

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

2009 NY Slip Op 31653(U)

July 21, 2009

Supreme Court, New York County

Docket Number: 400303/09

Judge: Joan A. Madden

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

PRESENT: Hon Joan A. Mader  
Justice

PART 11

Cecilia Gullas

INDEX NO. 400303/09

MOTION DATE 4-4-08

- v -  
NYC Preservation + Development

MOTION SEQ. NO. 01

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

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for Article 7.8 relief

	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 petition decided in accordance with the attached Memorandum Decision and Order.

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

**FILED**  
JUL 24 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

Dated: July 21, 2009

[Signature]  
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: IAS PART 11

-----X  
In the Matter of the Application of  
CECILIA GULLAS,

Petitioner,

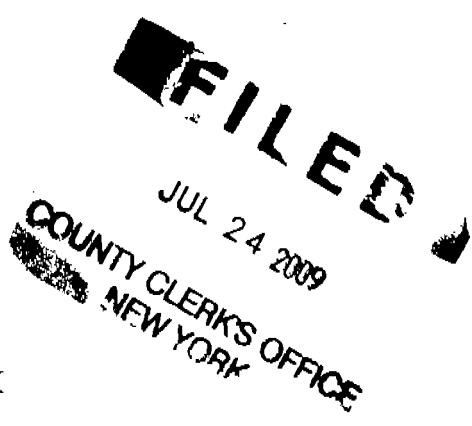
For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules

-against-

THE NEW YORK CITY DEPARTMENT OF HOUSING  
PRESERVATION AND DEVELOPMENT and RNA  
HOUSE, INC.,

Respondents.

-----X



JOAN A. MADDEN, J.:

Petitioner Cecilia Gullas (“Gullas”), acting pro se, brings this Article 78 proceeding for a judgment reversing the decision, dated January 29, 2009, by the respondent New York City Department of Housing Preservation and Development (“HPD”), issuing a certificate of eviction against Gullas at the address 150 West 96<sup>th</sup> Street Apartment 2-B, New York, New York (“the Apartment”), a building owned by respondent RNA House, Inc. (“RNA”).

In its verified answer, HPD opposes the petition and asserts that to the extent that the petition raises an issue of substantial evidence it should be transferred to the Appellate Division, First Department pursuant to CPLR 7804(g). RNA also opposes the petition.

**Background**

RNA is a limited-profit housing company organized under Article II of the Private Housing Finance Law of the State of New York (“PHFL”). Gullas is listed as the

tenant/cooperator on the Occupancy Agreement for the Apartment dated July 19, 2002. Gullas was the sole occupant of the Apartment on the income affidavits for calendar years 2002, 2003, 2004 and 2005. Gullas' son, Paul Gullas, was added as an occupant of the Apartment on the 2006 income affidavits.

On or about October 23, 2006, RNA served Gullas and her son with a Notice of Petition and a Verified Petition seeking a Certificate of Eviction from HPD ("the Notice") on the ground, inter alia, that Gullas was not using the Apartment as her primary residence. Mr. Gullas was named as an undertenant. RNA alleged that Gullas did not use the Apartment as her primary residence and was actually living at 205 West 95<sup>th</sup> Street, Apt. 2A in violation of her Occupancy Agreement and HPD rules and regulations governing Mitchell-Lama apartments. See HPD's Rules and Regulations Governing City-Aided Limited Profit Housing Companies § 3-02(n)(4) (requiring, inter alia, that in Mitchell-Lama housing, the apartment of a tenant be his or her primary residence). In accordance with Title 28 of The Rules of the City of New York (RCNY) § 3-18, the Notice indicated that the parties would have an opportunity to be heard at the hearing was scheduled at HPD on November 15, 2006.

There were numerous adjournments of the hearing. In an affidavit sworn to by Paul Gullas on October 26, 2006, he requested that the November 15, 2006 hearing be adjourned until January 2007 because, inter alia, by that time petitioner "will have vacated the apartment at 205 West 95<sup>th</sup> Street, Apt. 2-A, and therefore, it is no longer her primary residence." By letter dated October 31, 2006, HPD Hearing Officer Frances Lippa (H.O. Lippa), denied Mr. Gullas' request to adjourn the hearing. The letter also informed him that only a conference would be held on November 15, 2006 and he could renew his request for an adjournment of the hearing at that

time.

