

**Matter of Ruiz v State of N.Y. Div. of Hous. &  
Community Renewal**

2010 NY Slip Op 30891(U)

April 14, 2010

Supreme Court, New York County

Docket Number: 107654/09

Judge: Joan A. Madden

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

PRESENT: MADDEN  
Justice

PART 11

JULIO RUIZ

- v -

DITCO

INDEX NO. 107654/09  
MOTION DATE 11-12-10  
MOTION SEQ. NO. 001  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this <sup>pchm</sup> motion to/for Article 78 relief

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...  
Answering Affidavits — Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion <sup>pchm</sup> is ~~to~~ <sup>is</sup> ~~be~~ <sup>decided</sup> ~~in~~ <sup>accordance</sup> with the ~~attached~~ <sup>attached</sup> Memorandum Decision + order.

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 hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1240).

Dated: April 14, 2011

[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  
JULIO RUIZ,

Petitioner,

Index No. 107654/09

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

-against-

THE STATE OF NEW YORK DIVISION OF  
HOUSING AND COMMUNITY RENEWAL  
LESLIE TORRES – DEPUTY COMMISSIONER  
FOR RENT ADMINISTRATION and  
513-517 WEST 135<sup>TH</sup> STREET, HDFC,

**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).**

Respondents.

-----X  
JOAN A. MADDEN, J:

In this Article 78 proceeding, petitioner Julio Ruiz (“Ruiz”) seeks an order reversing, setting aside, or modifying the decision of respondent State of New York Division of Housing and Community Renewal (“DHCR”) dated April 1, 2009, which denied Ruiz’s Petition for Administrative Review (PAR) (“the petition”), affirmed earlier findings that Ruiz had failed to satisfy the requirements to be a successor tenant, and found that respondent 513-517 West 135<sup>th</sup> Street, HDFC (“HDFC”) is not subject to the Rent Stabilization Law (“RSL”) or Rent Stabilization Code (“RSC”). DHCR opposes the petition and submits a verified answer. Respondent HDFC cross-moves to dismiss the proceeding for failure to state a cause of action.

Background

Respondent HDFC, which owns 513-517 West 135th Street in Manhattan (“the building”), is a housing development fund corporation and a non-profit cooperative corporation organized under the Private Housing Finance Law, Article XI (see Priv. Hous. Fin. Law § 573).

[\*3]

Petitioner Ruiz's grandmother was a tenant at 515 West 135th Street, apartment #3A ("the apartment"), which had been subject to rent control, since 1969. Ruiz claims that he has lived in the building since 1980. HDFC took over the building and converted it to a cooperative in 1990, pursuant to the Private Housing Finance Law, Article XI. Ruiz's grandmother lived in the apartment until her death in April 1994.

HDFC, through the Board of Directors in charge of the building, offered a renewal of the lease to Ruiz in 1996. A new lease was signed for the term of March 1, 1996 to February 28, 1998, and included a typed notation: "RENT CONTROLLED." It appears from the record that the former Board of Directors of HDFC concluded, by 1996, that Ruiz had succeeded to his grandmother's rights to the apartment and that the apartment was subject to rent control. A new Board raised rents in 2004, ostensibly in conjunction with a lawsuit against HDFC for foreclosure of its mortgage on the property. The Board offered a new lease to Ruiz at a higher, non-rent control rate of \$1650 per month, which Ruiz rejected. HDFC terminated Ruiz's tenancy on September 30, 2004, after giving notice. On December 1, 2004, HDFC instituted a holdover proceeding against Ruiz, seeking eviction. Ruiz then sought a determination from DHCR on whether he had successor rights to the apartment.

On May 5, 2006, the Rent Administrator ("RA") found that Ruiz had not proven that he had lived at the apartment for the two years immediately preceding his grandmother's death, and also found that the apartment was subject to rent stabilization. Ruiz filed a PAR challenging the determination that he was not entitled to successor rights. On January 10, 2007, DHCR denied the PAR, affirming both findings of the RA. HDFC then filed an Article 78 proceeding, challenging the DHCR's determination that the apartment was subject to rent stabilization. This proceeding was remanded to the DHCR on April 19, 2007.

