

**Matter of Wilkinson v New York State Div. of  
Hous. & Community Renewal**

2008 NY Slip Op 30998(U)

April 1, 2008

Supreme Court, New York County

Docket Number: 0109696/2007

Judge: Judith J. Gische

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

PRESENT: JUDITH J. GISCHE, J.S.C.  
*Justice*

PART 10

Index Number : 109696/2007  
WILKINSON, YOLANDA K.  
vs  
DIV OF HSG & COMMUNITY RENEWAL  
Sequence Number : 001  
ARTICLE 78

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered \_\_\_\_\_ this motion to/for \_\_\_\_\_

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

PAPERS NUMBERED
_____
_____
_____

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

motion (s) and cross-motion(s)  
decided in accordance with  
the annexed decision/order  
of even date.

**FILED**  
APR 08 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

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

Dated: 4/2/08

JUDITH J. GISCHE, J.S.C. 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 10**

-----X  
In the matter of the application of  
**Yolanda K. Wilkinson,**

Petitioner,

*for a judgment pursuant to Article 78  
of the Civil Practice Law and Rules*

-against-

**New York State Division of  
Housing and Community Renewal,**

Respondent.  
-----X

**DECISION/ORDER**

Index No.: 109696/07

Seq. No.: 001

Present:

Hon. Judith J. Gische

**FILED**

APR 08 2008

COUNTY CLERK'S OFFICE  
NEW YORK

Recitation, as required by CPLR § 2219 [a], of the papers considered in the review of this (these) motion(s):

<b>Papers</b>	<b>Numbered</b>
Notice of Pet and Pet, exhs . . . . .	1
DHCR's answer, w/CF affirm, and "Return" . . . . .	2,3
YKW reply . . . . .	4
Transcript 1/31/08 . . . . .	5

*Upon the foregoing papers, the decision and order of the court is as follows:*

This is a petition seeking judicial review of respondent DHCR's order dated May 16, 2007 that denied petitioner's petition for administrative review ("PAR"). The PAR was of the rent administrator's decision which found that there were no issues for the DHCR to address because they had been decided in housing court. This petition is timely and issue has been joined. The court will therefore consider whether there are factual disputes that require a trial, or whether the petition can be decided on the record before the court.

## Arguments

Petitioner Yolanda K. Wilkinson ("petitioner") contends that she is entitled to recover treble damages from her landlord, a non-party to this action, because he failed to timely pay a rent refund to her. It is undisputed that the landlord has, in fact, made the refund payment. It is also undisputed that the payment was made several days late.

This refund was ordered in connection with a proceeding brought against Ms. Wilkinson by her landlord in housing court to recover unpaid rent and compel her to sign a lease. Ms. Wilkinson had asserted a counter claim in that action for a rent over charge. This overcharge claims as also the basis for her complaint against the landlord before the DHCR [UL-410038-R]. Following a testimonial hearing in housing court [L&T No. 79034/06], the landlord was ordered by Judge Gilbert Badillo to refund the sum of \$365.00 to the tenant, representing a rent overpayment (\$165.00) and excess security (\$200.00). Judge Badillo ordered that the refund be made to Ms. Wilkinson within ten (10) days of his decision made November 27, 2006.

Thereafter, the rent administrator rendered his decision in connection with Ms. Wilkinson's over charge complaint [UL-410038-R]. The rent administrator decided that the missing rent registration had been filed and that the issue of the overcharge had been resolved in housing court by Judge Badillo [L&T 79034/06]. Although erroneously stating that the court had directed a refund of "\$530.00," (it was in fact \$365.00), the rent administrator found that there were no issues to decide, and he terminated that action (and therefore dismissed the petition) without action. Rent Administrator's decision 2/23/07.

Ms. Wilkinson filed the PAR that is the subject of this Article 78 proceeding, seeking payment of the "\$530.00." In deciding the PAR, the DHCR only corrected the underlying decision to reflect the payment was supposed to be \$365.00 not "\$530.00," but otherwise affirmed the rent administrator's decision.

