

Matter of Chiclana v Division of Hous. & Community Renewal of State of N.Y.
2007 NY Slip Op 34442(U)
October 9, 2007
Supreme Court, New York County
Docket Number: 401003/09
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. CAROL EDMEAD

PART 35

Index Number : 401003/2009
CHICLANA, VICTOR
 VS.
D.H.C.R. OF THE STATE OF N.Y.
 SEQUENCE NUMBER : 001
 ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

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

In accordance with the accompanying Memorandum Decision, it is hereby

ORDERED and ADJUDGED that the application of petitioners Victor Chiclana, Rudolph Richardson, James Yee, and Kerry Glover for an order, pursuant to Article 78 of the Civil Practice Law and Rules, for a judgment vacating and annulling: (1) the Order and Opinion of respondent Division of Housing and Community Renewal of the State of New York denying petitioners' Petition for administrative review; and (2) the Decision of the Rent Administrator, is denied, and the instant Petition is dismissed; and it is further

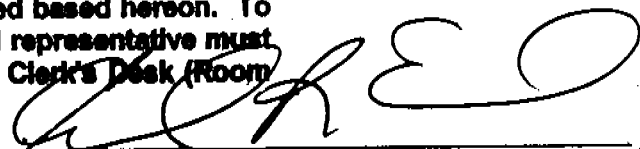
ORDERED that counsel for respondent shall serve a copy of this order with notice of entry within twenty days of entry on counsel for petitioners.

This constitutes the decision and order of this court.

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 1415).

Dated: 10/9/09


HON. CAROL EDMEAD J.S.C.

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

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 35

In the Matter of the Application of
VICTOR CHICLANA, RUDOLPH RICHARDSON,
JAMES YEE, and KERRY GLOVER,

Index No. 401003/09

Petitioners,

DECISION/ORDER

For judgment under Article 78 of the
Civil Practice Law & Rules

-against-

DIVISION OF HOUSING AND COMMUNITY
RENEWAL OF THE STATE OF NEW YORK,
HARLAN SALES CO., INC. and JEA NI TON LTD.
d/b/a SUNSHINE HOTEL,

Respondents.

EDMEAD, J.S.C.

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
1415).

MEMORANDUM DECISION

In this Article 78 proceeding, Victor Chiclana ("Mr. Chiclana"), Rudolph Richardson ("Mr. Richardson"), James Yee ("Mr. Yee"), and Kerry Glover ("Ms. Glover") (collectively "petitioners") seek to vacate and annul: (1) the Order and Opinion (the "Final Order") of the Division of Housing and Community Renewal of the State of New York ("DHCR"), which denied their Petitions for Administrative Review (the "PARs"); and (2) the Rent Administrator's Orders.

Background¹

On October 1, 2007, petitioners, tenants of various housing accommodations operated as the Sunshine Hotel in New York, New York ("the Hotel"), filed rent overcharge complaints,

¹ Information is taken from DHCR's Answer.

alleging that their 3.5% rent increase on October 1, 2003 violated Hotel Guidelines Order 33 (“Guideline 33”).² The Hotel opposed the complaints, asserting, *inter alia*, that (1) the rent actually was increased on September 30, 2003 and that as of September 30, 2003, the Hotel met the occupancy requirement under Guideline 33, and (2) that the complaints were time-barred, as a determination could not be made without an examination of the rental histories more than four years prior to the date on which the complaints were filed (see the “Hotel’s Answer”).

The Rent Administrator denied the complaints, finding that pursuant to Rent Stabilization Code (“RSC”) §§2520.6(f) and 2526.1(a)(3)(i), (1) the base date for an overcharge complaint is the date four years prior to the filing date of the complaint, *i.e.*, October 1, 2003, and (2) the rental events prior thereto could not be examined (see the “Rent Administrator’s Orders”).

On appeal, petitioners asserted that the overcharge complaints were timely as to an overcharge collected on October 1, 2003 and that the Rent Administrator’s interpretation effected a one-day reduction in the four-year statute of limitations, in violation of RSC §2526.1 and Rent Stabilization Law (“RSL”) §26-516(a). Also, since the 2003 rent for Ms. Glover’s Unit 12L was not registered, the time to challenge her rent had not commenced, and since the Hotel did not register the remaining tenants’ 2003 rent until June 13, 2005, they had until June 13, 2009 to challenge that rent under RSL §26-516(a). Finally, the RSC’s definition of the base date rent conflicts with RSL’s definition in a manner that impaired petitioners’ rights under the RSL; therefore, the RSC definition must be stricken in accordance with RSL §26-511(b).