An Administrative Law Judge ("ALJ") held hearings on March 26, 2008 and May 6, 2008. Ruiz produced three witnesses to testify on his behalf. None had visited the apartment regularly, but on the occasions they had been to the apartment, all three witnesses remembered

seeing Ruiz there. Ruiz did not testify. In the Hearings Report of July 8, 2008, the ALJ found that the witness testimony, combined with a lack of documentary evidence, was insufficient to establish that the apartment had been Ruiz's primary residence for the two years immediately preceding his grandmother's death. The ALJ also held that equitable estoppel could not be used to establish his successor rights based on the notation on Ruiz's lease that the apartment was rent controlled, citing *Matter of Schorr v. NYC Dep't of Hous. Preservation and Development*, 10 NY3d 776 (2008). The ALJ also found that HDFC is exempt from the RSL and the RSC. DHCR adopted all of these findings in its Order of July 22, 2008.

Ruiz filed an Article 78 proceeding challenging the Order, claiming he was denied an opportunity to properly refute the findings made by the ALJ on administrative appeal because the findings were not set forth in detail in the DHCR's Order and which did not attach a copy of the ALJ's findings. The court granted Ruiz relief to the extent of remanding to the DHCR, stating that it could not make a determination as to whether a rational basis existed for the DHCR's July 22, 2008 decision from the decision alone.

On April 1, 2009, DHCR issued an Order denying the PAR and affirming every finding adopted in the Order of July 22, 2008 and attached the Hearings Report containing the ALJ's findings, and modifying the RA's order to the extent it found that the apartment was subject to the Rent Stabilization Law. In rejecting Ruiz's estoppel argument, DHCR wrote that "courts have consistently ruled that jurisdiction under the rent laws cannot be conferred on an apartment based on the wishes or beliefs of an owner or tenant, or based on the agreements reached by an owner or tenant," and in any event, "an *ad hoc* decision of the cooperative board of directors to treat the tenant as rent-controlled would not be legally binding on the Division." Thus, the DHCR found that the RA's Order of May 5, 2006 should be affirmed as to the portion of it finding that "tenancy of tenant Julio Ruiz in the subject apartment was not governed by the Rent Control Law by virtue of such individual's succession rights to the apartment."

[\*5]

Ruiz filed this Article 78 proceeding challenging the DHCR's April 1, 2009 decision. HDFC cross moved to dismiss the proceeding, asserting that record supports DHCR's findings that Ruiz had not met his burden of proving that the apartment was his primary residence for the two year period preceding the death of his grandmother; that HDFC is not subject to the RSL or RSC; and that estoppel to be inapplicable.

In its opposition to the petition, DHCR argues that a rational basis exists for its determination. It argues that the ALJ was rational in deciding that Ruiz had not proven succession rights through the testimony presented at the hearing; that HDFC is exempt from the RSL and RSC because of HDFC's status as a non-profit cooperative corporation organized under the Private Housing Finance Law Article XI; and that estoppel does not apply.

#### Discussion

Judicial review of an administrative agency's action in an Article 78 proceeding such as this one is limited. The court does not weigh the facts and merits de novo or substitute the court's judgment for that of the agency's determination. *Greystone Mgmt. Corp. v. Conciliation & Appeals Bd. of the City of New York*, 94 AD2d 614, 616 (1st Dep't 1983), *aff'd* 62 NY2d 763 (1984). Rather, upon judicial review of a determination rendered by an administrative body, the issue presented for the reviewing court's consideration is limited to whether the determination was in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious, or an abuse of discretion. CPLR 7803(3); *Matter of Gilman v. New York State Div. of Hous. & Community Renewal*, 99 NY2d 144 (2002); *Matter of Nehorayoff v. Mills*, 95 NY2d 671, 675 (2001); *Matter of Pell v. Bd. of Educ.*, 34 NY2d 222 (1974). Only if the record as a whole reveals that the agency's determination has no rational basis may a court overturn that determination. *Pell*, 34 NY2d at 231.

