

**Matter of Mujahid v New York City Dept. of Hous.
Preserv. & Dev.**

2012 NY Slip Op 30322(U)

February 6, 2012

Supreme Court, New York County

Docket Number: 104826/11

Judge: Barbara Jaffe

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

PRESENT: JAFFE BARBARA JAFFE J.S.C. PART 5
Justice

Index Number : 104826/2011
MUJAHID, JUBAE
vs.
DEPARTMENT OF HOUSING
SEQUENCE NUMBER : 002
ARTICLE 78
CAL. # 83

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED
1
2
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

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION ~~ORDER~~ JUDGEMENT

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: 2/6/12
FEB 06 2012

BARBARA JAFFE J.S.C.
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE
 SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

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 5

-----x

In the Matter of the Application of
JUBAE MUJAHID,

Petitioner,

-against-

Index No. 104826/11

Motion Subm.: 11/6/11
Motion Seq. No.: 002

DECISION & JUDGMENT

NEW YORK CITY DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT,

Respondent.

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).

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By notice of petition and verified petition dated April 26, 2011, petitioner brings this Article 78 proceeding for a judgment granting the following relief: reviewing respondent's handling and management of petitioner's premises and account; determining that respondent failed to provide petitioner with prior notice; reviewing and setting aside respondent's determinations related to the premises and denials of petitioner's protests; directing respondent to reduce or waive undue charges; staying further proceedings and enforcement of respondent's determinations; directing that respondent remove violations issued against petitioner; removing respondent's managerial authority and returning control of management to petitioner; and granting petitioner legal costs and disbursements. By verified answer dated July 11, 2011, respondent opposes the petition.

I. BACKGROUND

A. Relevant statutes and procedures

Pursuant to New York City Charter § 1802, respondent is a New York City agency responsible for all functions relating to the rehabilitation, maintenance, alteration and improvement of residential buildings and privately-owned housing, including the execution of emergency repairs to buildings relating to the maintenance, use, occupancy, safety or sanitary condition of any building or portion thereof. (Verified Answer, dated July 11, 2011 [Ans.]).

Title 27 of the Administrative Code of the City of New York authorizes respondent to enforce the Housing Maintenance Code (HMC), which sets standards for housing maintenance, including water supply, ventilation, and heat and hot water. (Ans.). An owner of a multiple dwelling has the duty to keep his or her premises in good repair and to comply with the requirements of the HMC, including supplying his or her tenants with heat and hot water. (Admin. Code §§ 27-2005, 27-2032[f]).

Respondent is authorized to, among other things, issue to owners notices of violation (NOV) and make repairs. Pursuant to section 27-2115 of the Administrative Code, all HMC violations are classified as non-hazardous (Class A), hazardous (Class B), or immediately hazardous (Class C). (Ans.). Respondent has an Emergency Repair Program for Class C violations, including the failure to provide essential services, such as heat and hot water. C violations must be corrected within 24 hours. (*Id.*).

Pursuant to Administrative Code § 27-2125, whenever respondent determines that a condition in a dwelling is dangerous to human safety or detrimental to health due to an HMC violation, it may correct the condition or order the owner to correct it, and if there is any other

HMC violation, respondent may order the owner to correct it. The orders must cite the violations and the corrective action to be taken, with a deadline of not less than 21 days from the date of service of the order, except a shorter period may be given for a dangerous condition. If an order is not complied with timely, respondent may execute it. (Ans.).

An NOV is mailed to the registered managing agent of the premises and sets forth a date by which the correction must be made, known as the Original Correction Date, and a date by which the correction must be certified as completed to respondent, known as the Original Certification Date. For Class C violations, the correction date is 24 hours (after allowing five days for mailing of the NOV) from the date of the violation, and the certification date is five days after the correction date. However, for heat and hot water violations, the owner has 24 hours from the date of the violation within which to cure the condition. (Ans.).

Many Class C violations, such as insufficient heat or hot water, require emergency repairs (ER), and when an NOV is issued for such a violation, a letter is also sent advising the owner that his or her failure to correct the violation may result in emergency repairs by respondent. (Ans., Exh. A). When an ER is generated for a Class C violation, the violation is sent electronically to respondent's Emergency Services Bureau (ESB), which then attempts, as additional notice of the violation, to contact the owner. If ESB cannot determine whether the violation has been corrected or if the violation is not corrected, it is forwarded to respondent's Division of Maintenance Emergency Repair Program, which then determines the scope of work needed to correct the violation and issues an Open Market Order (OMO) for the work. (Ans.).