The DHCR Commissioner affirmed the Rent Administrator’s Orders.

² Guideline 33 required that 75% of the Hotel’s units be occupied by permanent, rent-stabilized tenants at the time of the increase.

Petitioners' Contentions

In their first cause of action, petitioners allege that by failing to properly interpret RSC §§ 2520.6(e) and (f), and 2526.1(a)(3)(i), the Final Order was arbitrary, capricious, and contrary to law. In their second cause of action, petitioners allege that because DHCR relied on incorrect interpretations of law to reach its conclusions, the denial of the PARs was fatally flawed.

Petitioners argue that although RSL §§ 26-516(a) and 2526.1 provide a four-year statute of limitations from the base date in which to file a complaint, the DHCR misinterpreted four years by reducing the time by one day, and requiring the filing of the complaints by September 30, 2007. The limitations period would be impermissibly shortened if filing on the last possible day meant that the rent charged four years ago when the overcharge began on October 1, 2003, is no longer subject to question. Pursuant to General Construction Law ("GCL") §20, in calculating the number of days from an event in which an act is required to be done, the day of the event is to be disregarded. The Rent Administrator wrongly determined that it must accept without challenge the increased rent as of October 1, 2003 and establish the base date rent (to which all lawful rent increases are added to come up with the current legal rent) as that rent charged on October 1, 2003. If applying the Rent Administrator's holding, a petitioner would have to file a complaint one day prior to the expiration of the statute of limitations in order for DHCR to determine whether the base date rent increase was proper. Thus, DHCR's determination that the rent overcharge complaint is untimely under the "look-back" provision of the four year rule is arbitrary and capricious, because it contradicts the four-year statute of limitations.

Even using the Rent Administrator's method of applying the September 30, 2007

deadline to challenge the October 1, 2003 increase, that date fell on a Sunday. Thus, pursuant to GCL §25-a, petitioners would have had until the next business day, Monday, October 1, 2007, to file. Therefore, under the GCL 25-a, Monday, October 1, 2007 was the last day to file and still have a September 30, 2003 base date, thereby permitting the examination of the rental history on September 30, 2007.

In holding that the base date rent was the illegal rent charged on October 1, 2003 (four years prior to the filing of the overcharge complaint), DHCR ignored RSL §26-516(a)'s plain meaning that the base date rent is that rent in the annual registration filed four years prior to the most recent statement. RSL §26-516(a) allows four years from the filing of a registration to challenge the rent in that registration. Ms. Glover's 2003 registration was never filed, and the 2003 registrations for the other three petitioners were filed June 13, 2005.³ Thus, petitioners timely challenged the registrations containing the October 1, 2003 increase.

Further, the DHCR should have followed the four-year rule of the RSL, and since the RSL and RSC have different definitions of the legal rent for overcharge purposes, the RSC should be stricken. Under the RSL § 26-516(a), the legal rent used to determine whether an overcharge has occurred is the rent indicated in the annual registration four years prior to the most recent registration statement. However, under the RSC § 2520.6, the legal rent is the rent charged on the base date, *i.e.*, four years prior to the filing of the complaint. Under the RSC, the base date according to the Rent Administrator was October 1, 2003. In contrast, if the Rent Administrator had applied the RSL, the base date legal rent used to determinate whether an

³ The most recent registration statements as of the October 1, 2007 filing date for each petitioner were as follows: Mr. Chiclana, 2006 registration filed on December 4, 2006; Ms. Glover, none filed; Messrs. Richardson and Yee, 2003 registrations filed on June 13, 2005.

overcharge had occurred would have been December 4, 2002 for Ms. Chiclana, June 13, 2001 for Messrs. Richardson and Yee, and indeterminable and subject to the default formula for Ms. Glover for whom no registration was ever filed, based on the most recent registration statements as of the October 1, 2007 overcharge claim filing dates.

