

**Matter of Quisqueya Hous. Co., L.P. v  
Commissioner of the Div. of Housing and  
Community Renewal**

2008 NY Slip Op 31103(U)

April 11, 2008

Supreme Court, New York County

Docket Number: 0106524/2007

Judge: Joan Madden

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

HON. JOAN A. MADDEN

PRESENT:

PART 11

Index Number : 106524/2007

QUISQUEYA HOUSING

vs

HOUSING & COMMUNITY RENEWAL

Sequence Number : 001

ARTICLE 78

NO. \_\_\_\_\_

N DATE \_\_\_\_\_

N SEQ. NO. \_\_\_\_\_

N CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this \_\_\_\_\_ 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~~ *Article 78 petition is determined in accordance with the annexed decision and order, which also determines petition sequence no. 002.*

**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 1419).

Dated: April 11, 2008

J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 11

-----X  
In the Matter of the Application of  
QUISQUEYA HOUSING CO., L.P.,

Petitioner,

For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules  
-against-

INDEX NO. 106524/07

COMMISSIONER OF THE DIVISION OF  
HOUSING AND COMMUNITY RENEWAL

**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).*

Respondent.  
-----X

JOAN A. MADDEN, J.:

In this Article 78 proceeding, petitioner landlord challenges the March 15, 2007 decision of respondent Commissioner of the Division of Housing and Community Renewal ("DHCR"), which denied its petition for administrative review ("PAR") and upheld the agency's rent overcharge determination (sequence number 001). Cecilia Reyes ("Reyes"), the tenant of the rent stabilized apartment which is the subject of this proceeding, moves for an order pursuant to CPLR 7802(d) granting her leave to intervene and answer the petition (sequence number 002).<sup>1</sup>

Petitioner Quisqueya Housing Co., L.P. (Quisqueya) is the owner of the building located at 500 West 176<sup>th</sup> Street in Manhattan (the "building"). Proposed intervener Reyes has been a rent-stabilized tenant occupying apartment 39 in the building since 1983. Respondent DHCR is the New York State agency charged with overseeing and enforcing the application of the rent stabilization law and code.

<sup>1</sup> Motion sequence numbers 001 and 002 are consolidated for determination herein.

When Reyes first moved into the building in 1983, it was owned by the New York City Department of Housing Preservation and Development (HPD), and was evidently in very poor condition. In 1994, HPD undertook a gut rehabilitation of the entire building, at which time Reyes was temporarily relocated to other quarters for three months. On June 30, 1999, HPD sold the building to Quisqueya's predecessor in interest, a not-for-profit corporation, for one dollar pursuant to the Neighborhood Redevelopment Program. Also on that date, HPD and Quisqueya's predecessor in interest executed a regulatory agreement (the regulatory agreement), pursuant to which HPD retained the authority to determine the legal rent for each of the building's apartments in accordance with the applicable state, local and federal rent regulations, and that set forth the calculations of those rents. Afterwards, on December 20, 2000, HPD and Quisqueya executed an amended regulatory agreement (the amended regulatory agreement) that recalculated the apartments' rents.

HPD evidently issued a rent restructuring order in 1997 establishing Reyes's legal rent at \$302.50 per month (the first rent restructuring order).<sup>2</sup> After the building's sale on March 20, 2001, HPD issued another rent restructuring order that determined, effective April 1, 2001, that the legal regulated rent for Reyes's apartment would be \$679.00 per month; however, pursuant to the terms of the amended regulatory agreement and Reyes's income certification documents, the maximum collectable rent would be \$166.50 per month. In December 2000, Quisqueya offered Reyes a two-year lease with a monthly rent of \$302.50. That lease, however, included a rider which provided that the initial legal rent for the apartment would be \$679.00 per month. Reyes

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<sup>2</sup>Although DHCR's March 15, 2007 order refers to the 1997 first rent restructuring order, a copy is not included in the record before the court.

refused to sign this lease, and also eventually stopped recertifying her income. As a result, after HPD and Quisqueya executed another amended regulatory agreement on January 11, 2005 (the second amended regulatory agreement) which further recalculated the building's apartment rents, HPD issued another restructuring order on January 9, 2006 (the third restructuring order) that fixed Reyes's legal rent at \$2,411.00 per month and her collectable rent at \$670.00 per month.

In the meantime, on August 31, 2001, the DHCR issued a order under Docket No. NI-410016-B (the first reduction order) which temporarily reduced the collectable rent "to the level in effect prior to the most recent guidelines increase" as a result of Quisqueya's failure to provide or maintain certain essential services in the building. The DHCR subsequently issued another order on December 17, 2003, under Docket No. RF-410020-B (the second reduction order), which further temporarily reduced the collectable rent on Reyes's apartment "to the level in effect prior to the most recent guidelines increase" as a result of Quisqueya's continued failure to provide or maintain certain essential services in the building. It is unclear whether those orders still remain in effect.<sup>3</sup>

Meanwhile, on June 27, 2003, Reyes filed a rent overcharge complaint with the DHCR. On April 9, 2004, the DHCR issued an order under Docket No. RF-410108-R (the overcharge order) finding that Quisqueya had overcharged Reyes. Believing that the DHCR had incorrectly calculated the overcharge amount by failing to take into account the two rent reduction orders already in effect, Reyes petitioned the DHCR on July 28, 2005, to reconsider its overcharge order. On November 2, 2005, the DHCR issued an order under Docket No. TH-410013-RK (the

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<sup>3</sup>Quisqueya submits a copy of a rent restoration order, but that order is predicated on the correction of an unrelated violation in the building's common areas.

amended overcharge order) modifying and recalculating the earlier overcharge order to account for the effect of the first and second rent reduction orders. On December 9, 2005, Quisqueya filed a PAR as to the amended overcharge order, which the DHCR denied on procedural grounds in February 2006.

