

**Matter of Haruvi v Department of Hous.
Preserv. & Dev.**

2008 NY Slip Op 30720(U)

March 10, 2008

Supreme Court, New York County

Docket Number: 0112546/2007

Judge: Joan Madden

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

PRESENT: HON Joan A. Madden

PART 11

Index Number : 112546/2007

HARUVI, ABE

vs

DEPT. OF HSG PRESERVATION

Sequence Number : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE

1-10-08

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

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

PAPERS NUMBERED

Notice of Motlon/ 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~~ application is decided in accordance ~~with~~ with the annexed Memorandum of Decision Order and Judgment.

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

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served upon the parties. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1415).

Dated: March 10, 2008

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 11

-----X

In the Matter of the Application of
ABE HARUVI AND ARTHUR HARUVI,

Index No. 112546/07

Petitioners,

For a Judgment Pursuant to Article
of the Civil Practice Law and Rules

-against-

DEPARTMENT OF HOUSING PRESERVATION AND
DEVELOPMENT,

Respondent.

-----X

JOAN A. MADDEN, J.:

In this Article 78 proceeding, petitioners challenge the determination of respondent New York City Department of Housing and Development ("HPD") regarding certain emergency repairs made to their property and seek to vacate liens asserted against their property in connection with such repairs. Respondent cross moves to dismiss the petition, arguing that petitioners failed to exhaust their administrative remedies, and that the petition is barred by the applicable statute of limitations. Petitioners do not oppose the cross motion, which is granted for the reasons below.

Background

Petitioners are the owners of properties located at 448 West

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57th Street and 450 East 57th Street in Manhattan.¹ On or about June 16, 2006, HPD inspected the property at 450 East 57th Street (hereafter "the premises") and found evidence of lead paint at Apartment 1-E. The petition alleges that following the inspection, petitioners hired a company which corrected the lead paint condition on July 6, 2007.² The petition further alleges that without providing notice to petitioners, HPD subsequently hired their own company to repair the entire apartment even though only the floors failed the lead paint test, and that thereafter HPD wrongfully filed liens against the premises for charges in connection with the work performed by HPD's contractor.

The petition alleges that the HPD's actions concerning the emergency repairs were in violation of lawful procedures and were arbitrary and capricious.

HPD cross moves to dismiss the petition, asserting that petitioners failed to exhaust their administrative remedies as they did not protest the amounts charged for emergency repairs in writing within thirty days of HPD's service upon petitioners of

¹Although petitioners assert that the violations at issue were made against the property at 448 West 57th Street, respondents maintain, and submit uncontroverted evidence that the violations were issued to the property at 450 West 57th Street.

²Petitioners submit no evidence to support these allegations such as a contract, invoice, or a certificate indicating that the violation was corrected in accordance with New York Administrative Code § 27-2115(1)(2).

the bill for the repairs and dust wipe tests performed at the premises. In support of their cross motion, HPD submits computer records indicating that in response to a telephone inquiry from petitioners on January 29, 2007, on January 30, 2007 it sent copies of invoices to petitioners for the repairs performed and various tests performed.

HPD also maintains that with these invoices, petitioners were sent an Emergency Repair Charge Protest Form which, provides that:

Article 5 of Title 5 of the New York City Administrative Code authorizes [HPD] to make emergency repairs to correct conditions in a building that violate the law and are dangerous or detrimental to human life, safety or health. Expenses incurred by HPD for emergency repairs are billed to the Department of Finance to the owner. The owner has thirty days from the date of service of the bill to protest an emergency repair charge. Protests must be in writing, must state a reason for protest, and must be submitted with documentation to support the protest. (An owner may request copies of invoices relating to an emergency repair charge from HPD within thirty (30) days from the service or the bill in order to submit a protest).

(emphasis supplied)

HPD asserts that in this case petitioners failed to submit a protest in writing, and therefore did not exhaust their administrative remedies.

Alternatively, HPD asserts even assuming that petitioners were not required to file a protest, this proceeding is time-

barred as it was commenced more than four months after HPD sent the invoices on January 30, 2007.

Petitioners do not deny that they received the invoices and the Emergency Repair Charge Protest Form, or otherwise oppose the cross motion.

Discussion

New York City Administrative Code ("Administrative Code") § 27-2129 provides that:

Whenever the department has incurred expenses for the repair of a dwelling or for the elimination of any dangerous or unlawful conditions therein, pursuant to this article or any other provision of the administrative code, it may serve upon the owner in the manner provided in section 27-2095 of article one of subchapter four of this code a statement of the expense incurred and a demand for payment thereof. If the owner does not within thirty days of service of such statement, notify [HPD] in writing of his or her objection to the statement of expenses or any individual item therein, such owner may not in any subsequent judicial or administrative proceeding contest any item in such statement.

(emphasis supplied).

"The requirement that the owner must object in writing within thirty days following service of the statement of account places [HPD] on notice that the claim is in dispute. A written objection to the statement of account is equivalent to a request for administrative review, and it gives the owner an opportunity to obtain a hearing with a [HPD] negotiator who will entertain

[* 6] .

and review the owner's contentions, and has the authority to settle [HPD's] claim, subject only to the approval of the Comptroller." Department of Housing Preservation and Development of the City of New York v. Chesnut, 119 Misc2d 865, 870-871 (Civ Ct. Bronx Co. 1983); see also, Department of Housing Preservation and Development of the City of New York v. 849 St. Nicholas Equities, 141 Misc2d 258, 265 (Civ Ct. NY Co. 1988) (characterizing the requirement that the owner object in writing within 30 days of service of a statement of expenses as an "important procedural limitation[] precluding challenges to [HPD's] charges for work").

Here, petitioners did not submit a written statement objecting to the invoices sent by HPD, and therefore, HPD argues, this proceeding should be dismissed for failure to exhaust administrative remedies. Whether labeled as a failure to exhaust administrative remedies or a lack of compliance with the procedural requirements conditioning a challenge to HPD's charges for emergency repair work, as petitioners did not submit written objections to the amounts charged, they are now precluded seeking judicial review of HPD's charges for emergency work on the premises.

In any event, even assuming arguendo that petitioners were not required to take further action following their receipt of the January 30, 2007 invoices from HPD and such invoices

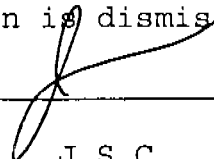
constituted a final determination by the agency, this proceeding would be time-barred. It is well settled law that a challenge to an administrative determination must be commenced within four months after the determination becomes final and binding upon the petitioner. Todd v New York City Housing Auth., 262 AD2d 202 (1st Dept 1999); CPLR 217. "A strong public policy underlies the abbreviated statutory time frame: the operation of government agencies should not be unnecessarily clouded by potential litigation." Best Payphones, Inc. v. Department of Information Technology and Telecommunications of the City of New York, 5 NY3d 30, 34 (2005).

As this action commenced in September 2007, which is more than four months after the January 30, 2007 determination, it is subject to dismissal on statute of limitations grounds.

Conclusion

In view of the above, it is ORDERED that the cross motion is granted; and it is further ORDERED and ADJUDGED that the petition is dismissed.

DATED: March 10 2008



 J.S.C.

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