Under this standard, the court finds that there is no basis for overturning DHCR's decision. *Matter of Colt Indus. v. New York City Dept. of Fin.*, 66 NY2d 466, 471 (1985);

[\* 6]  
*Matter of New York Pub. Interest Research Group v. New York State Dep't of Ins.*, 66 NY2d 444, 448 (1985).

First, there was a rational basis for DHCR's finding that Ruiz did not prove he was entitled to successor rights. Under the Rent and Eviction Regulations, 9 NYCRR § 2204.6(d)(1), a family member of the original tenant may not be evicted if the family member "has resided with the tenant in the housing accommodation as a primary residence for a period of no less than two years, ... immediately prior to the permanent vacating of the housing accommodation by the tenant..." However, 9 NYCRR § 2204.6(d)(2) provides that "all such persons ..., who seek to exercise the right to protection from eviction as provided for in this subdivision, [have] the affirmative obligation to establish such right" unless the original tenant had previously informed the landlord that the person was residing in the accommodation during the relevant time frame of two years immediately before the original tenant permanently vacated.<sup>1</sup>

As Ruiz's grandmother did not inform the landlord of Ruiz's residential use of the apartment, Ruiz had the burden of showing that he had lived in the apartment, as his primary residence, for the two years immediately preceding his grandmother's death in April 1994. The ALJ, and by adoption of the ALJ's findings, the DHCR, found that Ruiz had not met this burden

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<sup>1</sup> Specifically, 9 NYCRR § 2204.6(d)(2) provides:

On a form prescribed or a facsimile of such form approved by the city rent agency, a tenant may, at any time, advise the landlord of, or a landlord may at any time, but no more often than once in any twelve months, request from the tenant, the names of all persons other than the tenant who are residing in the housing accommodation, and the following information pertaining to such persons:

(i) if the person is a "family member" as defined in paragraph (3) of this subdivision; and

(ii) if the person is, or upon the passage of the applicable minimum period of required residency, may become a person entitled to protection from eviction pursuant to paragraph (1) of this subdivision, and the date of the commencement of such person's primary residence with the tenant; and

(iii) if the person is a "senior citizen" or a "disabled person" as defined in paragraph (3) of this subdivision.

of proof. Following remand, the DHCR found again that based on the record the PAR should be denied.

The evidence in Ruiz's favor consisted solely of the testimony of three witnesses, none of whom lived in the same building as Ruiz, 515 West 135th Street. One witness stated he visited Ruiz at the apartment a few times a year, more frequently between 1992-94; one stated he had not gone to the apartment at all from 1992-94, but that Ruiz was always "in and out" of the apartment over many years; and one, a friend of Ruiz's grandmother, stated she had visited the apartment a couple of times between 1992-94 and saw Ruiz in the apartment. Ruiz himself did not testify. Ruiz provided letters from the universities he attended for college and law school stating that his last provided address was the subject address, but that information was as of 1984 and 1989, respectively, and thus neither letter pertained to the relevant period of April 1992-April 1994. Ruiz provided other documents, but none showed whether he used the apartment as his primary residence from April 1992-April 1994. Given the record before the ALJ, it cannot be said that it was irrational, or arbitrary and capricious, for the DHCR to find that Ruiz had not met his burden of proof with respect to establishing that the apartment was his primary residence for the relevant period.<sup>2</sup>

Additionally, the DHCR's finding that Ruiz's rent controlled status could not be established by estoppel was not arbitrary or capricious. In *Schorr, supra*, the petitioner had not resided in his apartment for the two years before the original tenants vacated the apartment, but argued he was entitled to succession by estoppel because the owner housing company allowed

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<sup>2</sup> Although not raised by Ruiz, there appears to be some dispute as to whether HDFC is subject to the Rent and Eviction Regulations which were cited by the DHCR in its decision as providing the statutory requirements for a successor tenant (*see* Rent and Eviction Regulations, 9 NYCRR § 2200.2(f)(7), excluding from regulation "[h]ousing accommodations in buildings operated exclusively for charitable purposes on a nonprofit basis."). In any event, essentially equivalent requirements for a successor tenant to claim rights – that he must have occupied the dwelling as a primary residence for the two years immediately preceding the original tenant's permanent vacation, and that he establish proof of the primary residency – are provided in 9 NYCRR 1727-8.2(a) for limited profit housing companies (*see* 9 NYCRR 1700.1).