By letter dated November 20, 2006, H.O. Lippa informed Mr. Gullas that the HPD conference was rescheduled for December 7, 2006. Then, on or about November 20, 2006, Mr. Gullas contacted HPD by fax requesting an adjournment of the December 7, 2006 conference so that he could retain a lawyer.

On November 21, 2006, Justice William Davis signed an order and judgment appointing a Self Help Community Services as an Article 81 guardian ("the Guardian") for Gullas. This order and judgment was issued in connection with Justice Davis' July 25, 2006 decision on the record appointing a guardian of the property and person for Gullas. By letter dated December 13, 2006, H.O. Lippa wrote that in light of Mr. Gullas' request to retain an attorney and questions regarding the appointment of a guardian for Gullas the December 7, 2006 conference date was rescheduled for January 24, 2007.

By letter dated January 9, 2007, H.O. Lippa enclosed a copy of Justice Davis' order and judgment appointing a guardian and informed Gullas, Mr. Gullas, and the Guardian that the HPD hearing was still scheduled for January 24, 2007. In a letter dated January 24, 2007, an attorney for Mr. Gullas requested an adjournment of the January 24, 2007 hearing. The letter also stated that Gullas was seeking representation from the Legal Aid Society. Then by letter dated January 25, 2007, H.O. Lippa informed Gullas and Mr. Gullas that the HPD conference was rescheduled to February 12, 2007 and the new hearing date was scheduled for February 28, 2007.

On or about January 30, 2007, the Legal Aid Society informed H.O. Lippa that it did not represent Gullas or Mr. Gullas. On February 12, 2007, Gullas, the Guardian, and Mr. Gullas failed to appear at the HPD conference. In a Final Default Notice dated February 13, 2007, H.O.

Lippa informed Gullas, the Guardian and Mr. Gullas that they were in default for failing to appear at the conference and re-notified them of the hearing scheduled at HPD on February 28, 2007. Neither Gullas, Mr. Gullas nor anyone on their behalf, appeared at the February 28, 2007 hearing.

In a Final Default Notice dated February 28, 2007, H.O. Lippa informed the Guardian that the hearing was rescheduled for March 15, 2007. Another Final Default Notice dated April 11, 2007, was sent to Mr. Gullas, which notified him that the HPD hearing was scheduled for April 26, 2007. By letter dated May 24, 2007, H.O. Lippa informed Mr. Gullas that the HPD hearing was rescheduled to June 6, 2007. On June 5, 2007, prior to the hearing scheduled for June 6, 2007, the attorney for the Guardian signed a stipulation in which Gullas relinquished her occupancy rights in the Apartment and consented to the issuance of a certificate of eviction against her ("Stipulation"). On June 6, 2007, the Stipulation was submitted to HPD. Subsequently, on June 11, 2007, a certificate of eviction was issued against Gullas and Mr. Gullas.

In June 2007, Gullas brought an Order to Show seeking to have the guardianship terminated. By Decision and Order dated July 23, 2007, Justice Milton Tingling granted Gullas' motion to terminate the guardianship. Judge Tingling also vacated the Stipulation nunc pro tunc. This order was not filed until November 19, 2007.

By letter dated December 20, 2007, H.O. Lippa informed Gullas and Mr. Gullas that because the Stipulation which formed the basis for the June 11, 2007 eviction was vacated, the certificate of eviction was also vacated. The letter also stated that a hearing was scheduled at HPD for January 7, 2008. Neither Gullas nor Mr. Gullas appeared for the January 7, 2008

hearing. On that date, H.O. Lippa sent a Final Default Notice informing Gullas and Mr. Gullas that the hearing was adjourned to January 30, 2008.