The RSL provision is consistent with the purpose of the four-year rule, which is to permit a landlord who complies with the registration requirements to not have to retain records more than four years old. The purpose is not to immunize a landlord who has not filed timely registrations from challenges to its untimely filings. RSL §26-511(b) is also consistent with the purpose of the four-year rule to allow tenants four years to challenge any registrations.

Further, the Rent Administrator need not examine the rent history more than four years before the date the complaint was filed in order to address the overcharge complaints. Instead, it could have (1) looked at the registration statements filed by the Hotel to determine whether the owner met the occupancy requirements of Guideline 33 on October 1, 2003, and determined the legal rent and amount of overcharge by deducting 3.5% from the rent charged and paid on October 1, 2003, or (2) it could have used the DHCR's "default formula."

DHCR's Contentions

The Court should deny petitioners' Petition and affirm the Final Order. DHCR's conclusion that the Rent Administrator's interpretation of the regulations was consistent with the legislative intent enunciated in the Rent Regulation Reform Act of 1997, and no evidence or argument proffered by petitioners warranted a different result. DHCR contends that it is undisputed that any rent increases charged after October 1, 2003 were permissible.

The RSC defines "base rent" as the rent charged on the date four years before a rent

overcharge complaint is filed. The rent charged on the base date is not subject to challenge; by definition, it is the legal rent. The RSL provides that no determination of an overcharge and no award or calculation of an award of an overcharge may be based on an overcharge having occurred more than four years before a complaint is filed. The courts and DHCR are further precluded from even considering rent history that precedes the base date.

Further, the Appellate Division has expressly rejected petitioners' argument that the base date rent should be established four years before the most recent annual rent registration statement was filed. A failure to file a registration becomes irrelevant after the passage of four years, DHCR argues.

Also, the calculation of the base date rent is a matter of substantive law to which GCL §25-a does not apply. It does not matter on what day of the week on which the base date rent occurs, or the day of the week that a rent overcharge complaint is filed. A tenant may not enlarge the statutory four-year period by arranging to file a complaint on a Monday and then arguing that the base date rent occurs four years and one day before the complaint was filed.

DHCR further contends that the four-year rule is an exclusionary rule of evidence that does not permit DHCR to consider any rent record that is more than four years older than a complaint. That a complaint is filed on a Monday does not render records that are older than four years reviewable as though they were more recent than four years. The four-year rule also functions as a limitation upon the subject matter jurisdiction of DHCR and the courts, and no determination of an overcharge and no award or calculation of an award may be based on an overcharge having occurred more than four years before the complaint is filed. Although GCL §25-a can extend a procedural deadline that occurs on a Sunday, it cannot enlarge a rule of

substantive law, *i.e.* redefine “base date rent” or open the exclusionary rule.

DHCR further argues that petitioners also failed to establish that RSC §§2520.6(e) and (f) and 2526.1(a)(3)(i) are “*ultra vires*,” or so lacking in reason and arbitrary. Courts have recognized DHCR’s broad authority to interpret the RSL and issue regulations, and these RSC provisions have been upheld against claims that these provisions are not consistent with the RSL.

Petitioners’ Reply

Petitioners argue that the Court should apply GCL §25-a and treat the petitioners’ overcharge complaints filed on Monday, October 1, 2007 as having met DHCR’s Saturday, September 30, 2007 deadline for filing an overcharge claim with a September 30, 2007 base date. As to DHCR’s claim that GCL §25-a applies only to procedural deadlines and not substantive provisions with dates, there is no basis in the statute for such a distinction, and DHCR cites no caselaw in support of this proposition. Moreover, petitioners contend, this statute is routinely applied to statute of limitations deadlines such as the one herein.

Further, DHCR’s four year look-back rule to determine the rent on the base date is akin to a statute of limitations period. If DHCR only considers a challenge filed within three years and 364 days of that increase, then that is a *de facto* procedural rule and limitations period.

Further, DHCR’s argument that there is no deadline to file a rent overcharge complaint is contradicted by the four-year limitations period for filing an overcharge complaint set out in RSL §26-516(a), RSC §2526.1 and CPLR §213-a, each requiring that a complaint on a residential rent overcharge be commenced within four years of the first overcharge alleged. Petitioners argue that the cases cited by DHCR regarding the inability to extend the time to file a challenge to the rent charged are inapplicable and do not restrict the application of GCL §25-a to the instant case.