On December 8, 2005, Reyes filed her own PAR, objecting that the amended overcharge order did not impose treble damages or award attorney's fees. On February 13, 2006, Quisqueya re-filed its PAR, alleging that the amended overcharge order was calculated incorrectly, since it did not account for Reyes's failure to recertify her income, which should have resulted in her being responsible for the full legal regulated rent. On March 15, 2007, DHCR Deputy Commissioner Paul A. Roldan issued an order denying both PARs. In pertinent part, the order provided as follows:

What determines the correct rents for apartments in a program such as that in which the tenant's apartment is enrolled is a complex structure of regulations and practices promulgated pursuant to various federal, state and local statutes.

The HPD orders which are labeled restructuring orders in this record are somewhat more complicated than a simple rent restructuring order which re-sets the rent for an apartment after some renovation or improvement work has been done to the apartment and/or building under a publicly funded program. The rent restructuring orders herein set forth two rents; a higher one and a lower one. The difference between these rents being based, apparently, on the income of the tenant, the size of the apartment, and the size of the tenant's household.

The record indicates that the owner initially certified to HPD that the subject tenant's household qualified to be numbered among those paying the lower (\$166.50) of the two rents set forth in the second (March 20, 2001) restructuring order. The record further indicates that there came a time when the owner needed an income certification from the tenant to substantiate the owner's initial representations to HPD. It appears that when the owner could not provide HPD with that tenant certification (because the tenant did not provide it to the owner), the owner attempted to collect from the tenant the higher rent (\$679.00) set forth in the March 20, 2001 restructuring order. The tenant resisted and the proceeding

below ensued.

Eventually, based on the tenant's failure to submit the requested income certification, HPD issued a third restructuring order dated January 9, 2006, which order set the "new initial rent" at \$2,411.00 effective January 9, 2006. That same order indicated that "Pursuant to a regulatory agreement dated January 11, 2005 and based upon the income certification conducted by the landlord, the collectable rent for the apartment will be \$679.00 per month."

Based on the record before him, the Commissioner finds no merit in the owner's claim that it, on its own authority, was entitled to require the tenant to start paying the higher rent of \$679.00 a month during the time when the second restructuring order was still in effect. That order set the collectable rent at \$166.50 a month and it was issued in accordance with the Regulatory Agreement dated March 31, 2000.

That agreement provided, in substance . . . that "Non-Cooperating Tenants" for three bedroom apartments (which is what the subject apartment is) shall not pay a rent in excess of \$679.00 and that "Cooperating Tenants" shall, simply put, pay the lower figure in their restructuring order. In this case the \$166.50 figure in the March 20, 2001 order. That agreement further provided ... that "After consulting with sponsor [the owner], HPD shall determine whether a particular tenant is a Cooperating Tenant or a Non-Cooperating Tenant and shall notify Sponsor of its determinations." Accordingly, the Commissioner finds that the owner has not established its entitlement to collect any rent from the tenant in excess of \$166.50 prior to January 9, 2006, the effective date of the third restructuring order.

The Commissioner notes that the owner has made no claim of entitlement to increase the tenant's rent in accordance with a Guidelines Adjustment; however, the Commissioner notes that had such a claim been made, it would have been barred by virtue of the outstanding rent reduction orders.

The Commissioner finds that the issuance of the third (January 9, 2006) HPD rent restructuring order in no way supports the position that the owner has taken herein. That order was issued after the appealed order was issued and the effective date of that third rent restructuring order is after the end of the period covered by the appealed order.

The Commissioner points out that programs such as the one in which this building participates are subject to statutes and regulations at the federal, state and city level and at the federal level alone there are two separate bodies of law that must be complied with: those relating to fair housing, administered by, and subject to regulations promulgated by, HUD; and the Internal Revenue Code. The Commissioner finds that, considering the record below as a whole and the

complexity of the legal structure under which the building operates, the Administrator did not err in declining to impose treble damages on the petitioner-owner.

The Commissioner notes that the application of legal fees has been addressed by the Civil Court. Any action or determination on that issue taken by this agency would be inappropriate.<sup>4</sup>

Thereafter, on May 14, 2007, Quisqueya commenced the instant Article 78 proceeding challenging the DHCR's determination denying its PAR. The DHCR served an answer on July 2, 2007. Reyes has moved for leave to intervene in this proceeding, but she is not objecting to the DHCR's denial of her PAR.

