

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

2011 NY Slip Op 31281(U)

May 13, 2011

Sup Ct, NY County

Docket Number: 113814/10

Judge: Cynthia S. Kern

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

PRESENT: CYNTHIA S. KERN
J.S.C.
Justice

PART 52

Daniell Friedman

INDEX NO. 113814/10

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

- v -

MSDHER

The following papers, numbered 1 to _____ were read on 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 *is decided in accordance with the attached decision.*

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

FILED

MAY 16 2011

NEW YORK COUNTY CLERK'S OFFICE

Dated: 5/13/11

CSK
CYNTHIA S. KERN 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: Part 52

-----X

In the Matter of the Application of
DANIELLE FRIEDMAN,

Petitioner,

Index No. 113814/10

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

-against-

THE NEW YORK STATE DIVISION OF
HOUSING AND COMMUNITY RENEWAL
and CHELSEA 25, LLC,

Respondent.

-----X

FILED

MAY 16 2011

NEW YORK
COUNTY CLERK'S OFFICE

HON. CYNTHIA KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Petition and Affidavits Annexed.....	<u>1</u>
Answering Affidavits and Cross Motion.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Petitioner brings this petition seeking to vacate, annul and set aside the order of respondent the New York State Division of Housing and Community Renewal (the "DHCR") under Docket Number YE410067RO, which granted the Third Petition for Administrative Review (PAR) of respondent Chelsea 25, and found that the owner had made certain improvements to the apartment which petitioner leased from it. For the reasons set forth more fully below, the petition is denied.

The relevant facts are as follows. Petitioner Danielle Friedman is the tenant of Apartment 5B in the building known as 231 West 25th Street which is owned by respondent Chelsea 25 (the "Owner"). Petitioner initially occupied the apartment pursuant to a lease dated August 15, 2005. Petitioner rented the apartment as a deregulated apartment. After suspecting that the apartment had not been legally deregulated, she requested and obtained a rent registration history report from the DHCR and ultimately filed a Rent Overcharge Complaint. In response, the Owner asserted that it had made improvements to the apartment worth \$37,676.49 which, in addition to vacancy increases, resulted in the deregulation of the apartment. The DCHR issued various orders as the case followed a lengthy procedural journey through the administrative system, including two visits by a DCHR inspector and three PARs. The many orders issued in the case (including those from the Rent Administrator and the PAR orders) variously found that either none of the claimed improvements had been substantiated or that some of the claimed improvements had been substantiated. The subject of the instant proceeding is the Third PAR Order, which granted the Owner's PAR and found that the Owner had substantiated \$11,550.00 worth of work consisting of the demolition of a wall between the kitchen and the living room and its replacement with a 12-inch header and island countertop, the installation of a new floor in the kitchen and the installation of a new wooden floor in the living room. Based upon these allowances and other previously-authorized increases, the DHCR determined that the legal rent is \$2,0006.75, rendering the apartment deregulated and exempt from rent stabilization. Petitioner now brings this petition seeking to vacate this last decision of the DHCR.

The standard of review in an Article 78 proceeding such as this is whether the administrative agency's determination was "arbitrary or capricious." Arbitrary action is without

sound basis in reason and is generally taken without regard to the facts.” *Pell v Board of Education*, 34 N.Y.2d 222, 231 (1974). The administrative agency has broad discretion in evaluating the evidence and drawing inferences therefrom and “its interpretation will be upheld so long as it is not irrational or unreasonable.” *Wembly Mgmt. Co. v NYSDHCR*, 205 A.D.2d 319 (1st Dept 1994).

The DHCR’s decision to permit an allowance for the new kitchen floor was not arbitrary or capricious. Allowances are permitted for new floors when they are part of a larger renovation. *See Matter of Levene*, Adm. Dkt. Rev. No. RI410003RK (2003) (allowance granted). Whether a renovation has been undertaken is a question for the DHCR. *See Wembly*, 205 A.D.2d 319. In the instant case, it was rational for the DHCR to find that the Owner had undertaken a renovation of the apartment given that the living room floor had also been replaced and a wall had been demolished. Therefore, the DHCR’s decision to permit an allowance in the instant case cannot be said to be irrational, arbitrary or capricious. Petitioner’s argument that no allowance should be made for the replacement of the kitchen floor because such replacement is not considered an improvement is without merit. Similarly, her argument that the allowance should be rejected because the new flooring is ceramic, not marble, is irrelevant in light of the fact that the landlord substantiated the cost of the new flooring, regardless of what it is made of.

The DHCR’s decision to permit an allowance for new living room floors was also not arbitrary or capricious. The Owner submitted sufficient documentation, including invoices and cancelled checks, to establish that new living room floors were installed. The DCHR inspector’s opinion that this work was not done is not determinative. Whether to accept the inspector’s conclusion is in the discretion of the DHCR. *See Simpson v Wolansky*, 38 N.Y.2d 391, 394