On January 5, 2008, Gullas filed a complaint against H.O. Lippa with the City of New York Office of Administrative Trials and Hearings (OATH). Subsequently, on or about January 30, 2008, Gullas informed H.O. Lippa that she would not appear at any other administrative hearings until a "thorough" judicial review of her case was conducted. Neither Gullas, Mr. Gullas, nor anyone of their behalf, appeared at the January 30, 2008 hearing. By letter dated February 1, 2008, OATH notified the Deputy Commissioner and General Counsel of HPD that Gullas' complaint against H.O. Lippa did not establish a prima facie violation of the Rules of Conduct for Administrative Law Judges and Hearing Officers of the City of New York. By letter dated February 19, 2008, H.O. Lippa notified Gullas and Mr. Gullas that notwithstanding Gullas' January 30, 2008 letter, they were required to appear at the HPD hearing. By letter dated February 27, 2008, RNA's attorney requested an adjournment of the March 6, 2008 hearing. By letter and email dated March 4, 2008, H.O. Lippa notified all parties that RNA's request for an adjournment was granted, and that the hearing was rescheduled for April 3, 2008.

By email dated March 3, 2008, Gullas inquired whether the hearing would go forward even though she had been evicted from her rent stabilized apartment at 205 West 95<sup>th</sup> Street. H.O. Lippa replied to this email and confirmed that the hearing would still go forward on April 3, 2008. The only parties that appeared at the April 3, 2008 hearing were H.O. Lippa, RNA's attorney and a witness for RNA. Neither Gullas nor Mr. Gullas appeared.

That afternoon HPD received a "notice of motion" from Gullas which sought, inter alia, an adjournment of the April 3, 2008 hearing. By letter dated April 7, 2008, HPD informed Gullas

and Mr. Gullas that it denied Gullas' "motion" for an adjournment, and the hearing on April 3, 2008 proceeded as scheduled. HPD also notified them that the hearing would be continued on April 22, 2008.

By letter dated April 11, 2008, Gullas requested an adjournment of the April 22, 2008 hearing because of an alleged conflict with a Court date. On April 15, 2008, HPD received a "Notice of Motion" from Gullas requesting, inter alia, an adjournment of the April 22, 2008 hearing. By letter dated April 15, 2008, H.O. Lippa informed Gullas, Mr. Gullas and RNA's attorney that the April 22, 2008 hearing was adjourned. By letter dated April 23, 2008, H.O. Lippa notified Gullas and Mr. Gullas that the new hearing date was May 22, 2008. She also notified them of how to obtain a transcript from the April 3, 2008 hearing and how to review documents submitted into evidence at that hearing. She further notified them that if they failed to appear at the May 22, 2008 hearing, it would proceed in their absence. By letter dated April 29, 2008, Gullas requested a transcript of the April 3, 2008 hearing. By email dated April 29, 2008, H.O. Lippa instructed Gullas to contact the transcription company and provided information on how to do so.

On May 13, 2008, Gullas submitted a proposed Order to Show Cause to this court, seeking, inter alia, a stay of the May 22, 2008 hearing. By decision dated May 16, 2008, this Order to Show Cause was refused by Justice Nicholas Figueroa who found that Gullas failed to allege grounds that would allow the Court to enjoin the administrative proceeding. On May 17, 2008, Gullas sent an email to OATH requesting a different hearing officer. OATH replied on May 20, 2008, referring Gullas to HPD's General Counsel. By letter dated May 21, 2008, Gullas contacted HPD's General Counsel requesting the removal of H.O. Lippa from any administrative

hearing and an adjournment of the May 22, 2008 hearing. By hand delivery, email and regular mail, HPD's General Counsel denied Gullas' request explaining that her complaint against H.O. Lippa did not require her removal from the administrative hearing. He also denied her request for an adjournment indicating that her request should have been made to H.O. Lippa and not to the General Counsel.

The May 22, 2008 hearing proceeded with H.O. Lippa, RNA's attorney and a witness for RNA. Gullas and Mr. Gullas did not appear.

On May 27, 2008, HPD received an Order to Show Cause dated May 23, 2008 requesting a stay of any decision from the May 22, 2008 hearing. In a letter dated May 27, 2008, H.O. Lippa reminded Gullas and Mr. Gullas of their prior obligations to attend the administrative hearings and their failure to do so. She also notified them that they had a final opportunity to appear at the hearing scheduled for June 10, 2008. H.O. Lippa also notified them that she would issue a decision thereafter based on the information provided at the hearing and that it would be HPD's final determination. Gullas and Mr. Gullas failed to appear again at the hearing continued on June 10, 2008. The hearing proceeded with H.O. Lippa, RNA's attorneys and two witnesses for RNA.