If a violation is corrected timely and the certification is received timely, respondent will set forth the date of certification in the "Actual Cert. Date" box on the NOV and if no

certification is received, the box will be blank.

Respondent maintains records of emergency repairs on a publicly available website, listed by the OMO number. Each OMO reflects the date that charges for emergency repairs performed by respondent were transferred to the New York City Department of Finance (DOF), under the column "TRX/DOF." DOF has a policy and procedure of sending owners Quarterly Statements of Account on which emergency repair charges appear after DOF receives notification of them. (Administrative Code § 27-2144[c]).

Pursuant to Administrative Code § 27-2129, an owner must notify respondent or DOF in writing of his or her objection to the first Statement of Account containing the charge at issue before the date the charge becomes due and payable, or he or she is precluded from challenging the charge in any subsequent judicial or administrative proceeding. Respondent or DOF will only review objections received by it in writing prior to the due and payable date for the charge as reflected on the second Statement containing the charge. (*Id.*). The due and payable date is also reflected on respondent's OMO tracking module as the Protest End Date. (Ans.). If the charge is not paid timely, DOF is entitled to receive interest thereon at a rate of seven percent per annum. (Admin. Code § 27-2144[d]).

Section 27-2128 of the Administrative Code provides that all expenses incurred by respondent for emergency repairs "shall constitute a debt recoverable from the owner and a lien upon the building and lot," and section 27-2146 provides that in any proceeding to enforce or discharge such a lien, the validity of the lien shall not be subject to a challenge based on: (1) the lawfulness of the repair or other work done; or (2) the propriety and accuracy of the expense for which a lien is claimed. An owner who has been served with a Statement may not contest the

expense contained therein unless he or she notified respondent in writing of his or her objection to the Statement in the manner and within the time period required. (Admin. Code § 27-2146[c]).

B. Petitioner's premises

Petitioner is the registered owner of premises located at 509 West 150th Street in Manhattan. (Affirmation of Helen Enobakhare, Esq., dated Mar. 31, 2011 [Enobakhare Aff.]; Ans.). In November 2004, she completed a Property Registration form, reflecting that she owned the premises and that Nkenge Scott was the managing agent. Scott's address is listed as the premises address. (Ans., Exh. A). Between 2004 and 2009, petitioner did not file any other Property Registration forms, but in December 2009 and 2010, she completed forms listing herself as both the owner and managing agent. (*Id.*).

C. Violations and charges at issue

According to respondent's records, in December 2009, a complaint was lodged about a lack of heat and hot water in the premises, and on December 4, 2009, an inspection by respondent of the premises resulted in the issuance of three Class C violations: (1) lack of hot water (NOV 8177141); (2) lack of heat (NOV 8177142); and (3) failure to provide access to the boiler room (NOV 8177143). As the utility bills for the premises were not being paid, Consolidated Edison (Con Edison) shut off the gas and electric services from the street, which caused respondent to conduct an integrity test on the property on December 18, 2009 (EA19963). (Ans., Exhs. Q, U). Due to leaks in the gas line, the test failed and gas service remained suspended. (*Id.*).

On December 23, 2009, respondent provided petitioner's tenants with sleeping bags. (EA27444). (Ans., Exh. R). On or about January 5, 2010, respondent determined that the entire

gas system needed re-piping (EA21469). (*Id.*, Exh. G). From January 8, 2010 to March 17, 2010, respondent furnished the premises with a mobile unit providing heat and hot water (EA22000). (*Id.*, Exh. H). On February 1, 2010, a new gas boiler was installed (EA23652), on February 19, 2010 a new hot water heater was installed (EA26672), and in March 2010 repairs were made to the boiler room (EA30273). (*Id.*, Exhs. I, J, P, X).

As the utility bills for the premises were not being paid, by letter dated April 19, 2010, respondent asked that Con Edison place the gas and electric accounts for the common areas of the property in the name of the City of New York, HPD Emergency Repair Program. (*Id.*, Exh. B). Petitioner was charged for the electric and gas charges under this arrangement (EA28004, EB03450, EA28007). (*Id.*, Exhs. M, O, T, W).

Other emergency repairs were made to the stairwells (EA34593), fire escapes (EA17513), sprinkler system heads (EA34907), and skylights (EA34914) at the premises. (*Id.*, Exhs. K, L, S, V).

