

**Matter of Langham Mansions LLC v New York State  
Div. of Hous. & Community Renewal**

2009 NY Slip Op 33261(U)

January 28, 2009

Supreme Court, New York County

Docket Number: 111188/2008

Judge: Marilyn Shafer

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

PRESENT: Marilyn Saper  
*Marilyn*

PART 8

Index Number : 111188/2008  
**LANGHAM MANSIONS LLC**  
VS.  
**HOUSING & COMMUNITY RENEWAL**  
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~~ *petition* is *dismissed*  
*in accord with the annex of memorandum.*

**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).

Dated: 1/28/09

Marilyn Saper  
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):

[\* 2]  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : IAS PART 8

-----X  
In the Matter of the Application of  
LANGHAM MANSIONS LLC,

Petitioner,

-against-

Index No. 111188/08

NEW YORK STATE DIVISION OF HOUSING AND  
COMMUNITY RENEWAL, and 135 CENTRAL PARK  
WEST TENANTS ASSOCIATION,

Respondent

-----  
MARILYN SHAFER, J.:

**UNFILED JUDGMENT**  
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obtain entry, counsel or authorized representative must  
appear in person at the Judgment Clerk's Desk (Room  
1412).

Petitioner Langham Mansions LLC seeks an order, pursuant to article 78 of the CPLR, annulling and setting aside the order of the Deputy Commissioner of respondent New York State Division of Housing and Community Renewal (DHCR) issued on June 24, 2008 (the Order), which revoked the Major Capital Improvement (MCI) rent increase for windows for apartments 4S, 5S, 7SC and PHN in the building located at 135 Central Park West; or in the alternative, remanding the matter to the Rent Administrator with a directive to modify the Order to the extent of suspending, rather than revoking the MCI increases for those apartments.

Petitioner is the owner of the premises located at 135 Central Park West, New York, New York. On or about June 13, 2005, petitioner filed an application for MCI rent increases based on petitioner's expenditure of \$1,540,000.00 for the installation of new windows at the premises.

On May 19, 2006, the Rent Administrator issued an order granting virtually all of the requested increases.

A Petition for Administrative Review (PAR) was filed by respondent 135 Central Park West Tenants Association (the tenants) seeking a reversal of the MCI increase on the basis that the windows were defective, the owner did not substantiate its costs, the work was incomplete and piecemeal, the owner did not obtain the requisite permits from the Landmarks Preservation Commission, and an MCI rent increase was unwarranted in a building where 75% of the units were exempt from rent regulation.<sup>1</sup> The PAR included a report prepared for the tenants by RAND Engineering & Architecture, PC (the RAND report) based on RAND's inspection of 10 of 19 rent-regulated apartments. The report found, among other things, defects and deficiencies in the completed work which adversely impacted the residents' quality of life (windows that were difficult to open and drafty, and penthouse windows that didn't open fully).

On or about February 26, 2007, the owner answered the PAR, stating, in part that the Rand report had no probative value because of lack of specificity regarding the particular tenants, windows and problems with respect to the windows. Then, on or about October 5, 2007, the owner wrote to DHCR, submitting a

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<sup>1</sup> Initially, the PAR was dismissed by DHCR as untimely filed, but on review DHCR concluded that the PAR was timely filed and agreed to process the matter in the ordinary course of agency business. Order Granting Tenants' Request For Reconsideration and Reopening Administrative Proceeding UF430087RT, dated Nov. 29, 2006.

report from Ramco Windows & Screen, Inc., based upon its inspections of the various apartments that were the subject of the tenants' complaints. According to the owner, most of the alleged defects were minor and the windows were repaired and were in good working condition, with the exception of apartment 3SC.

In order to verify the owner's claims, on February 26, 2008 and March 12, 2008, DHCR conducted independent inspections of apartments of the tenants that made individual complaints. That inspection found no defects in the windows of four of the apartments, difficulty in opening and closing the windows in apartments 4S, 5S, 7SC and PHN, and missing frame moldings for the circular windows located outside vacant apartment 5NC.

On June 24, 2008, the Deputy Commissioner issued an order, largely on the basis of DHCR's inspection, granting the PAR in part, and revoking the MCI increase for windows in apartments 4S, 5S, 7SC and PHN. The order also directed petitioner to repair the frame and moldings of the circular windows near apartment PHS.

Petitioner contends that the inspection report on which DHCR's revocation of the MCI increases was based was vague and was contradicted by Ramco's report. The report which is contained in the Administrative Record, however, notes each individual apartment that was inspected and specifies the problems (or lack thereof) found. See e.g. the report regarding

apt. 7SC: "Den window lower sash difficult to open and to close. Master B/R window with the A/C in need of adjustment to frame and sash for proper use." Inspection Request Report, dated February 26, 2008 and March 12, 2008, Record, B-22. Such a report is not impermissibly vague.

