

**Matter of Granite Intl. Mgt., LLC v New York State
Div. of Hous. & Community Renewal**

2011 NY Slip Op 32966(U)

October 31, 2011

Supreme Court, New York County

Docket Number: 106021/11

Judge: Shlomo S. Hagler

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

PRESENT: Hon. Shlomo S. Hagler
Justice

PART: 25

In the Matter of the Application of:

GRANITE INTERNATIONAL MANAGEMENT, LLC.,

Petitioner,

for a Judgment Under Article 78 of the CPLR

- against -

NEW YORK STATE DIVISION OF HOUSING
AND COMMUNITY RENEWAL,

Respondent.

Index No.: 106021/11

Motion Date: _____

Motion Seq. No.: 001

Motion Cal. No.: _____

	<u>Papers Numbered</u>
<u>Article 78 Petition</u>	<u>1</u>
Notice of Motion/Order to Show Cause with Affidavits/Affirmations & Exhibits	_____
<u>Verified Answer w/</u>	<u>2</u>
Answering Affidavits/Affirmations & accompanying Exhibits + <u>Memo of Law</u>	_____
Replying Affidavits/Affirmations & accompanying Exhibits	<u>3</u>
Other: <u>Letters re additional case law (1 by P, 2 by Resp)</u>	<u>4, 5, 6</u>

Cross-Motion: Yes No

Upon the foregoing papers, it is hereby ordered that this Article 78 petition is decided as follows:

FILED

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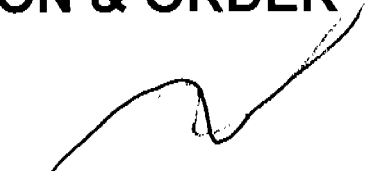
THIS ARTICLE 78 PETITION

NEW YORK
COUNTY CLERK'S OFFICE

IS DECIDED IN ACCORDANCE WITH

THE ATTACHED DECISION & ORDER

Dated: 10/31/11
New York, New York


Hon. Shlomo S. Hagler, J.S.C.

Check if appropriate: Do Not Post Reference
Check one: Final Disposition Non-Final Disposition

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 25

-----X

In the Matter of the Application of

GRANITE INTERNATIONAL MANAGEMENT, LLC,

Petitioner,

Index No. 106021/11

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

DECISION/ORDER

-against-

NEW YORK STATE DIVISION OF
HOUSING AND COMMUNITY RENEWAL,
Respondent.

-----X

HON. SHLOMO S. HAGLER, J.S.C.:

FILED

NOV 10 2011

NEW YORK
COUNTY CLERK'S OFFICE

Petitioner Granite International Management, LLC, ("Petitioner" or "Owner") moves by Notice of Petition, pursuant to Article 78 of the Civil Practice Law and Rules, to revoke, annul and set aside the Order of the Deputy Commissioner issued on April 8, 2011, under Docket Number YJ430019-RO, revoking the underling Order of the Rent Administrator issued under Docket Number XJ-410017-B, which had granted the tenant's rent reduction application. Respondent New York State Division of Housing and Community Renewal ("DHCR" or "Respondent") opposes the motion.

Background

In October 2009, various rent stabilized tenants of an apartment building located at 357 Edgecombe Avenue, New York, New York ("Subject Premises") filed an "Application For A Rent Reduction Based Upon Decreased Building-Wide Service(s)" which was assigned docket

number XJ-410017-B. See Exhibit A to the Petition. The tenants alleged various decreased building-wide services including the inoperability of the elevator. See Exhibit B to the Petition.

On September 2, 2010, the Rent Administrator issued an "Order Reducing Rent for Rent Stabilized Tenant(s)" based on decreased services ("Rent Administrator's Order"). See Exhibit D to the Petition. The Rent Administrator found, "[b]ased upon a complete review of the record" that elevator services were not maintained, to wit: "Services Not Maintained: Elevator." Id. Under the heading "Additional Comments," the DHCR further noted in the Rent Administrator's Order the findings of the July 7, 2010 inspection that stated the "elevator is inoperative, out of service." Id.