Petitioner contends the landlord failed to pay \$365 by the date he was required to and that although she sought relief from DHCR, to enforce that payment by awarding her treble damages, the DHCR referred her back to housing court. Petitioner contends that Judge Badillo had instructed her to seek relief from the DHCR, which is what she did. Thus, it is petitioner's further claim that she is being bounced back and forth between housing court and DHCR, without any avenue of relief.

In its decision denying petitioner's PAR, DHCR set forth the basis for its decision. It stated that not only did the housing court have concurrent jurisdiction over these issues raised by petitioner, but the court had, in fact, retained and exercised its jurisdiction over them. Petitioner had already brought a motion to enforce her claim for treble damages on the basis that the \$365 had not been timely paid. That motion for contempt was denied by Judge Finkelstein's in his order of December 26, 2006. He wrote that the monies the landlord had been required to paid to Ms. Wilkinson had, in fact, been paid in court that day (subject to collection), thereby resolving the motion.

### **Discussion**

The standard of judicial review in an Article 78 proceeding is whether there was a rational basis for the decision rendered by the administrative body. Thus, in reviewing DHCR's order and opinion denying the landlord's PAR the only questions that may be considered by the court are whether it was made in violation of lawful procedure, was

effected by an error of law, or was arbitrary and capricious or an abuse of discretion. CPLR § 7803. Where the determination is rationally based upon the administrative record, it should not be disturbed. Matter of Salvati v. Eimicke, 77 NY2d 784 (1988); Elgart v. DHCR, 2 AD3d 218 (1<sup>st</sup> Dep't 2003). While pure issues of law should be determined by the court, issues concerning the interpretation of a statute or regulation by the agency responsible for its administration should be upheld, if they are not irrational or unreasonable. Madison-Oneide Board of Compaartive Educational Servicesv. Mills, 4 NY3d 51 (2004); Allstate Ins. Co. V. Libow, 106 AD2d 110 ( 2<sup>nd</sup> dept. 1984) aff'd 65 NY2d 807 (1985).

Since this case involves the interpretation and application of the RSC, and the DHCR is the State agency responsible for the promulgation of regulations applicable to rent regulations, DHCR's interpretation of the Rent Stabilization Law is entitled to great deference by this court. I/M/O Dworman v. New York State Division of Housing and Urban Renewal, 94 NY2d 359, 371 (1999). Furthermore, because of its "specialized knowledge and understanding" of its own underlying operational practices, the DHCR is in the prime position to evaluate the facts developed before it and to draw any and all necessary conclusion therefrom that may be necessary, including making decisions about credibility. 201 East 81st Street Associates v. New York State Div. of Housing and Community Renewal, 288 A.D.2d 89 (1<sup>st</sup> Dept 2001).

Petitioner has failed to set forth any facts that support her claim, that DHCR's decision denying her PAR was arbitrary and capricious, or without a rational basis. The deadline for the payment of the \$365.00 to Ms. Wilkinson was set by Judge Badillo in the housing court. This followed a testimonial hearing in housing court in which the the

overarching claims by Ms. Wilkinson for a overcharge/refund were addressed. Petitioner also brought a motion for enforcement of Judge Badillo's order in housing court. That motion was decided - and denied - because the landlord made payment that day, resolving the motion. Petitioner cannot now come back to DHCR seeking a better result. This is the gravamen of DHCR's denial of her PAR, and an accurate statement of the applicable law.

Petitioner has not met her burden of putting forth facts that support her claim that the denial of her PAR by DHCR was arbitrary, in violation of lawful procedure, an abuse of its discretionary power, or made in excess of its jurisdiction. CPLR § 7803; Matter of Pell v. Board of Education, 34 NY2d 222 (1974). The DHCR's denial of her PAR, and its decision to affirm the Rent Administrator's decision are supported by the record, and its interpretation of the applicable statutes applicable to the dispute. Greystone Mgmt Corp. v. CAB, 94 AD2d 614 (1<sup>st</sup> Dept 1983). Therefore, the petition is denied.

### Conclusion

The clerk shall enter judgment against petitioner in respondent's favor.

Any relief requested that has not been addressed has nonetheless been considered and is hereby expressly denied.

This constitutes the decision and order of the court.

Dated:           New York, New York  
                  April 1, 2008

So Ordered:

Hon. Judith J. Gische, J.S.C.

