

**Matter of Shafir v State of N .Y. Div. of Hous. &
Community Renewal, Off. of Rent Admin.**

2011 NY Slip Op 30840(U)

April 4, 2011

Sup Ct, NY County

Docket Number: 112353/2010

Judge: Jane S. Solomon

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

JANE S. SOLOMON

PRECEDENT

PART 55

Index Number : 112353/2010

SHAFIR, HADAS

vs

NYS DIVISION OF HOUSING

Sequence Number : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE 1/4/11

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this ^{petition} motion for Art 78

PAPERS NUMBERED

1-3

4-5

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 decided by the annexed Memorandum Decision, Order and Judgment.

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: 4-4-11


JANE S. SOLOMON 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: PART 55

-----X

In the Matter of the Application of
HADAS SHAFIR,

Index No. 112353/2010

Petitioner,

DECISION, ORDER
and JUDGMENT

-against-

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

UNFILED JUDGMENT

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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
141B).

Respondent

-----X

SOLOMON, J.:

Pursuant to Article 78 of the Civil Practice Law and
Rules, petitioner Hadas Shafir (Petitioner) challenges the New
York State Division of Housing and Community Renewal (DHRC)
determination that his landlord, nonparty PWV Acquisition LLC
(Landlord) had not overcharged Petitioner. Petitioner seeks
reversal of the determination on the grounds that it was
arbitrary and capricious.

Petitioner is the tenant of 788 Columbus Avenue,
Apartment 16L, in Manhattan (the Apartment), which is a studio
apartment. The prior tenant moved out of the Apartment on
December 31, 2005. The rent at that time was \$620.16 (Tenant's
Complaint of Rent, attached to DHCR Records, Ex. A-1).
Petitioner moved into the Apartment on March 15, 2006, with a
written one year lease at an initial monthly rent of \$1493.52
(Id.), an increase of \$873.36. The rent increased because, prior
to Petitioner's tenancy, the Landlord made several "Individual

Apartment Improvements" (IAIs) to the Apartment, at a cost of \$30,000.

Petitioner filed a complaint of Rent Overcharge with DHCR. On January 1, 2010, the DHCR Rent Administrator (the RA) analyzed the rent increase and found a vacancy allowance of 17.25%, a longevity allowance of 9%, and an IAI increase of \$750; with the values correctly equating to the new rent value. The RA denied the complaint, stating "[a]ll rent adjustments subsequent to the base date . . . have been lawful. Therefore, it is found that there is no overcharge . . ." (RA Decision, attached to Petition, Ex. 1).

Petitioner filed a Petition for Administrative Review (PAR), requesting reversal of the RA's decision, arguing that the Landlord had overpaid for the renovations, and that several of the listed renovations had not taken place. In support, Petitioner supplied a report from a construction consultant, who estimated that the estimated renovation cost was \$13,600. On July 21, 2010, the DHCR Commissioner denied the PAR and affirmed the RA order, finding that the Landlord had adequately documented its expenditures for the renovation, was under no duty to obtain the lowest cost for improvements, and was justified in the rent increase (DHCR Decision, attached to Petition, Ex. B). Petitioner then brought this administrative appeal.

The standard of review for an Article 78 proceeding is

whether the challenged determination was rationally based, arbitrary and capricious, or an abuse of discretion (CPLR 7803; *Matter of Pell v. Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222 [1974]). If the challenged determination is rational, it must be upheld, even if the court might have reached a different conclusion. (*Mid-State Management Corp. v. New York City Conciliation & Appeals Board*, 112 AD2d 72 [1st Dept], *aff'd* 66 NY2d 1032 [1985]).

Petitioner argues that DHCR violated its own procedures, and acted arbitrarily and capriciously, when it did not consider evidence demonstrating that the landlord could have obtained the same results at half the cost, had he used a cheaper contractor. This argument is unpersuasive. DHCR did not fail to consider the evidence presented by the Petitioner; rather, it discussed the contractor's report, stating that "[a]n owner is not required to obtain the lowest cost for apartment improvements but just to establish that the work was done at the cost claimed by the owner" (DHCR Letter, p. 2). It then found Petitioner's arguments that specific repairs had never been made were unsupported by evidence, or were de minimis.

The facts of this case are easily differentiated from *Matter of 462 Amsterdam, LLC v. DHCR*, 61 AD3d 553 (1st Dept., 2009), upon which Petitioner relies. There, DHCR found the landlord did not prove the expenses of the claimed IAI based on

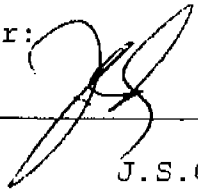
the evidence provided, and the Supreme Court determined that the decision was rationally based. Here, DHCR was not persuaded by Petitioner's evidence, and the determination was not arbitrary or capricious.

Moreover, DHCR supplies its Policy Statement 90-10, which is the guideline for confirming costs for IAI applications (attached to Opposition, Ex. A). It provides that an IAI rent increase request must be supported by at least one of the following: Cancelled check(s) contemporaneous with the completion of the work; invoice receipts marked paid in full; signed contract agreement; contractor's affidavit. At the hearing, in accord therewith, the Landlord supplied the contractor's proposal, cancelled checks and the check registers.

In view of the foregoing, it hereby is

ORDERED and ADJUDGED that the petition is denied and dismissed.

Dated: April 14, 2011

Enter: 

J.S.C.

UNFILED JUDGMENT

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