

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

2009 NY Slip Op 31231(U)

June 5, 2009

Supreme Court, New York County

Docket Number: 105892/2007

Judge: Shirley Werner Kornreich

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY  
JUSTICE SHIRLEY WERNER KORNREICH

PRESENT: \_\_\_\_\_

PART 54

Index Number : 105892/2007

SHERLOCK, REID

vs  
HOUSING & COMMUNITY RENEWAL

Sequence Number : 001

ARTICLE 78

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

MOTION DATE 9/17/07

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to 4 were read on this motion to/for Art 78 petition + administrative return

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

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

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

PAPERS NUMBERED

1-2

3

4

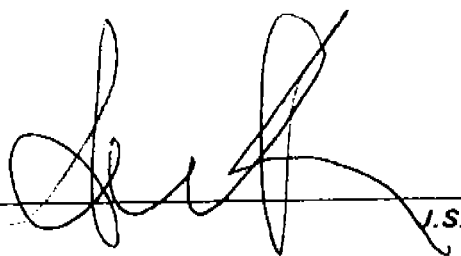
Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE  
WITH ACCOMPANYING MEMORANDUM  
DECISION AND ORDER.**

**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 141B).

Dated: June 5, 2009

 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 YORK  
COUNTY OF NEW YORK

-----X  
REID SHERLOCK,

Index No.: 105892/2007

Petitioner,

**DECISION & JUDGMENT**

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

-against-

NEW YORK STATE DIVISION OF HOUSING  
AND COMMUNITY RENEWAL, OFFICE OF  
RENT ADMINISTRATION,

Respondents.

-----X  
KORNREICH, SHIRLEY WERNER, J.

**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 County Clerk's Office, 100 State Street, Albany, New York 12242.

In this Article 78 proceeding, petitioner, Reid Sherlock, challenges a determination of the Deputy Commissioner of the New York State Division of Housing and Community Renewal (DHCR), Paul A. Roldan (Commissioner), dated March 9, 2007 (Commissioner's Determination), Docket Nos. UH420028RT and UI420013RO. Reid Sherlock lives in Apartment 8, a five room housing accommodation in an apartment building located at 1412 Madison Avenue, New York, N.Y. (Apartment). Petitioner and his wife, Valerie Sherlock, filed the underlying complaint with the DHCR on September 14, 2005. The Commissioner's Determination granted a petition for administrative review (PAR) by the owner, denied petitioner's PAR and reversed a decision of Rent Administrator, Sekhar P. Unnithan (RA), dated August 8, 2006, Docket No. UD420001AD (RA's Determination). The RA's Determination had ruled that the Apartment was improperly removed from rent control on September 14, 1978 and that the maximum collectible rent was \$74.25 as of January 1, 2005.

The Commissioner's Determination held that the RA had no authority to overrule the prior final determination of a previous overcharge complaint filed by petitioner on May 13, 2004, Docket No. SE420060R (2004 Proceeding). On December 12, 2004, the RA (the same individual who issued the RA Determination in 2006) denied petitioner's claim in the 2004 Proceeding that the Apartment was subject to rent control (2004 Determination). The 2004 Determination by the RA stated that:

The instant overcharge complaint has been filed by the tenant claiming that the subject apartment is rent controlled. However, agency records indicate that the owner had filed a Decontrol Report on September 14, 1978 .... Further, the apartment has been registered as rent stabilized since 1984 and the tenant has been signing rent stabilized leases at least since 1977.

Petitioner filed a PAR in the 2004 Proceeding, which DHCR dismissed as untimely. Petitioner filed an Article 78 proceeding challenging the dismissal of his PAR in the 2004 Proceeding. On July 26, 2005, the Article 78 proceeding was dismissed, on the ground that petitioner's PAR was untimely. *Reid v. Sherlock*, Sup. Ct. N.Y. Co., Index No. 105232/2005 (Hon. Rolando T. Acosta, J.).