The following NOV's were lodged against the premises:

- (1) NOV 8177141, issued December 4, 2009 for the lack of hot water, was sent to the registered managing agent, Scott. The repair consisted of re-piping and resulted in a charge of \$7,735.99 (EA21469). The due and payable date or the Protest End Date was January 1, 2011, which fell on a holiday, and thus became January 3, 2011. By letter dated August 6, 2010, respondent responded to petitioner's request for the corresponding invoice, and advised her of the protest procedures. By letter dated December 21, 2010, petitioner protested the charge, which respondent received on January 4, 2011, and by letter dated January 5, 2011, rejected it as untimely. (Ans., Exh. G);
- (2) NOV 8177141, issued December 4, 2009 for insufficient hot water, was sent to the registered managing agent, Scott. The repair consisted of the provision of a mobile unit to supply heat and resulted in a charge of \$35,923.75 (EA22000). The due and payable date or the Protest End Date was January 1, 2011, which fell on a holiday, and thus became January 3, 2011. By letter dated August 6, 2010,

respondent responded to petitioner's request for the corresponding invoice, and advised her of the protest procedures. By letter dated December 21, 2010, petitioner protested the charge which respondent received on January 4, 2011, and by letter dated January 5, 2011, rejected it as untimely. (Ans., Exh. H);

- (3) Various NOVS, issued December 4, 2009 for insufficient hot water and heat, were sent to the registered managing agent, Scott. The repair consisted of the installation of a new gas boiler and resulted in a charge of \$12,443.24 (EA24652). The due and payable date or the Protest End Date was January 1, 2011, which fell on a holiday, and thus became January 3, 2011. By letter dated August 6, 2010, respondent responded to petitioner's request for a corresponding invoice, and advised of the protest procedures. By letter dated December 21, 2010, petitioner protested the charge which respondent received on January 4, 2011, and by letter dated January 5, 2011, rejected it as untimely. (Ans., Exh. I);
- (4) NOV 8381694, issued on April 19, 2010 for insufficient hot water, was sent to petitioner as the registered managing agent. The repair consisted of the installation of a new hot water heater and resulted in a charge of \$1,895.29 (EA26672). The due and payable date or the Protest End Date was January 1, 2011, which fell on a holiday, and thus became January 3, 2011. By letter dated August 6, 2010, respondent responded to petitioner's request for a corresponding invoice, and advised of the protest procedures. By letter dated December 21, 2010, petitioner protested the charge, which respondent received on January 4, 2011, and by letter dated January 5, 2011, rejected it as untimely. (Ans., Exh. J);
- (5) NOV 8364397, issued April 1, 2010 for a broken or defective tread in the public hallway, was sent to petitioner. The repair consisted of the replacement of the tread and resulted in a charge of \$455.18 (EA34593). The due and payable date or the Protest End Date was January 1, 2011, which fell on a holiday, and thus became January 3, 2011. By letter dated December 15, 2010, respondent responded to petitioner's request for a corresponding invoice, and advised of the protest procedures. By an undated protest form, petitioner protested the charge, and submitted a letter from a contractor who allegedly repaired the tread. The letter is dated March 4, 2011 and was notarized on March 10, 2011. By letter dated March 23, 2011, respondent rejected the protest as untimely. (Ans., Exh. K);
- (6) NOV 8364464, issued December 4, 2009 for a broken or defective skylight, was sent to petitioner. The repair resulted in a charge of \$133.88 (EA34914). The due and payable date or the Protest End Date was January 1, 2011, which fell on a holiday, and thus became January 3, 2011. By letter dated December 15, 2010, respondent responded to petitioner's request for a corresponding invoice, and advised of the protest procedures. By an undated protest form, petitioner protested the charge, which respondent received on March 23, 2011, and by letter

dated the same day, respondent rejected it as untimely. (Ans., Exh. L);