Petitioner further contends that the repairs necessary, as to the PHN windows, were minor in nature. An evaluation of the severity of the problems and, therefore, the nature of the repairs, however, involves an evaluation of factual data that "entails the agency's expertise ... and is entitled to deference if it is not irrational or unreasonable." *Matter of West Vil. Assoc. v Division of Hous. and Community Renewal*, 277 AD2d 111, 112 (1st Dept 2000), citing *Matter of Ansonia Residents Assn. v New York State Div. of Hous. & Community Renewal*, 75 NY2d 206, 213 (1989)

Petitioner argues that DHCR's revocation of the MCI increases for the four apartments was contrary to its policy in prior cases, where the agency suspended rather than revoked MCI increases. See *Matter of Shemin*, DHCR, Admin Rev Dkt No. NC430206RT, August 29, 2000; *Matter of Little and Breslow*, DHCR, Admin Rev Dkt No NC430029RP, August 2, 1999. Citing *Matter of Metropolitan Life Ins. Co.* (Admin Rev Dkt No IK410210RO, December 14, 1995), petitioner argues that where only a small number of defective windows are involved, DHCR's normal policy is to grant

an MCI for those windows that are working and to delay the increase for those windows with problems. Petitioner contends that because DHCR has deviated from its own policy without explanation, its order revoking the MCI increases for the specified apartments is arbitrary and capricious and should be set aside.

In response, DHCR argues that its decision was not inconsistent with prior policy. DHCR argues that in the cases cited by petitioner it suspended, rather than revoked MCI increases where repair was needed because the owner had not been given a prior opportunity to undertake the repair. Here, in contrast, petitioner claimed to have already repaired the windows prior to DHCR's inspection, and the agency nonetheless found faulty windows. Of course, DCHR's decision to deny an MCI increase for window installations that it concluded were defective and, therefore, did not constitute a major capital improvement, has been upheld by the courts. See *Matter of Weinreb Mgt. v New York State Div. of Housing and Community Renewal*, 305 AD2d 207 (1<sup>st</sup> Dept 2003). A decision to revoke rather than suspend an MCI increase under the circumstances here is not arbitrary and capricious.

In its reply affidavit, petitioner argues that only six of the 864 windows installed in the entire building were found to have problems. Petitioner cites *Matter of Metropolitan Life Ins.*

Co. (Admin Rev Dkt No IK410210RO, *supra*) for the principle that where only a tiny percentage of the windows had problems, the MCI increase would take effect for the troubled windows after the completion of the corrective action. However, the court notes that here, the vast majority of the 864 windows replaced by petitioner were in apartments not subject to rent regulation or MCI increases, and neither DHCR, nor the court, are in a position to know whether there were any problems with those windows. Furthermore, as DHCR has argued in distinguishing the *Metropolitan Life Ins. Co.* case, there, the owner had not had a previous opportunity to correct the problems.

Finally, the court rejects petitioner's argument made on reply, that DHCR's decision to conduct an inspection at the stage of the PAR was violative of due process. DHCR has the authority to make investigations of facts at any stage of a proceeding. Rent Stabilization Code, 9 NYCRR 2527.5. Moreover, DHCR decided to conduct its own inspection in an effort to resolve the factual differences between the report submitted to the Agency during the PAR proceeding by the owner, and that submitted by the tenants. That approach did not violate principles of due process. Although the DHCR inspection found that some of the windows were problem free, it did confirm some of the complaints of the tenants and the report that they submitted indicating problems with certain windows. See *Matter of Riverton Assoc. v New York*

State Div. of Hous. and Community Renewal, 15 AD3d 225 (1<sup>st</sup> Dept 2005).

It is well settled that in reviewing the decision of an administrative agency, the review is limited to whether the agency decision was arbitrary and capricious. *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Wetchester County*, 34 NY2d 222, 230-231 (1974). Moreover, "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." *Matter of Partnership 92 LP and Bldg. Mgt. Co. v State of New York Div. of Hous. and Community Renewal*, 46 AD3d 425, 429 (1<sup>st</sup> Dept 2007), *affd* 11 NY3d 859 (2008).

On the record here, the court concludes that DHCR's decision was not arbitrary and capricious. Accordingly, it is hereby

ADJUDGED that the petition is denied and the proceeding is dismissed.

This constitutes the decision and judgment of the Court.

Dated:

1/28/09

ENTER:

**UNFILED JUDGMENT**  
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MARILYN SHAFER  
J.S.C.