[\*8]

him to occupy the apartment. The court held that invoking estoppel would prevent the agency in charge (there, the Department of Housing Preservation and Development) from executing the applicable housing statutes. 10 NY3d at 779. Similarly, invoking estoppel in this case would prevent the agency in charge (DHCR) from properly executing the applicable housing statutes, namely, the Rent and Eviction Regulations. It was thus not arbitrary and capricious to find that Ruiz had not established that he was entitled to successor rights under the regulations nor by estoppel.

Second, there was a rational basis for the DHCR finding that HDFC is not subject to the RSL or RSC, and that a private agreement designating a tenant as being subject to those regulations cannot create equitable estoppel. NYC Admin. Code § 26-504(a)(1) lists exceptions for the application of the RSL, including exceptions for dwelling units “(a) owned or leased by, or financed by loans from, a public agency or public benefit corporation, (b) subject to rent regulation under the private housing finance law...”. 9 NYCRR § 2520.11 provides exceptions for the application of the RSC, including an exception for “housing accommodations contained in buildings operated exclusively for charitable purposes on a nonprofit basis”. 9 NYCRR § 2520.11(j). The court in *512 East 11th Street HDFC v. Grimmet*, 181 AD2d 488 (1st Dep’t 1992) held that the building in question, also owned by a housing development fund corporation, was exempt from rent stabilization under the RSL (NYC Admin. Code 26-504(a)) and the RSC (9 NYCRR § 2520.11(j)). See also *546 West 156th Street HDFC v. Smalls*, 43 AD3d 7 (1st Dep’t 2007) (“a nonprofit cooperative corporation organized under the Private Housing Finance Law article XI is statutorily exempt from rent stabilization both because it is a housing cooperative and because it is operated for charitable purposes” [internal citations omitted]).

Additionally, the DHCR had a rational basis for deciding that the private agreement to treat Ruiz as rent regulated tenant could not, by equitable estoppel, prevent the new Board from deviating from such an agreement. “In determining whether a dwelling unit is subject to rent regulation, what the parties think might be its status or even what they agree to be its status is not

dispositive; what is controlling is whether the premises meet the statutory criteria for protection under the applicable regulatory statute.” *Smalls*, 43 AD3d at 12. As the court noted, “[t]hat the parties may have treated the premises as subject to rent stabilization does not defeat the statutory exclusion from regulation.” *Id.* at 11. In *Smalls*, “[t]he subject agreement to treat respondent’s apartment as rent-stabilized [did] not confer protection under the Rent Stabilization Law in contravention of the explicit statutory exemption...” *Id.* at 12. The court in *Grimmet* noted that a statutory exemption from rent regulation “is not subject to waiver or equitable estoppel.” 181 AD2d at 488. Additionally, the principle in *Schorr*, that estoppel cannot be used to countermand the application of statutory authority, supports the DHCR’s conclusion. 10 NY3d at 778.

Accordingly, as there is a rational basis for the DHCR’s determinations, Ruiz’s application for Article 78 relief is denied and the petition is dismissed. As for HDFC’s cross motion, it is denied as moot since DHCR’s answer demonstrates that a rational basis exists for the determination.<sup>3</sup>


Conclusion

In view of the above it is

ORDERED and ADJUDGED that Ruiz’s petition is denied and dismissed; and it is further

ORDERED that HDFC’s cross motion is denied as moot.

DATED: April 14, 2010

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

**UNFILED JUDGMENT**  
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<sup>3</sup>The court notes that a pre-answer cross motion to dismiss is not the proper vehicle for seeking to dismiss a petition on the grounds that an agency’s determination is rational and not arbitrary and capricious.