- (7) EA28007 reflects charges by Con Edison for the delivery of gas for \$16.01 and \$134.87. The due and payable date or the Protest End Date was January 1, 2011, which fell on a holiday, and thus became January 3, 2011. By letters dated August 6, 2010, respondent responded to petitioner's request for a corresponding invoice and advised of the protest procedures. (Ans., Exh. M);
- (8) Another charge for Con Edison's services was added to EA28007 in the sum of \$70.51, with a Protest End Date of April 1, 2011. By letter dated December 15, 2010, respondent responded to petitioner's request for a corresponding invoice and advised of the protest procedures. By letter dated March 31, 2011, petitioner protested the charge which respondent received on April 1, 2011. Respondent acknowledges that it denied this protest in error. (Ans., Exh. N);
- (9) EB03450 consists of four charges by Con Edison for the delivery of electricity to the premises for \$4.10, \$68.10, \$59.74, and \$78.54, with a Protest End Date of July 1, 2011 for the first three charges and October 1, 2011 for the last. By letters dated March 29, 2011, respondent responded to petitioner's request for a corresponding invoice, and advised of the protest procedures. (Ans., Exh. O);
- (10) NOV 8177142, issued on December 4, 2009 for insufficient heat, was sent to Scott. The repair resulted in a charge of \$2,966.81 (EA30273). The due and payable date or the Protest End Date was October 1, 2011. By letter dated March 29, 2011, respondent responded to petitioner's request for a corresponding invoice and advised of the protest procedures. (Ans., Exh. P);
- (11) NOV8177141, issued on December 4, 2009 for insufficient hot water, was sent to Scott. The repair resulted in a charge of \$247.75 (EA19963). The due and payable date or the Protest End Date was January 1, 2011. By letter dated August 6, 2010, respondent responded to petitioner's request for a corresponding invoice and advised of the protest procedures. (Ans., Exh. Q);
- (12) Another violation, issued under NOV8177142 on December 4, 2009 was for insufficient heat, and was sent to Scott. The charge of \$265.90 resulted from respondent's provision of sleeping bags to tenants at the premises (EA27444). The due and payable date or the Protest End Date was October 1, 2011. By letter dated August 6, 2010, respondent responded to petitioner's request for a corresponding invoice and advised of the protest procedures. By undated protest form, petitioner protested the charge. By letter dated September 1, 2010, respondent rejected the protest, although it was timely. (Ans., Exh. R);
- (13) NOV816221, issued on October 29, 2009 for a defective portion of a fire escape,

was sent to Scott. The repair resulted in a charge of \$247.75 (EA17513). The due and payable date or the Protest End Date was October 1, 2010. By letter dated August 6, 2010, respondent responded to petitioner's request for a corresponding invoice and advised of the protest procedures. By undated protest form, petitioner protested the charge. By letter dated September 1, 2010, respondent rejected the protest, although it was timely. (Ans., Exh. S);

- (14) EA28004 consists of two charges by Con Edison for providing electricity to the premises, in the sums of \$2,558.75 and \$3,492.11. The due and payable date or the Protest End Date was January 1, 2011. By letters dated August 6, 2010, respondent responded to petitioner's request for an invoice related to the charge, and advised of the protest procedures. (Ans., Exh. T);
- (15) Another violation, issued under NOV8177141 on December 4, 2009, was for insufficient hot water, and was sent to Scott. The charge of \$966.23 resulted from the contractor's integrity test of the gas system, along with related services (EA19963). The due and payable date or the Protest End Date was October 1, 2010. By letter dated August 6, 2010, respondent responded to petitioner's request for a corresponding invoice, and advised of the protest procedures. By protest form and letter dated August 21, 2010, petitioner protested the charge, and by letter dated September 2, 2010, respondent rejected the protest, although it was timely. By letter dated December 28, 2010, petitioner objected to respondent's denial. (Ans., Exh. U);
- (16) NOV8364463, issued on April 8, 2010, related to sprinkler heads at the premises, and was sent to petitioner. The repair resulted in a charge of \$724.26 (EA34907). The due and payable date or the Protest End Date was April 1, 2011. By letter dated December 15, 2010, respondent responded to petitioner's request for a corresponding invoice and advised of the protest procedures. By undated protest form, petitioner protested the charge, which was received by respondent on March 23, 2011. By letter dated March 23, 2011, respondent rejected the protest, although it was timely. By letter dated March 31, 2011, petitioner's attorney sent respondent another protest, which respondent denied by letter dated April 11, 2011. (Ans., Exh. V);
- (17) As pertinent here, EB03449 consists of six charges by Con Edison for the delivery of gas to the premises in the sums of \$129.33, \$65.82, \$82.91, \$162.11, \$421.89, and \$442.02. The due and payable date or the Protest End Date for the first two charges was April 1, 2011, while the date for the last four charges was July 1, 2011. By letters dated December 15, 2010, January 10, 2011, and March 29, 2011, respondent responded to petitioner's request for corresponding invoices and advised of the protest procedures. By letters dated March 31, 2011, petitioner protested the charges. By letters dated April 8, 2011 and April 11, 2011,

respondent denied the protest on the ground that petitioner had failed to correct the Class C violation within 24 hours as required. (Ans., Exh. W); and

- (18) EA24652 relates to NOVS issued for petitioner's failure to provide heat and hot water to the premises in December 2009, plus additional costs for a new gas boiler, for a charge of \$929.06. The Protest End Date was April 1, 2011. Petitioner protested the charge, which respondent received on March 30, 2011. By letter dated April 4, 2011, respondent denied the protest on the ground that petitioner had failed to correct the Class C violation within 24 hours as required. (Ans., Exh. X).