Petitioners also contend that DHCR fails to rebut petitioners' argument that requiring a challenge to the October 1, 2003 rent increase to be filed by September 30, 2007 impermissibly shortens the four-year limitations period by one day. GCL §25-a provides that the day on which the overcharge was imposed is excluded when calculating the applicable four-year limitations period. Thus, the last day to timely challenge a rent increase on October 1, 2003 should be October 1, 2007.

Petitioners further contend that DHCR does not challenge their assertion that the RSL provision defining the legal rent is inconsistent with the RSC, and that DHCR's application of the RSC provision produced a result inconsistent with the RSL, which impaired petitioners' rights. DHCR's application of the RSC led to the rejection of petitioners' overcharge claims, while application of the RSL would allow a successful challenge to the October 1, 2003 rent increases.

The mere application of the RSC provision in prior cases where no party made an *ultra vires* challenge to the provision does not establish that the RSC provision is not *ultra vires*. DHCR does not cite any case where an *ultra vires* challenge was made to the RSL provision, much less any caselaw where the Court upheld the RSC provision in the face of a challenge to its validity under an *ultra vires* theory. Where, as here, the RSC provision is inconsistent on its face with the RSL provision and the purpose of the four-year rule, and where application of the RSC is detrimental to petitioners, the RSC provision must be struck down.

Finally, it is uncontested that Rent Administrator need not examine the rent history more than four years before the date the complaint was filed in order to determine the merits of the overcharge complaints.

Discussion

CPLR §7803 states that the court review of a determination of an agency, such as DHCR, consists of whether the determination was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion (*Windsor Place Corp. v New York State DHCR*, 161 AD2d 279 [1st Dept 1990]; *Mazel v DHCR*, 138 AD2d 600 [1st Dept 1988]; *Bambeck v DHCR*, 129 AD2d 51 [1st Dept 1987], *lv denied* 70 NY2d 615 [1988]). An action is arbitrary and capricious, or an abuse of discretion, when the action is taken “without sound basis in reason and . . . without regard to the facts” (*Pell v Board of Education*, 34 NY2d 222, 231[1974]). Rationality is the key in determining whether an action is arbitrary and capricious or an abuse of discretion (*Pell* at 231). The court’s function is completed on finding that a rational basis supports an agency’s determination (*Howard v Wyman*, 28 NY2d 434, 438 [1971]). Further, where the agency’s interpretation is founded on a rational basis, that interpretation should be affirmed even if the court might have come to a different conclusion (*Mid-State Management Corp. v New York City Conciliation and Appeals Board*, 112 AD2d 72 [1st Dept 1985], *affd* 66 NY2d 1032 [1985]).

At the outset, the Court notes that, contrary to petitioners’ contention, the Rent Administrator did not find that petitioners’ overcharge complaint was untimely filed. The Rent Administrator held, in relevant part:

[T]he base date for an overcharge complaint is the date four years to the filing date of the complaint. Accordingly, the base date for this proceeding is 10/1/03 with a base rent of [the specific rent on October 1, 2003 for the respective unit], collected from the tenant on that date. Rental events occurring before the base date are not subject to challenge and cannot be examined, and that rental events occurring before the base date are not subject to challenge and cannot be examined.

Thus, the Rent Administrator held that the rents charged *before* October 1, 2003 could not be examined or challenged.

The DHCR's Final Order rejected petitioners' PARs, stating in relevant part, that:

[I]t is well established that unless and until set aside by a court of competent jurisdiction, a regulation has the force of a statute. The regulations in question herein, RSC Sections 2520.6(e) and (f) and 2526.1(a)(3)(i) were promulgated in their present form in order to implement the legislature's passage of Section 33 of Chapter 116 of the Laws of 1997, known as the Rent Regulation Reform Act of 1997 (RRRA 1997) which, *inter alia*, amended Section 26-516(a)(2) of the RSL to read, in pertinent part, as follows:

. . . no determination of an overcharge and no award or calculation of an award of the amount of an overcharge may be based upon an overcharge having occurred more than four years *before the complaint is filed*. . . . This paragraph shall preclude examination of the rental history of the housing accommodation prior to the four-year period *preceding the filing of a complaint* pursuant to this subdivision. [Underscored portions were added by RRRA 1997. All emphasis supplied.]
(Final Order, p. 5)

Contrary to petitioners' contention, it cannot be said that DHCR's determination that the four-year rule requires DHCR to establish the base date rent as that rent charged on October 1, 2003 was in violation of lawful procedure, affected by an error of law, or arbitrary and capricious or an abuse of discretion.