Reyes's motion to intervene is granted in the absence of opposition. CPLR 7802(d) vests a trial court with discretion to permit "other interested persons" besides the named partes to intervene in an Article 78 proceeding. The statute specifically provides that "[t]he court may direct that notice of the proceeding be given to any person," and "may allow other interested persons to intervene." CPLR 7802(d). The decision whether to permit a party to intervene in an Article 78 proceeding "is a matter addressed to the sound discretion of the court." White v. Incorporated Village of Plandome Manor, 190 AD2d 854 (2<sup>nd</sup> Dept 1993). As a party to and the complainant in the underlying rent overcharge proceeding determined by DHCR, Reyes should be permitted to intervene to protect her interests in the outcome of this Article 78 proceeding. See Matter of Nestor v. New York State Division of Housing & Community Renewal, 257 AD2d 395 (1<sup>st</sup> Dept), app diss 93 NY2d 982 (1999).

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<sup>4</sup>Based on documents submitted with Reyes's motion papers, it appears that Quisqueya commenced a number of non-payment proceedings against her Housing Court. In one proceeding (Index No. 66573/05), the court awarded Reyes a money judgment for rent overcharges, and found that as the prevailing party, Reyes was entitled to an award of attorney's fees, and directed a hearing as to the amount of such fees.

Turning to the merits of Quisqueya's Article 78 petition, it is well settled that the court's review of the action of an administrative agency, such as the DHCR, is limited to whether the agency's determination is arbitrary and capricious, or without a rational basis in the record and a reasonable basis in the law. See CPLR 7803(3); Classic Realty LLC v. New York State Division of Housing & Community Renewal, 2 NY3d 142 (2004); Matter of Pell v. Board of Education of Union Free School District No. 1, 34 NY2d 222 (1984); Matter of Partnership 92 LP & Building Management Co., Inc. v. State of New York Division of Housing & Community Renewal, 46 AD3d 425 (1<sup>st</sup> Dept 2007). If the challenged determination is rational, it must be upheld, even if the court when viewing the case in the first instance, might have reached a different conclusion. See Mid-State Management Corp. v. Conciliation & Appeals Board, 112 AD2d 72, aff'd 66 NY 2d 1032 (1985). Thus, "the determination of an agency, acting pursuant to its authority and within the orbit of its expertise is entitled to deference, and even if different conclusions could be reached as a result of conflicting evidence, a court may not substitute its judgment for that of the agency when the agency's determination is supported by the record." Id at 428 - 429 (citations omitted). It is also well established "that an agency's interpretation of the statutes and regulations it is responsible for administering is entitled to great deference, and must be upheld if reasonable." Id at 429 (citations omitted). ~

Here, after reviewing the record in accordance with the above standards, the court finds that the DHCR's denial of petitioner's PAR was not arbitrary or capricious and should be upheld. In support of its petition, Quisqueya argues that the DHCR erred in calculating Reyes's rent, as it should have used the \$679.00 monthly rental figure that was established in the January 3, 2006 third restructuring order as Reyes's "lower monthly rent," in view of Reyes's failure to recertify

her income. This argument is without merit. The DHCR's order expressly addressed and rejected that identical argument, reasoning that the third restructuring order did not take effect until after both Reyes's overcharge complaint and, and Reyes's and Quisqueya's subsequent PARs were filed. Specifically, the DHCR found that "the issuance of the third (January 9, 2006) HPD rent restructuring order in no way supports the position that the owner has taken herein. That order was issued after the appealed order was issued and the effective date of that third rent restructuring order is after the end of the period covered by the appealed order." As the DHCR explains in its answer, "[c]ontrary to the owner's assertion, the Commissioner's order did not ignore HPD's [third] restructuring order which set the initial regulated rent and the collectable rent. Instead, the Commissioner found that the March 20, 2001 [second] restructuring order setting the initial rent at \$166.50 was the order which prevailed since it was the order that was in effect during the Rent Administrator's proceeding and in accordance with the Regulatory Agreement, the owner had to request that HPD determine the tenant to be 'non-cooperating' and thus, required to pay the higher rent of \$679.00. HPD did not do so until January 9, 2006, after the rent Administrator's November 2, 2005 order."

The court is mindful that "[t]he interpretations of respondent agency of statutes which it administers are entitled to deference if not unreasonable or irrational." Matter of Metropolitan Assoc. Ltd. Partnership v New York State Division of Housing & Community Renewal, 206 AD2d 251, 252 (1st Dept 1994), citing Matter of Salvati v Ejmicke, 72 NY2d 784, 791 (1988). Thus, since the DHCR clearly considered Quisqueya's argument and articulated a rational reason for rejecting it, based on an interpretation of the governing HPD and DHCR regulations, petitioner has failed to establish that the DHCR's determination was arbitrary or capricious, and

the petition is denied.


Accordingly, it is hereby

ORDERED that the motion by Cecilia Reyes to intervene is granted; and it is further

ORDERED AND ADJUDGED that the petition is denied and dismissed.

DATED: April 11, 2008

ENTER:

  
\_\_\_\_\_  
J.S.C.

**UNFILED JUDGMENT**  
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