By fax dated June 10, 2008, Gullas asserted that she was scheduled for another Court date. HPD also received another Order to Show Cause dated June 5, 2008 in which Gullas sought an appeal of HPD General Counsel's May 21, 2008 decision. HPD's Deputy General Counsel responded by letter dated June 10, 2008, which explained, inter alia, that Gullas still needed to appear for the hearing. By letter dated June 17, 2008, H.O. Lippa notified Gullas and Mr. Gullas that another hearing date was scheduled for July 7, 2008. H.O. Lippa again notified them that this

was a final opportunity to address RNA's allegations against them.

On July 1, 2008, Autumn Shoemaker, Esq. faxed an emergency request to HPD to adjourn the July 7, 2008 hearing because she was new counsel to Gullas and needed time to study Gullas' files. After a conference call with RNA counsel and Ms. Shoemaker, H.O. Lippa agreed to adjourn the hearing for a final time and requested possible hearing dates from counsel. H.O. Lippa sent a confirming email dated July 2, 2008. Although RNA's attorney responded, Ms. Shoemaker did not. H.O. Lippa contacted Ms. Shoemaker by letter dated July 10, 2008 to inform her of the hearing scheduled for July 20, 2008. On July 28, 2008, Gullas faxed a pro se "motion" to HPD seeking dismissal of the proceeding and indicating in a separate statement that Ms. Shoemaker would withdraw as her counsel.

In a letter dated July 29, 2008, which was emailed to Gullas and hand delivered to the Apartment, H.O. Lippa denied Gullas' motion to dismiss and informed Gullas that the July 30, 2008 hearing would proceed. By letter dated July 29, 2008, Ms. Shoemaker informed H.O. Lippa that she would not be representing Gullas. Gullas appeared *pro se* at the July 30, 2008 hearing. Mr. Gullas did not appear.

RNA submitted a total of forty-one exhibits into evidence at the hearings held on April 3, 2008, May 22, 2008 and June 10, 2008. RNA also called its employee, Michael Skidmore to testify. Mr. Skidmore testified that for more than one year, staff at the subject building noticed Gullas leaving the building every evening and returning in the morning. Mr. Skidmore believed that a member of the staff and a board member of RNA followed Gullas and discovered she was going into the building located at West 95<sup>th</sup> Street. RNA also provided evidence that in a February 14, 2006 decision regarding a different matter, Housing Court Judge Laurie Lau

described Gullas as the rent stabilized tenant of apartment 2-A at 205 West 95<sup>th</sup> Street. Gullas herself initialed statements in affidavits that acknowledged that she was the tenant named as respondent in the proceeding. RNA presented other evidence such as checks and postmarked envelopes that indicated Gullas' address as 205 West 95<sup>th</sup> Street.

On July 30, 2008, Gullas testified on her own behalf but called no witnesses. The only document Gullas submitted that reflects the Apartment as her address is her New York State identification card, which was issued on February 27, 2008, which is more than a year after the HPD proceeding was commenced and after she was evicted from her apartment at 205 West 95<sup>th</sup> Street. Both in her July 28, 2008 motion and at the July 30, 2008 hearing, Gullas made a motion to dismiss the proceeding for lack of jurisdiction based on the failure to serve the Notice of Petition commencing the proceeding on the Guardian. H.O. Lipa denied the motion holding that the service of the Notice of Petition and Petition provided her with proper notice and an opportunity to be heard.<sup>1</sup>

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<sup>1</sup>Specifically, with respect to the motion, H.O. Lipa wrote:

Although a guardian had been appointed for Ms. Gullas on consent in July 2006 Ms. Gullas successfully sought to have that guardian removed. Justice Tingling, in his July 23, 2007 decision vacating the appointment of guardian, wrote 'the evidence is clear and convincing that Ms. Gullas is not in need of a guardian and there is no impairment of her ability to provide for her personal needs or property management.' Justice Tingling also noted that while 'one or many may not agree with the decisions Ms. Gullas may make, disagreement does not constitute grounds for an appointment of a guardian and Ms. Gullas has been a passionate and determined advocate of her rights and desires.'

For over a year after the guardian was removed, Ms. Gullas was on notice that this matter was proceeding. Ms. Gullas was also on notice of the nature of the proceeding and an opportunity to be heard well after she was found to be competent and no longer in need of a guardian.