RSL § 26-516(a)(2) provides in relevant part:

[T]he legal regulated rent for purposes of determining an overcharge, shall be the rent indicated in the annual registration statement filed four years prior to the most recent registration statement, (or, if more recently filed, the initial registration statement) plus in each case any subsequent lawful increases and adjustments. Where the amount of rent set forth in the annual rent registration statement filed four years prior to the most recent registration statement is not challenged within four years of its filing, neither such rent nor service of any registration shall be subject to challenge at any time thereafter.

Further, RSC §2526.1(a)(3)(i) provides: "The legal regulated rent for purposes of

determining an overcharge shall be deemed to be the rent charged on the base date, plus in each case any subsequent lawful increases and adjustments.” Base date and legal regulated rent are defined in RSC §2520.6(e) and (f) as follows:

(e) Legal regulated rent. The rent charged on the base date set forth in subdivision (f) of this section, plus any subsequent lawful increases and adjustments.

(f) Base date. For the purpose of proceedings pursuant to sections 2522.3 and 2526.1 of this Title, base date shall mean the date which is the most recent of:

(1) *the date four years prior to the date of the filing of such appeal or complaint; . . .*
(Emphasis added)

Thus, under the Rent Stabilization Law and Code the legal regulated rent is the rent charged four years prior to the filing of an overcharge complaint or action (*Les Filles Quartre LLC v McNeur*, 9 Misc 3d 179, 798 NYS2d 899 [New York City Civ Ct 2005] citing *78/79 York Associates v Rand*, 180 Misc 2d 316, 691 NYS2d 875 [App Term 1st Dept 1999]; CPLR §213-a, RSC §§2520.6(e) and (f)(1)). Caselaw clearly holds that any overcharges that occurred more than four years prior to the date the complaint was filed are outside DHCR's jurisdiction and may not be challenged (*see e.g. Hawco v State of New York Div. of Housing and Community Renewal*, 281 AD2d 294 [1st Dept 2001] [holding that DHCR's dismissal of a petitioner's challenge to the service of the initial 1984 rent registration was rational on the ground that petitioner's overcharge complaint filed in 1989 was subject to a four-year limitations period which period did not encompass the complained of rent registration]; *Theoharidou v Newgarden*, 176 Misc 2d 97, 98, 673 NYS2d 813 [1st Dept 1998]). It has been noted that this provision “is not a mere statute of limitations but is a substantive limit on the overcharges for which recovery can be had. That is, if a claim that an overcharge occurred within the four-year period could only be established by

showing that an overcharge existed before the four-year period, the claim could not be made out” (*Myers v Frankel*, 184 Misc 2d 608, 708 NYS2d 566 [Sup Ct County 2000]). In other words, a complaint must be filed within four years of the first overcharge that needs to be alleged in order to establish the existence of overcharges within the four-year period (*id* at 615). Therefore, the DHCR’s holding that no determination of an overcharge may be based upon an overcharge having occurred more than four years before the complaint is filed was rational (*see Zafra v Pilkes*, 245 AD2d 218 [1st Dept 1997]).

Further, DHCR’s determination that its review of rental events was limited to the period of four years prior to the date the complaint was filed was not arbitrary or capricious. When the Rent Regulation Reform Act of 1997 (RRRA) amended RSL §26-516(a)(2), it clarified and reinforced “the four-year statute of limitations applicable to rent overcharge claims . . . by limiting examination of the rental history of housing accommodations prior to the four-year period preceding the filing of an overcharge complaint” (*Thornton v Baron*, 5 NY3d 175, 180 [2005]; *see also* CPLR §213-a). The time limitation was intended to relieve building owners from having to retain rent records on rent-stabilized apartments dating back more than four years from the time of the filing of the overcharge complaint (*Scott v Rockaway Pratt, LLC*, 2009 WL 2382992 [Sup Ct New York County 2009] citing *Zafra v Pilkes*, 245 AD2d 218, 219 [1st Dept 1997][stating that by “virtue of the [RRRA of 1997] . . . the rental history prior to the four-year statutory period may not be considered, pursuant to the amended statute]). The First Department in *Hatanaka v Lynch* (304 AD2d 325, 326 [1st Dept 2003]) stated:

