

**Matter of Terrace Ct., LLC v New York State  
Div. of Hous. & Community Renewal**

2008 NY Slip Op 32125(U)

July 25, 2008

Supreme Court, New York County

Docket Number: 0100449/2008

Judge: Jane S. Solomon

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

PRESENT: Hon JANE S SOLOMON

PART 55

Index Number : 100449/2008

TERRACE COURT LLC

vs

N.Y.S.D.H.C.R.

Sequence Number : 001

ARTICLE 78

INDEX NO.

100449/2008

MOTION DATE

6-2-2008

MOTION SEQ. NO.

001

MOTION CAL. NO.

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

1-4

5-7

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this ~~motion~~ Petition is decided in accordance with the annexed memorandum 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 based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1419).

Dated: \_\_\_\_\_

7/25/08



JANE S. SOLOMON J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

[\* 2 ]  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 55

-----X  
In the Matter of the Application of  
TERRACE COURT, LLC.,

Petitioner,

INDEX NO. 100449/2008

For a Judgment under Article 78 of  
the Civil Practice Law and Rules,

-against-

NEW YORK STATE DIVISION OF HOUSING  
AND COMMUNITY RENEWAL,

DECISION, ORDER and  
JUDGMENT

Respondent.

RE: DHCR Rent Administrator's Docket No.  
SE 430042 OM and  
Administrative Review Docket Nos.  
UA 430068 RO and US 430047 RT

-----X  
JANE S. SOLOMON, J.

Petitioner Terrace Court LLC ("Terrace Court")

commenced this Article 78 proceeding seeking to annul the  
November 15, 2007 Order of respondent New York State Division of  
Housing and Community Renewal ("DHCR"), issued in Docket Nos. UA  
430047 RT and UA 430068 RO (the "Order Under Review"). The Order  
Under Review granted Terrace Court a rent increase for major  
capital improvements in most of the apartments in the building  
that it owns at 202 Riverside Drive in Manhattan (the  
"Building"), but permanently exempted the improvements made in  
five of the apartments, finding that they did not justify an  
increase. On April 28, 2008, my Interim Order granted the motion

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1415).

brought under sequence 002 by the tenants of those five apartments, who sought to intervene. The Petition is now decided as follows.

On or about May 21, 2004, Terrace Court filed an application with DHCR seeking to increase the rent for all regulated apartments in the Building based on major capital improvements ("MCI"). The MCI application states that the improvements consisted of pointing, masonry, lintels and parapet, and includes supporting documentation.

On or around June 14, 2004, DHCR sent a copy of the MCI application in summary form to the Building's tenants, and received several complaints in response about the inadequacy of the improvements. Specifically, tenants of several apartments complained that the work had not been done properly, and that their apartments had leaks, crumbling plaster, bulging walls and large stained areas. Terrace Court and the tenants both submitted reports from their respective architects, and on September 22, 2005, DHCR sent an inspector to check the apartments for evidence of water damage. The inspector was unable to access one of the apartments, but found evidence of water leakage in all of the others.

On December 19, 2005, the Rent Administrator granted an MCI rent increase of \$40.20 per room per month for all rent

stabilized and rent controlled tenants except the five apartments whose tenants complained of leakage and whose apartments were inspected. Terrace Court and two individual tenants of non-exempted apartments filed Petitions for Administrative Review ("PARS"). Terrace Court claimed that the inspector only found minor violations unrelated to the pointing work done, and the two tenants claimed that their apartments also had problems but had not been inspected.

On November 15, 2007, DHCR's Commissioner issued the Order Under Review affirming its previous findings. Specifically, it held that the tenants' claims were untimely or not related to the work performed, and second, that a permanent exemption was appropriate for the MCI rent increase on the work done in the exempted apartments because the water damage conditions existed after the work was completed. This Article 78 proceeding ensued, in which Terrace Court claims that DHCR had no discretion to exempt permanently the five apartments.

DHCR has jurisdiction to determine whether an owner is entitled to a rent increase by reason of having made an MCI to its property. Rent Stabilization Law § 26-511(c)(6)(b); Rent and Eviction Regulations § 2202.4(c). To obtain an MCI rent increase, an owner must make an installation or perform work that meets the applicable regulatory requirements as interpreted by

DHCR. Pointing and masonry are the type of improvements for which an owner can receive an MCI rent increase, however, DHCR can deny or revoke an MCI rent increase if the work is done improperly. See Garden Bay Manor Assoc. v. New York State Div. of Housing & Community Renewal, 150 A.D.2d 378 (2<sup>nd</sup> Dep't 1989).

Here, DHCR's inspector found water damage in the five inspected apartments. Terrace Court argues that the leaks could have resulted from different conditions than those existing before the MCI work was done. However, the inspector's finding that the problems continued supports the agency's determination that the pointing work was not done effectively for the five exempted apartments.

Terrace Court also argues that the inspector's findings were not served on it and that the inspection was performed too long after the work was performed. These arguments are unpersuasive. Due process does not require that a copy of DHCR's inspection report be served on an owner, as it merely confirms the tenants' allegations (see Empress Manor Apartments v. New York State Div. of Housing & Community Renewal, 147 A.D.2d 642 [2<sup>nd</sup> Dep't 1989]), and the tenants' complaints were made known to the owner throughout the proceeding. Although the inspection was performed 16 months after the work was performed, DHCR's Commissioner's finding that the MCI in the five subject

apartments had not been completed properly, is reasonable given the submissions of the parties and numerous problems cited by the inspector. See ANF Co. v. New York State Div. of Housing & Community Renewal, 176 A.D.2d 518 (1<sup>st</sup> Dep't 1991). To the extent the exemptions are permanent, this only prevents rent increases for the work referred to in the May 2004 MCI application that DHCR deemed were not improvements; Terrace Court is not prohibited from seeking rent increases for future improvements it makes in the subject apartments. Under these circumstances, the exemption of the work in the five apartments was rational, not an abuse of discretion, and cannot be characterized as a penalty.

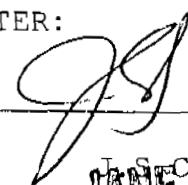
Accordingly, it hereby is

ORDERED and ADJUDGED that the Petition is denied and the proceeding is dismissed.

This constitutes the decision and judgment of this court.

Dated: July 25, 2008

ENTER:

  
 \_\_\_\_\_  
 JANE S. SOLOMON

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