On January 27, 2009, H.O. Lippa issued a certificate of eviction authorizing RNA to initiate legal proceedings to terminate Gullas' tenancy. H.O. Lippa also issued a 20- page decision in which she found that Gullas failed to provide proof that she maintained and resided in the Apartment as her primary residence since the commencement of her residency as required by 28 RCNY 3-02(n)(4) and that RNA had submitted evidence which "raises legitimate reasonable and serious questions regarding whether the Apartment was Gullas' primary residence." (H.O. Lippa Determination at 14). H.O. Lippa also determined that Paul Gullas failed to prove that he co-resided with Gullas at the Apartment and therefore failed to prove any entitlement to occupancy rights in the Apartment.

H.O. Lippa also specifically rejected Gullas' position that her eviction from 205 West 95<sup>th</sup> Street, Apt. 2A in February 2008 provided a basis for finding that the Apartment was now her primary residence, finding that non-primary residence cannot be cured. (H.O. Lippa Determination at 19).

Lippa also denied Gullas' request to have the proceeding dismissed or transferred to the housing court. Lippa denied the transfer of this matter to housing court based on the HPD rules requiring that a Mitchell-Lama housing company commence a proceeding at HPD before terminating a tenant's lease or occupancy agreement for any reason other than non-payment of rent.

On February 27, 2009, Gullas commenced this Article 78 proceeding challenging H.O.

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The standard of service in this administrative proceeding is proper and adequate notice and an opportunity to be heard. Ms. Gullas was afforded both and therefore any defects in the service are not jurisdictional in nature and do not affect HPD's ability to hold a hearing in this matter. (H.O. Lippa Determination at 15, 16)

Lippa's determination authorizing HPD to evict Gullas. Gullas alleges that HPD had no jurisdiction to hear this case because the Notice of Petition was served on her after the Guardian had been appointed for her and while she was deemed to be incapacitated by the Court. Gullas further alleges that since she was evicted from 205 West 95<sup>th</sup> Street in February 2008, she has been using the Apartment as her primary residence and therefore should not be evicted from it, and that she used the 95<sup>th</sup> Street apartment as an office space and storage facility instead of as a primary residence.<sup>2</sup>

RNA and HPD oppose the petition and HPD further requests that to the extent that it raises issues of substantial evidence, that this proceeding be transferred to the Appellate Division, First Department.

### **Discussion**

Pursuant to CPLR 7804(g), a case presenting a question of substantial evidence must be transferred to the Appellate Division. Padilla v. Levy, 300 AD 2d 62 (1<sup>st</sup> Dep't 2002), lv denied, 100 NY2d 502 (2003) (Article 78 proceeding in which a certificate issued by HPD to Columbus Manor Inc. for eviction was challenged). "That section mandates such a transfer where one of the bases for the challenge to administrative action is that the determination was not supported by substantial evidence." Mason v. Dep't of Bldgs., 307 AD2d 94 (1<sup>st</sup> Dep't 2003). Here, as Gullas challenges the determination of H.O. Lippa made after a hearing on the record, such challenge presents substantial evidence questions. On the other hand, to the extent that the petition raises issues relating to errors of law that could terminate the proceeding without considering the

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<sup>2</sup>Gullas also requests that Doreen Fishman, who is RNA's attorney, be removed from the case on the grounds that she provided false information to RNA's management and shareholders. As Gullas' allegations regarding Ms. Fishman are wholly unsubstantiated, they do not provide a basis for relief.

substantial evidence question, the Supreme Court should consider these issues in the first instance. Robinson v. Finkel, 194 Misc2d 55 (Sup. Ct. NY Co. 2002), aff'd, 308 AD2d 355 (2003).

In this case, Gullas raises two such issues. First, she argues that the HPD lacked jurisdiction over her in the eviction proceeding as she did not receive proper notice of the proceeding and that her Guardian should have been served. In addition, Gullas asserts that following her eviction from 205 West 95<sup>th</sup> Street, Apt. 2A in February 2008, the Apartment has been her primary residence, and therefore H.O. Lipa's determination should be reversed.