There is an express proscription against applying the rental history reflected in any registration statement filed more than four years before the rent overcharge complaint was brought (Rent Stabilization Law of 1969 [Administrative Code of City of NY] §26-516

[a] [2]). This legislative scheme “specifically ‘preclude[s] examination of the rental history of the housing accommodation prior to the four-year period preceding the filing of the complaint’” . . . even where the prior rental history clearly indicates that an unauthorized rent increase had been imposed.

(*Id.* at 326, quoting *Zafra v Pilkes* at 219) (emphasis added). +

Therefore, the DHCR’s determination to preclude examination of the rental history of the housing accommodation prior to the four-year period preceding the filing of a complaint was rational.

Contrary to petitioners’ contention, the DHCR’s interpretation of the relevant statutes did not deprive petitioners of the four-year statute of limitations afforded to them under the statutes.

“The four-year Statute of Limitations applicable to both administrative and judicial rent overcharge claims, by its terms, commences to run with the ‘first overcharge alleged’ ” (*Mozes v Shanaman*, 21 AD3d 854, 855 [1st Dept 2005] citing *Matter of Brinckerhoff v New York State Div. of Hous. & Community Renewal*, 275 AD2d 622, 713 NYS2d 56 [2000] [internal citations omitted], *lv denied* 96 NY2d 712 [2001]). Since the first overcharge alleged by petitioners occurred on October 1, 2003, petitioners had four years to file their complaint, and petitioners in fact filed their overcharge complaints exactly four years after the alleged overcharge, on Monday, October 1, 2007. However, the relevant statutes expressly preclude the DHCR from looking back beyond four years prior to the date petitioners filed their complaints to establish the base rent date. Under the relevant statutes, the legal regulated rent is the rent charged on the date four years prior to the date of the filing of the complaint. +

That RSL §26-516(a) allows four years from the filing of a registration to challenge the rent in that registration does not permit the DHCR to look back beyond four years from the date the complaint was filed and establish a base date rent other than the rent which was within four +

years from such filing. Petitioners' argument that the *date on which the landlord registered the rent* is the base date for the four-year calculation does not assist the petitioners. In *Silver v Lynch* (283 AD2d 213 [1st Dept 2001]), the First Department reversed the Supreme Court because the Court calculated a base date rent from the date of the "filing of the most recent rent registration statement" instead of calculating a base date rent from the date the rent-overcharge complaint was filed.

Here, petitioners sought to challenge a 3.5% rent increase made on October 1, 2003 by the Hotel. Petitioners filed their overcharge complaints on October 1, 2007. Therefore, pursuant to RSC §§2526.1(a)(3)(i), and 2520.6(e) and (f), the base date rent is October 1, 2003. As discussed above, both DHCR and the courts are precluded from considering any rent history, including rent registration statements, that predate October 1, 2003. Therefore, petitioners' argument that they had until June 13, 2009 to challenge that rent under RSL §26-516(a) because the Hotel *did not register* the rent until June 13, 2005 is insufficient to establish that the determinations at issue were arbitrary or capricious.

Petitioners' arguments based on the application of GCL §§20 and 25-a also fail. GCL §20 (titled "Day, Computation") provides:

A number of days specified as a period from a certain day *within which or after or before which an act is authorized or required to be done* means such number of calendar days exclusive of the calendar day from which the reckoning is made. If such period is a period of two days, Saturday, Sunday or a public holiday must be excluded from the reckoning if it is an intervening day between the day from which the reckoning is made and the last day of the period. In computing any specified period of time from a specified event, the day upon which the event happens is deemed the day from which the reckoning is made. The day from which any specified period of time is reckoned shall be excluded in making the reckoning.
(Emphasis added)

GCL §25-a(1) (titled “Public holiday, Saturday or Sunday in statutes; extension of time where performance of act is due on Saturday, Sunday or public holiday”) provides in relevant part:

When any period of time, computed from *a certain day*, within which or after which or before which *an act is authorized or required to be done, ends on a Saturday, Sunday or a public holiday*, such act may be done on the next succeeding business day and if the period ends at a specified hour, such act may be done at or before the same hour of such next succeeding business day.

