[* 1]

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY
PRESENT: Hon. Charles J. Tejada, Justice PART 50N

In The Matter of the Application of PARTNERSHIP 92 LLP and BLDG. MANAGEMENT CO., INC., d/b/a BRISTOL MANAGEMENT CO., INC., Petitioner, For a Judgment pursuant to Article 78 of the Civil Practice Law and Rules

-against-

STATE OF NEW YORK DIVISION OF HOUSING AND COMMUNITY RENEWAL, OFFICE OF RENT ADMINISTRATION

Respondent.

INDEX NO. 100573/06
MOTION DATE
MOTION SEQ. NO. 001
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 petition is denied as per the attached opinion, decision and order

Dated: December 17, 2007 **ENTER:** _____ **J.S.C.**

Check One: X **FINAL DISPOSITION** ☐ **NON-FINAL DISPOSITION**

CASE DISP

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 50N

In The Matter of the Application of PARTNERSHIP 92 LP and BLDG MANAGEMENT CO. INC., d/b/a BRISTOL MANAGEMENT CO., INC., Petitioner,	INDEX NO. 100573/06
For a Judgment pursuant to Article 78 of the Civil Practice Law and Rules	OPINION, DECISION AND ORDER
-against-	
STATE OF NEW YORK DIVISION OF HOUSING AND COMMUNITY RENEWAL, OFFICE OF RENT ADMINISTRATION, Respondent.	

TEJADA, C.J., J..S.C.

Pursuant to Article 78 of the Civil Practice Laws and Rules, the scope of this Court's review of an administrative agency's determination is limited. In reviewing an agency's decision, the only determination to be made is "whether a determination was made in violation of lawful procedures, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion." CPLR 7803[3]; *Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 356 N.Y.S.2d 833 (1974). Thus, the function of the Court upon an application of relief under CPLR Article 78 is to determine, upon the proof before the administrative agency, whether the determination had a rational basis in the record or was arbitrary and capricious. *Fanille v. NYC Conciliation and Appeals Board*, 90 A.D.2d 756, (1st Dep't 1982) aff'd 58 N.Y.2d 952 (1983).

This is a remanded proceeding pursuant to a memorandum decision (Index# 117576/04) rendered by the Honorable Eileen Bransten on or about September 30, 2005. Specifically, Judge Bransten remanded this matter back to the DHCR to provide a cogent explanation for its' failure to follow agency precedent in making a determination that there was sufficient reason to issue a rent reduction based on the DHCR inspection of alleged malfunctioning elevators.

Petitioners argue that DHCR's failure to follow its agency precedent in the present case, under "almost indistinguishable circumstances", that the "City is in a better position than the

DHCR to determine appropriate performance standards and ancillary equipment for elevators of varying age and manufacture" is sufficient cause to annul respondent's administrative order (Docket # TJ 430008-RP) as arbitrary, capricious, in violation of law and an abuse of discretion or in the alternative dismissing the underlying application or remanding the matter back to the Rent Administrator to make a new determination.

After reviewing the evidence submitted by the parties this Court finds that the explanation provided in the recent order issued by respondent agency and dated November 14, 2005, was reasonable and met its burden of demonstrating why the agency changed reliance from precedent in this case for valid reasons. First, the agency states with sufficient specificity that the genesis of its change in reliance solely upon DOB inspectors for assessing proper elevator service, was the sudden depletion of DOB inspectors in April, 1996, due to an anti-corruption probe within the DOB which resulted in a decrease of elevator inspectors from 58 to 16. On June 11, 1996, in reaction to this change, the DHCR issued an inter office memorandum regarding "Determinations Regarding Elevator Services" which stated, *inter alia*, despite DHCR's exclusive use of the DOB to determine elevator issues, DHCR can inspect and report on elevator services "based on an observation of the operation of the elevator." In support of this position, the DHCR included several recent cases (*In the Matter of Gilman Management Corp*, docket # OH430084-RO [2001]; *Matter of Kaled Management Corp*, docket # FG130084-RO [2002]; *Matter of LTE 22nd Realty*, docket # OK230091-RO [2001] and *Matter of Broadway 69 LLC*, docket # OF430012-RO [2000]) where the DHCR became more reliant on its own inspections in evaluating elevator complaints where the inspector's own observations could and did determine the issue.

Moreover, in reviewing the two DOB inspections cited by the petitioner in support of their position, this Court notes that the DOB inspection which occurred on January 6, 2000, was based on the specific complaint of December 1999, relating to malfunctioning elevator doors and not mis-leveling elevators. The second DOB inspection of the elevators which occurred on March 10, 2000, was actually an elevator safety inspection pursuant to Local Law 10 of 1981 and also not related to the specific tenant complaints of mis-leveling elevators.

Respondents do not contest the validity of the DOB inspection of March 10, 2000, but

rather that the inspection was an annual safety inspection and not specifically related to the chief concern of the tenants - the mis-leveling of the elevators. On the other hand, a June 5, 2000, inspection of the elevators by DHCR revealed leveling problems consistent with the tenants' complaint filed in November, 1999. Moreover, the March 10, 2000, inspection relied upon by petitioner was unsupported by the requisite certification from a licensed elevator company and consequently, the Rent Administrator was not obligated to rely upon this privately conducted inspection. And, since the elevators were modernized in July 2000, the Rent Administrator properly determined that the rent reduction for failure to provide elevator services based on the tenants' complaints was limited to the time frame from January 1, 2000, to July 31, 2000.

Contrary to petitioner's allegations and based on the foregoing, this Court determines that DHCR's explanation for its' determination was neither arbitrary or capricious, nor in violation of applicable law and that the November 14, 2005, determination by the respondent was supported by a rational basis in and all throughout the record. *Pell v. Board of Ed. of Union Free School Dist.*, 34 N.Y.2d 222 (1974); see also *Colton v. Berman,* 21 NY2d 322 (1967); *Matter of Korein v. Conciliation and Appeals Bd of the City of New York*, 57 NY2d 938 (1982); *Ansonia Residents Ass'n v. New York State Div. of Housing and Community Renewal*, 75 N.Y.2d 206, 551 N.E.2d 72, 551 N.Y.S.2d 871 ("Where the interpretation of a statute or its application involves knowledge and understanding of underlying operational practices or entails an evaluation of factual data and inferences to be drawn therefrom, the courts regularly defer to the governmental agency charged with the responsibility for administration of the statute. If its interpretation is not irrational or unreasonable, it will be upheld." [citations omitted])

Consequently, the petitioner's application is denied.

This constitutes the decision, opinion and order of this Court.

Date: December 17, 2007
New York, NY

Charles J. Tejada, J.S.C.