With respect to the notice issue, Title 28 RCNY 3-18(a), entitled "Lease Termination and Renewal" provides that an eviction proceeding based on breach of the terms of the lease or occupancy agreement can be initiated by a housing company, such as RNA, against the tenant. This provision sets out the notice requirements for such proceedings and provides, inter alia, that the tenant should be notified of the specific charges against her and that she will have "an opportunity to appear before an HPD hearing officer to deny or explain the charges against him or her." RCNY 3-18(a)(3)(i),(ii). As reflected in these provisions, service of papers initiating administrative proceedings must be reasonably calculated to make the recipient of such papers aware of the proceedings and afford her an opportunity to be heard. Nole v. New York City Department of Housing Preservation and Development, 26 AD3d 163, 164 (1<sup>st</sup> Dept 2006).

Here, a review of the evidence and decision after the HPD hearing indicates that Gullas was aware of the proceeding and had an opportunity to be heard. Although the application for the appointment of the Guardian was granted in July 2006, before the HPD proceeding was commenced, and the Notice was not served on the Guardian, the record reflects that no conferences or hearings were held prior to December 2006, when H.O. Lipa began to include

the Guardian on all notices regarding the HPD proceeding.

In any event, any argument that Gullas did not receive sufficient notice based on the failure to serve the Guardian is completely undermined by Gullas' successful effort to have the the Guardian removed after the Guardian, through its attorney, signed the Stipulation consenting to a certificate of eviction. Notably, in granting Gullas' motion to vacate the Stipulation and to have the Guardian removed, Justice Tingling found clear and convincing evidence that there was no impairment of Gullas' ability to provide for her personal needs and property management, and that she therefore did not need a guardian.

After the Guardian was removed, Gullas and her son continued to receive notice of the dates for the eviction proceeding hearing and given numerous opportunities to appear and to be heard. After Gullas' efforts and those of her son to delay the hearing failed and the proceeding was held on three dates without them, Gullas finally appeared and testified and presented evidence on July 30, 2008. Accordingly, Gullas' objection based on lack of jurisdiction on the ground that she did not receive proper notice of the HPD proceeding is without merit.

Gullas' other argument that her use of the Apartment as her primary residence, beginning in or about February 2008, after she was evicted from the Apartment at 205 West 95<sup>th</sup> Street, provides a basis for annulling the administrative determination is without merit since "the failure to use one's apartment as one's primary residence is not capable of being cured." 21 W. 58th St. Corp. v. Foster, 2007 NY Slip Op 7514, 1 (1<sup>st</sup> Dep't 2007); see also, Pamela Equities Corp v. Camp, 127 Misc2d 395, 397 (NY Civ Ct 1985)(holding that "a tenant who has established another residence as a primary residence has no right to cure").

Finally, to the extent that Gullas presents issues that were not raised at the administrative hearing, the court cannot consider them. See Matter of Torres v. New York City Hous. Auth., 40

A.D.3d 328 (1<sup>st</sup> Dep't 2007)(noting that judicial review of administrative determinations is "confined to the facts and evidence adduced before the agency"); see also, District Council 37, Am. Fedn. of State, County & Mun. Employees, AFL-CIO v. City of New York, 22 A.D.3d 279 (1<sup>st</sup> Dep't 2005).

As the remaining allegations in the petition raise questions of substantial evidence, the balance of this proceeding must be transferred to the Appellate Division, First Department pursuant to CPLR 7804(g).

In view of the above, it is

ORDERED that petitioner's request for Article 78 relief on the grounds that (i) HPD lacked jurisdiction based on the failure to provide proper notice, and (ii) her alleged failure to use the Apartment as her primary residency has been cured is denied; and it is further

ORDERED that the application seeking to annul the determination of respondent HPD is respectfully transferred for disposition, pursuant to CPLR 7804 (g), to the Appellate Division, First Department. This proceeding involves an issue as to whether a determination made a result of a hearing held, and at which evidence was taken, pursuant to a direction at law, is on the entire record, supported by substantial evidence. (CPLR 7803(4)); and it is further

ORDERED that the Clerk of the Court is directed to transfer the file to the Appellate Division, First Department, upon service of a copy of this order with the notice entry; and it is further

ORDERED that all proceedings to evict petitioner are stayed pending further order from the Appellate Division.

Dated: July 21, 2009