(Emphasis added)

Here, petitioners challenged a rent increase that took place on October 1, 2003. Pursuant to CPLR §213-a, RSL §26-516(a)(2) and RSC §2526.1(a)(3)(i), petitioners had four years from that date to challenge the alleged overcharge, *i.e.*, October 1, 2007. On October 1, 2007, a Monday, petitioners timely filed their overcharge complaint, and there is nothing in the Rent Administrator’s Order indicating that their complaints were deemed untimely. The Rent Administrator, as upheld by the DHCR, “looked back” four years from October 1, 2007 to October 1, 2003 pursuant to RSL §26-516(a)(2) and RSC §2526.1(a)(3)(i) to examine records to determine whether petitioners were overcharged rent, and found that they were not.

There is no caselaw permitting DHCR to “look back” more than four years prior to the date the overcharge complaint was filed, and petitioners’ argument that DHCR failed to do so is unsupported by caselaw or statute. GCL §25-a(1) permits parties to file a complaint on the next business day if the deadline by which to perform an act, *i.e.*, file a complaint, falls on a Saturday, Sunday, or holiday (essentially granting such parties an extension by law by one or two days). Notably, even if GCL §25-a(1) were interpreted in such a way as to give DHCR such an extension, it would *not* assist petitioners herein, because October 1, 2003, the date to which DHCR would look back, fell on a Wednesday. Further, the cases cited by petitioners (*LeHavre*

Tenants Ass'n. Inc. v New York State Div. of Housing and Community Renewal, 2003 WL 22721557, 2 [Sup Ct, Qns County 2003] *revd on different grounds*, and *Scuderi v Board of Ed. for City School Dist. of City of Yonkers*, 49 AD2d 942 [2d Dept 1975]), are inapplicable, since the last day for plaintiffs therein to commence their proceedings fell on a weekend and holiday. Therefore, petitioners' argument that DHCR's failure to consider the period before October 1, 2003 lacks merit. It cannot be said DHCR's failure to consider the period before October 1, 2003 denied petitioners' their four-year statute of limitations to challenge the October 1, 2003 rent increase.

Finally, a reading of the caselaw and statutes indicate that the RSC is not inconsistent with the RSL. The Legislative history of the RSC and the RSL supports DHCR's interpretation of RSC §§2526.1(a)(3)(i), and 2520.6 (e) and (f). Therefore, the Court does not find DHCR's interpretation of the RSC or the RSL to be irrational (*see Ostrer v Schenck*, 41 NY2d 782, 786 [1977], quoting *Matter of Howard v Wyman*, 28 NY2d 434, 438 [1971] [holding that the "interpretation given a statute by the administering agency 'if not irrational or unreasonable, should be upheld'"]).

As petitioners have failed to demonstrate that the Final Order was arbitrary, capricious, and contrary to law, their petition is denied.

Conclusion

Based on the foregoing, it is hereby

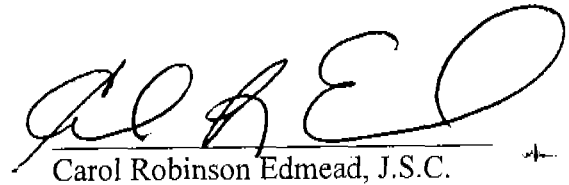
ORDERED and ADJUDGED that the application of petitioners Victor Chiclana, Rudolph Richardson, James Yee, and Kerry Glover for an order, pursuant to Article 78 of the Civil Practice Law and Rules, for a judgment vacating and annulling: (1) the Order and Opinion of

respondent Division of Housing and Community Renewal of the State of New York denying petitioners' Petition for administrative review; and (2) the Decision of the Rent Administrator, is denied, and the instant Petition is dismissed; and it is further

ORDERED that counsel for respondent shall serve a copy of this order with notice of entry within twenty days of entry on counsel for petitioners.

This constitutes the decision and order of this court.

Dated: October 9, 2009



Carol Robinson Edmead, J.S.C.

HON. CAROL EDMead

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).