

**Matter of Israilova v New York City Dept. of Hous.
Preserv. & Dev.**

2008 NY Slip Op 33591(U)

October 27, 2008

Supreme Court, New York County

Docket Number: 107137/09

Judge: Walter B. Tolub

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

PRESENT: **WALTER B. TOLUB**

PART 1

Index Number : 107137/2009
ISRAILOVA, DAVORO
 VS.
NEW YORK CITY DEPT. OF HPD
 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

IS DECIDED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

FILED
 NOV 02 2009
 COUNTY CLERK'S OFFICE
 NEW YORK

Dated: 11/2/09

[Signature]
WALTER B. TOLUB 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 15

-----x
In the Matter of the Application of
DAVORO ISRAILOVA and YURIY ISRAILOV

Index No. 107137/09
Mtn. Seq. 001

Petitioners,

-against-

NEW YORK CITY DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT

Respondent.
-----x

WALTER B. TOLUB, J.:

By this Petition, Petitioners seek an order annulling Respondent's determination that Petitioner should be liable for \$91,297.50 based on a charge issued under the Housing Preservation and Development (HPD) Emergency Repair Program (ERP).

Respondent cross moves for an order dismissing the Petition pursuant to CPLR 3211[a][2].

Facts

Petitioners reside at 144-09-85 Avenue, Queens, New York (Premises/Building). Respondent, HPD is an agency created under Chapter 61 of the New York City Charter.

On or about June 15, 2008, the New York City Department of Buildings (DOB) issued a partial vacate order to the Premises in connection with debris and the retaining wall in the back of the Building.

On July 3, 2008, Respondent issued an "Urgent Notice"

informing the Petitioners that unless they were to inform the Respondent within three days of their intention to cure, Respondent would proceed on their own to repair the retaining wall at the Premises and Petitioners would be responsible for the costs.

The Respondent did not hear anything from the Petitioners and on August 26, 2008, Respondent filed for a work permit at the Premises. The "Cost Affidavit" estimated the cost of the work [or a portion of the work] to be \$7,200.00.

On September 29, 2008 Respondent's contractor commenced work at the Building. The work was completed one week later. Petitioners claim that no permanent repairs were made to the retaining wall and there has not been a final "sign off" on the work performed. A "Notice to Revoke" was issued on November 6, 2008.

On January 26, 2009, Petitioner received an invoice for the repairs to the Premises totaling \$91,297.50. Shortly thereafter, Petitioner verbally requested additional clarification of the repair charge with the ERP. On or about February 25, 2009, Petitioners received a response from the Respondent with a copy of the work contract and general invoice for the work performed. Petitioners did not submit a written protect^s to the charges ✓ within the 30 days required by the Administrative Code.

Petitioners claim that the charges should be revoked because

Respondent acted arbitrarily and capriciously in charging over \$91,000 for a job that was estimated at \$7,200. Additionally, Plaintiff claims that the charges should be revoked because Respondent failed to properly repair the Building pursuant to the Housing Maintenance Code. Lastly, Petitioners claim [without more] that they have consulted with an architect who had estimated the cost for the necessary repairs at a significantly lower charge than the one charged by Respondent.

Respondent seeks to dismiss the Petition arguing that this Court lacks jurisdiction because Petitioners have not exhausted their administrative remedies.

Discussion

Petitioners do not dispute that they did not cure the condition of the Premises. Petitioners do not dispute that they did not exhaust their administrative remedies because they failed to protest the fee charged by Respondent.

Petitioners are prohibited from challenging an administrative determination without first exhausting all available administrative remedies (Young Men's Christian Ass'n v. Rochester Pure Water Dist., 37 NY2d 371 [1975]; Plummer v. Klepak, 48 NY2d 486 [1979]). As such, this Court lacks the requisite subject matter jurisdiction over this action.

The problem which arises is that since Petitioner failed to

protest the charges within 30 days¹, Petitioners claims become forever premature (Administrative Code §§27-2129 and 27-2125). That being said, Petitioners did have a full opportunity to dispute the charges but failed to do so. But, more significantly, this Court lacks the proper jurisdiction over this matter, and as such, the Petition must be and is dismissed.

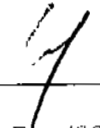
Accordingly, it is

ORDERED that Respondent's motion to dismiss is granted.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 10/27/09

FILED
NOV 02 2009
COUNTY CLERK'S OFFICE
NEW YORK



HON. WALTER B. TOLUB, J.S.C.

¹Petitioners received extensions of time to act and protest the charges. Petitioners, who are not originally from the United States, claim neither fully comprehended the options they had in disputing the charge.