II. CONTENTIONS

Petitioner alleges that due to fraudulent actions undertaken by her attorney and her associate, Scott, the title to and mortgage for the premises was placed in her name while Scott opened a Con Edison account in her name but placed his address on the account, thereby keeping her from knowing of the outstanding balance on the account. When petitioner learned of the account, the balance due as of December 2009 was \$27,000. She contacted various agencies for assistance in resolving the debt, including respondent, who allegedly promised to help her by taking over future Con Edison payments while she paid off the arrears. (Pet.).

Respondent then allegedly installed a new boiler in the premises and performed other repairs, causing a lack of hot water, at which point it decided to use a mobile heating unit at a cost of \$2,700 a week for 10 weeks. Petitioner denies having been consulted about the boiler or emergency repairs, and asserts that the repairs were not necessitated by any emergency as they were not made until four months after respondent took over management of the premises, and that respondent's actions resulted in her having more than \$100,000 debt and the possibility that she will lose the premises in foreclosure. (*Id.*).

As to the charges, petitioner contends that she sent timely protests for EA28007, EA

22000, EA21469, EA24652, and EA26672, contests the nature and necessity of the repairs made and the charges set forth in EA27444, EA19963, EA34593, EA34914, EA34907, EB03449, EA17513, and lacks sufficient information to protest EA28004, EB03450, and EA30273. She submits a certified mail receipt dated December 28, 2010 and addressed to respondent, along with a United States Postal Services sales receipt reflecting the expected delivery as December 30, 2010. (*Id.*).

Respondent contends that petitioner is barred from challenging the charges set forth in EA21469, EA22000, EA24652, EA26672, EA28004, EA34593, and EA34914 as she did not protest them by the applicable Protest End Dates, observing that petitioner's certified mail receipt does not reflect what was mailed to respondent. As to EA28007 (the charges for \$16.01 and \$134.87), EB03450, EA30273 and the charge for \$247.75 under EA19963, petitioner did not submit protests for these charges and thus may not challenge them here. Respondent alleges that petitioner may not challenge EA27444, EA17513, and EA19963 (the charge for \$966.23) as she failed to do so within four months of respondent's denial of her protests relating to these charges. Respondent also maintains that it properly denied petitioner's protests related to EA34907, EB03449, and the charge of \$929.06 under EA24652. (*Ans.*).

In reply, petitioner denies that her protests for EA21469, EA22000, EA24652, and EA26672 were untimely, as she mailed them on December 28, 2010 and they should have been received by January 3, 2011. She alleges that there are triable issues about the necessity of the repairs made under EA34593 and EA34914, and denies that her protests to EA27444 and EA19963 are time-barred as respondent issued numerous NOV's relating to the same condition that allegedly existed at the premises on December 4, 2009, thus constituting a continuous wrong

and tolling the statute of limitations. As to EA34907, EB03449, and EA24652 for the charge of \$929.06, petitioner contends that respondent's determinations constitute clear abuses of discretion, and are arbitrary, capricious, and irrational. (Verified Reply, dated Sept. 11, 2011).

By letter dated November 30, 2011, petitioner submits a printout of the USPS website showing that petitioner's December 28, 2010 mailing was delivered to respondent on January 4, 2011, although it also reflects that a delivery was attempted and notice left for respondent on January 3, 2011.

III. ANALYSIS

A. Timeliness of protests

Petitioner submits proof that she mailed her protests related to EA21469, EA22000, EA24652 (except as to the charge of \$929.06), and EA26672 to respondent on December 28, 2010, and that on January 3, 2011, the pertinent Protest End Date, USPS attempted to deliver her mail to respondent. That the mail was actually delivered after the Protest End Date was not petitioner's fault. Rather, respondent was unavailable to receive it on January 3, 2011. Consequently, petitioner has established that these protests were timely mailed and respondent is directed to consider them on their merits.