The Owner filed a timely "Petition for Administrative Review" ("PAR") alleging that it provided sufficient proof that the elevator service was being properly provided and that there was merely a minor service problem with the elevator on the July 7, 2010 inspection date which was repaired on the same day. See Exhibit E to the Petition.

On April 8, 2011, the Deputy Commissioner denied the Owner's PAR by "Order and Opinion Denying Petition for Administrative Review," ("Deputy Commissioner's Order") and affirmed the Rent Administrator's Order. See Exhibit G to the Petition.

Petitioner now brings a proceeding under Article 78 of the Civil Practice Law and Rules, seeking revocation of the Deputy Commissioner's Order which denied the Owner's PAR, as well as revocation of the underlying Rent Administrator's Order.

Article 78

It is apparent from the record that the Rent Administrator's Order which determined that the elevator at the Subject Premises was inoperable was not based solely on the findings of the July 7, 2010 inspection. The Rent Administrator's Order is clear that there was a complete review of the

record that compelled the Rent Administrator to find grounds for reducing the tenants' rent. It was not just the malfunction on July 7, 2010, but the inoperability of the elevator on a frequent basis that supported the decision to order a rent reduction. The reference to the July 7, 2010 inspection was a commentary on the finding, but the decision was nevertheless rendered upon a "complete review of the record."

The petitioner argues that it was improper for the Deputy Commissioner, in reviewing the Rent Administrator's Order, to consider the complete record on which the Rent Administrator's Order was based when deciding the PAR. Petitioner further argues that the record should be limited to the single July 7, 2010 elevator inspection that was referenced in the Rent Administrator's Order. The DHCR rejects this argument asserting that the Deputy Commissioner was obligated to review the entire record in reaching a decision.

After careful consideration and review of the cases submitted to chambers by both parties, this Court concludes that the Deputy Commissioner was well within his authority to review the complete administrative record in deciding the PAR. The fact that the Rent Administrator concluded in the order's findings that it was "based upon a complete review of the record" that "[s]ervices [were] not maintained: elevator" is a clear indication that the final determination was not necessarily limited to the single inspection that occurred on July 7, 2010. Significantly, the full record evidences repeated elevator breakdowns that was partly supported by the petitioner's own documentation which showed that service calls were required at the average rate of 1.18 times per month for the subject period.

Further, the Court concludes that, in conformity with the Rent Stabilization Code Section 2529.7(b), the Deputy Commissioner had the authority and ability to review the complete record and conduct the requisite investigation to determine whether the Rent Administrator's Order was

rationality based on the record. The Deputy Commissioner in this case neither added to the record nor modified the record in any way. The Deputy Commissioner conducted due diligence to determine whether the Rent Administrator abused his discretion. The fact that the Deputy Commissioner outlined other instances of the elevator's malfunction is evidence that he diligently acted within his scope of duties and authority. See, Ellison v. DHCR, 33 AD3d 457 (1st Dept 2006) and Lowe v. DHCR, 3 Misc 3d 1105(A) (Sup Ct, Queens County 2004).

Applying the guidelines set forth in CPLR 7803 to this case, the determination by the Deputy Commissioner was not made in violation of lawful procedure, affected by an error of law, arbitrary and capricious, or an abuse of discretion as to the measure or mode of penalty or discipline. Assuming the elevator breakdown on July 7, 2010 was in fact a "sheer coincidence" as the petitioner asserts, there was still ample evidence to conclude that there was a widespread reduction in elevator services so as to warrant an award in favor of the tenants for a reduction in rent. The Deputy Commissioner's determination was not arbitrary and capricious; it had a reasonable and rational basis and was supported by the record.

Conclusion

Accordingly, it is ORDERED AND ADJUDGED, that the petition is denied and the proceeding is dismissed with prejudice.

The foregoing constitutes the decision and order of this Court. Courtesy copies of this decision and order have been sent to petitioner and respondents' counsel.

FILED

Dated: New York, New York
October 31, 2011

NOV 10 2011

Hon. Shlomo S. Hagler, J.S.C.

NEW YORK
COUNTY CLERK'S OFFICE