBERED

1, 2, 3, 4, 5,
6, 7, 8
9, 10, 11
12

surreply

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

FILED
AUG 15 2007
NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: August 14, 2007


EILEEN A. RAKOWER 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: PART 5

-----X
In the Matter of the application of
HIGHBRIDGE HOUSE OGDEN, LLC, JANEL
TOWERS LLC, STELLAR BRUCKNER LLC,
STELLAR 2000 LLC, STELLAR UNDERCLIFF, LLC
and STELLAR SEDGWICK LLC,

Index No.
104395/07

Petitioner,
For a judgment pursuant to Article 78 of the CPLR

- against -

NEW YORK STATE DIVISION OF HOUSING
and COMMUNITY RENEWAL
Respondents.

Decision
and Order

-and-

HIGHBRIDGE HOUSE TENANTS ASSOCIATION
and EVELYN CURRY, INDIVIDUALLY and as
PRESIDENT, JANEL TOWERS TENANTS
ASSOCIATION and MARIA GONZALEZ,
INDIVIDUALLY and as PRESIDENT, BRUCKNER
TOWERS TENANTS ASSOCIATION and DARRYL
ALLEN, INDIVIDUALLY and as PRESIDENT,
BOULEVARD TOWERS I TENANTS ASSOCIATION
and EDWARD CLARKE, INDIVIDUALLY and as
PRESIDENT, 1655 UNDERCLIFF TOWERS TENANTS
ASSOCIATION and HORACE ORTON, INDIVIDUALLY
and as PRESIDENT,

Intervenor- Respondent.

-----X
HON. EILEEN A. RAKOWER

Petitioners, the owners of various apartment buildings, file this Article 78
petition against New York State Division of Housing and Community Renewal

(DHCR) seeking an order from the Court directing DHCR to process their pending "unique or peculiar" application within sixty days and to direct DHCR to determine that the rental units must have their monthly rents increased so that they conform to those of "substantially similar housing accommodations." Formerly, the owners (or their predecessors) participated in the government's Mitchell-Lama program under which each received low interest loans that were funded by the government, and many years of tax subsidies in exchange for renting apartments to tenants at affordable rates. The owners have now chosen to exit the Mitchell-Lama program and, pursuant to Rent Stabilization Law, the apartments in these buildings automatically become stabilized at the existing rents. Petitioners no longer enjoy government tax subsidies and wish to have the rents of the apartments located in six separate buildings in Bronx County, New York re-evaluated pursuant to DHCR's "unique and peculiar" exception. Petitioners state that the rents must be increased to what they believe are market rate rents for the subject locations. Petitioners state that, on information and belief, DHCR is refusing to process their applications. They now seek a writ of mandamus ordering DHCR to make their determinations within 60 days. Additionally, the owners petition the Court to direct DHCR to issue a determination in accordance with petitioner's view of the applicable law.

DHCR cross-moves for a change of venue to Bronx County and requests that the Court stay further proceedings pending determination of its change of venue motion. In the alternative, it opposes Petitioners' applications and asks for additional time to respond to the motion. By stipulation dated May 31, 2007, Petitioners and DHCR agreed with the Intervenor-Respondents that the Tenants' Associations (Tenants) should be permitted to intervene in this matter. Tenants oppose Petitioner's application and join in DHCR's application for change of venue to Bronx County.

Although not formally moving pursuant to CPLR § 602, Petitioners argue against change of venue stating that this matter should be consolidated with two other matters now pending before this Court. (One involves a Kings County apartment building, index # 104396, the other involves four New York County apartment buildings, index # 104007/07). Petitioners argue that the three actions are "highly related" and "as a way to minimize confusion with respect to the various buildings . . . it was decided that all three proceedings be brought in New York County Supreme Court." Petitioners further assert that as counsel for Petitioners in all three proceedings, the matters will concern identical legal arguments and "to avoid the risk of conflicting decisions by different courts," the matters should be "consolidated."

Lastly, they state that DHCR is not prejudiced if all three matters are heard here because the DHCR attorneys have their offices in New York County.

DHCR argues that the issues in these various proceedings are not similar because these buildings are not similarly situated and it is not the location of any of its many offices which controls the venue of this action. It argues that Rent Stabilization Law § 26-516(d) states:

[a]ny action or proceeding brought by or against the commissioner under this law shall be brought in the county in which the housing accommodation is located.

Additionally, the Rent Stabilization Code § 2530.01 states that a

petition for judicial review shall be brought in the Supreme Court in the county in which the subject housing accommodation is located.

DHCR notes that it is at the direction of the State Legislature that local courts have the authority to adjudicate the regulation of rent stabilized properties in their jurisdiction and these directives should not be disturbed.

DHCR has timely complied with the procedures mandated by CPLR§ 511 for change of venue. It has also demonstrated that Rent Stabilization Law requires matters involving Bronx County housing to be litigated in Bronx County. Wherefore, it is hereby

ORDERED that the petition is respectfully referred to a Justice of the Supreme Court in Bronx County; and it is further

ORDERED that the venue of this action is changed from this Court to the Supreme Court, County of the Bronx, and the Clerk of this Court is directed to transfer the papers on file in this action to the Clerk of the Supreme Court, County of the Bronx upon service of a copy of this order with notice of entry and payment of appropriate fees, if any.

All other relief requested is denied.

This constitutes the decision and order of the Court

Dated: August 14, 2007



Eileen A. Rakower, J.S.C.

FILED
AUG 15 2007
NEW YORK
COUNTY CLERK'S OFFICE