The Commissioner's Determination also held: 1) that petitioner's claim was barred because he waited 19 years to challenge the decontrol of the Apartment, citing *Olszewski v. Commissioner of the State Div. of Hous. & Community Renewal*, 277 A.D.2d 386 (2d Dep't 2000); and 2) that the maximum collectible rent under rent control would have to reflect an appropriate present-day rent, which would have been similar to the \$363.44 that petitioner is paying.

Petitioner contends that the Commissioner could not vary the statutory method of removing a housing accommodation from rent control and that to permit him to do that is a

manifest injustice. Petitioner asserts that he has lived in the Apartment since 1966 (or 1968 according to a letter he wrote in 2002) and that there was no vacancy upon which to predicate a decontrol.

In an Article 78 proceeding, the Supreme Court's scope of review is limited to deciding whether there is any rational basis for the determination of the agency. *Matter of Campo Corp. v. Feinberg*, 279 A.D. 302 (3d Dep't 1952), *aff'd* 303 N.Y. 995 (1952). If the determination has any rational basis that would appeal to a reasonable mind, and has any support in the record, it cannot be held by the court to be arbitrary and unreasonable. *Id.* The courts cannot interfere with the determination unless there is no rational basis for the exercise of discretion. *Pell v. Board of Education*, 34 N.Y.2d 222, 231 (1974).

The doctrine of *res judicata*, bars the assertion of claims that have been litigated to conclusion, or which could have been litigated, in a former lawsuit between the same parties. *CRK Contracting of Suffolk, Inc. v. Brown & Assoc.*, 260 A.D.2d 530 (2nd Dep't 1999). The doctrine of collateral estoppel bars a party from re-litigating where there is an identity of issues and the party against whom estoppel is sought had a full and fair opportunity to contest the issue in prior litigation. *Schwartz v Public Administrator*, 24 N.Y.2d 65 (1969). The doctrines of *res judicata* and collateral estoppel are applicable to quasi-judicial determinations of administrative agencies rendered pursuant to the adjudicatory authority of an agency employing procedures substantially similar to those used in a court of law. *Staatsburg Water Co. v. Staatsburg Fire Dist.*, 72 N.Y.2d 147, 152-153 (1988), citing *Ryan v. New York Tel. Co.*, 62 N.Y.2d 494, 499 (1984).

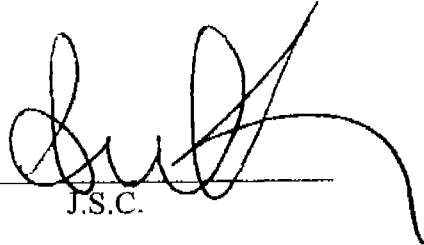
In this proceeding, the Commissioner's Determination that the RA had no authority to

overrule the 2004 Determination was not arbitrary and capricious and, therefore, it must be upheld by this court. In the 2004 Proceeding the issue of whether the Apartment was removed from rent control and placed under rent stabilization was determined adversely to petitioner. Petitioner's PAR from that ruling was denied as untimely and it became final when Justice Acosta dismissed petitioner's Article 78 proceeding challenging the denial of his PAR. Petitioner and Mosfilos Realty were parties to the 2004 Proceeding and the 2005 proceeding that underlies the instant petition. Petitioner had a full and fair opportunity to challenge the ruling in the 2004 Proceeding, but failed to file a timely PAR.

It is unnecessary to consider the remaining bases of the Commissioner's Determination, as the first one is dispositive. Accordingly, it is

ORDERED, ADJUDGED and DECREED that the petition of Reid Sherlock against the New York State Division of Housing and Community Renewal is denied and dismissed with prejudice and the Clerk is directed to enter judgment accordingly.

Dated: June 5, 2009

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

**UNFILED**  
 This judgment has not been entered by the Court and notice of entry cannot be served until the party obtains entry, counsel or authorized representation and appear in person at the Judgment Clerk's Office (Room 141B).