B. Failure to protest

Having failed to submit any evidence showing that she timely protested the charges set forth in EA34593, EA34914, EA28007 (the charges for \$16.01 and \$134.87), EB03450, EA30273, and the charges for \$247.75 and \$966.23 under EA19963, petitioner is precluded from challenging the necessity of or amount charged for the repairs or services provided. (Admin. Code § 27-2129 [owner must notify respondent in writing of objection to first Statement

containing the charge at issue before date charge becomes due and payable, or is precluded from challenging charge in any subsequent judicial or administrative proceeding]; Admin. Code § 27-2146[c] [owner served with Statement may not contest expense contained therein unless he or she notified respondent in writing of objection to Statement in manner and within time period required]). And, as respondent submitted proof that it mailed petitioner copies of the corresponding invoices, petitioner did not demonstrate that she lacked sufficient information to protest them timely.

C. Time-barred protests

Pursuant to CPLR 217(1), any proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding. The determination becomes final and binding when the petitioner is aggrieved by it. (*Yarbough v Franco*, 95 NY2d 342 [2000]; *see also Matter of Cowan v Kelly*, 89 AD3d 572 [1st Dept 2011] [determination final and binding when petitioner has received notice of and is aggrieved by it]).

As petitioner was notified on September 1, 2010 of respondent's denial of her protest to EA27444 and EA17513 and on September 2, 2010 of its denial of her protest of EA19963 for the charge of \$966.23, but did not commence the instant proceeding until April 2011, her objections to these charges are time-barred. (*See 80 E. 116th St. Corp. v City of New York Dept. of Hous. Preserv. & Dev.*, 245 AD2d 107 [1st Dept 1995] [four-month statute of limitations applied in petitioner's Article 78 proceeding challenging emergency repair liens, and began to run upon petitioner's receipt of respondent's letter advising of results of respondent's review of petitioner's objections to charges]).

Respondent issued numerous NOV's related to similar conditions, and issued separate

violations for each, which petitioner protested separately and which were denied separately. Consequently, petitioner has not shown that respondent's determinations relate to a continuing wrong.

D. Denials of protests

The only questions that may be raised in a proceeding to challenge action or inaction by a state or local government agency are, in pertinent part, whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion . . . (CPLR 7801, 7803[3]). The determination of an administrative agency, "acting pursuant to its authority and within the orbit of its expertise, is entitled to deference, and 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 & Bldg. Mgt. Co., Inc. v State of N.Y. Div. of Hous. & Community Renewal*, 46 AD3d 425, 429 [1st Dept 2007], *affd* 11 NY3d 859 [2008]).

As petitioner submits no evidence showing that she cured any of the violations set forth in EA34907, EB03449, or the charge for \$929.06 in EA24652 within the time period required or that she timely certified that the violations had been corrected, she has failed to demonstrate that respondent's denials of her protests related to these charges constituted an abuse of discretion, or were arbitrary or capricious, or irrational.

And, having listed Scott as the managing agent of the premises on her 2004 Property Registration Form and having failed to file a new Form until December 2009, there is no ground

for petitioner's claim that respondent should have notified her rather than Scott of certain violations. (*See eg Dept. of Hous. Preserv. & Dev. of City of New York v Barrett*, 20 Misc 3d 135[A], 2008 NY Slip Op 51513[U] [App Term, 1st Dept 2008] [as respondent provided petitioner with statutorily-required addresses and failed to update them, respondent could not now argue that service at registered address was improper]).

IV. CONCLUSION

Accordingly, it is hereby

ADJUDGED and ORDERED, that the petition is granted to the extent of directing respondent to consider and issue a new determination as to the following charges: (1) EA21469; (2) EA22000; (3) EA24652 (except as to the charge of \$929.06); (4) EA26672; and (5) EA28007 for the charge of \$70.51; and it is further

ADJUDGED and ORDERED, that the petition is denied as to the following charges: (1) EA34593; (2) EA34914; (3) EA28007 for the charges of \$16.01 and \$134.87; (4) EB03450; (5) EA30273; (6) EA19963 for the charges of \$247.75 and \$966.23; (7) EA27444; (8) EA28004; (9) EA34907; (10) EB03449; (11) EA24652 for the charge of \$929.06; and (12) EA17513.

ENTER:



 Barbara Jaffe, JSC
BARBARA JAFFE
 J.S.C.

DATED: February 6, 2012
 New York, New York
FEB 06 2012

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).