

**Savoy Park Owners, LLC v Division of Hous. &
Community Renewal of the State of NY**

2012 NY Slip Op 31413(U)

May 22, 2012

Sup Ct, New York County

Docket Number: 100340/12

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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In the Matter of the application of
SAVOY PARK OWNERS, LLC

Petitioner,

Index No. 100340/12

-against-

DECISION/ORDER

DIVISION OF HOUSING AND COMMUNITY
RENEWAL OF THE STATE OF NEW YORK **FILED**

Respondent. **MAY 29 2012**

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HON. CYNTHIA S. KERN, J.S.C. **NEW YORK**
COUNTY CLERK'S OFFICE

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

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	_____ 1 _____
Answering Affidavits.....	_____ _____
Notice of Cross Motion and Answering Affidavits.....	_____ 2 _____
Affirmations in Opposition to the Cross-Motion.....	_____ 3 _____
Replying Affidavits.....	_____ _____
Exhibits.....	_____ _____

Petitioner Savoy Park Owners, LLC ("Savoy") has brought the present Article 78 proceeding for a judgment vacating and setting aside the order and opinion dismissing its Petition for Administrative Review (the "PAR") on the ground that respondent Division and Community Renewal of the State of New York ("DHCR") failed to properly serve the tenant's overcharge complaint, the rent administrator's order and the other papers upon it. Respondent DHCR has brought a cross motion to dismiss the petition on the ground that the petitioner failed to file its

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PAR within the applicable 35 day statute of limitations period. As will be explained more fully below, the cross motion to dismiss the petition is granted and this action is hereby dismissed.

The tenants of the premises filed a rent overcharge complaint with DHCR on March 2, 2009 in which they claimed that they were being overcharged. On March 11, 2009 a Notice and Transmittal of the tenants' rent overcharge complaint was sent to Savoy as the owner but it was sent by DHCR to the wrong address. Savoy did not respond and DHCR sent two follow up letters to which Savoy did not respond. These were also sent to the wrong address. On December 2009, the overcharge complaint was again sent to the owner but this time, it was sent to Savoy at the address contained in its amended registration, which was 31-10 37th Avenue, 3rd floor, Long Island City. Savoy did not respond to this complaint. On December 10, 2009 DHCR sent Savoy a request for additional information/evidence at the address which Savoy had provided in its amended registration with the DHCR on April 13, 2009. Savoy did not respond to this notice. After the tenants then submitted additional information in response to a request from DHCR, a copy of the tenants' response was sent to Savoy on February 18, 2010. Also included in this mailing was a final notice to owner-imposition of treble damages on overcharge. This was sent to the Savoy via certified mail return receipt requested at the address provided by Savoy in its amended registration. Savoy failed to respond to this notice. However, the return receipt green card was returned to DHCR by the post office and bears a signature. Savoy claims that the signature is not a signature of anyone from its office and that it never received this notice. On May 5, 2010, the rent administrator issued an order and determination finding that there was a rent overcharge. This order was mailed to Savoy at the address provided by Savoy. Savoy filed a PAR of the May 5, 2010 order on October 11, 2011, which was one year and five

months after the order was issued. In the PAR, Savoy claimed that it was not served with a copy of the rent administrator's order or any of the documents from the DHCR, including the tenants' initial complaint and all of the other documents mailed in connection with the processing of the rent overcharge complaint. DHCR issued an order and opinion dismissing the PAR on November 17, 2011 on the ground that it was not timely brought.

Other than the first three documents which were sent by DHCR to the wrong address, all of the papers sent by DHCR in connection with the rent overcharge proceeding, including the rent administrator order which was challenged by Savoy in the PAR, were sent to Savoy at the address on file with the DHCR, Savoy Park owners LLC c/o Vantage Management Services LLC, 31-10 37th Avenue, 3rd Floor, Long Island City, New York 11101. None of this mail was ever returned to DHCR as undeliverable.

The Rent Stabilization law, sections 26-510 to 529 of the Administrative Code of the City of New York, provides for administrative review of orders issued by the rent agency pursuant thereto. The regulations implementing the Rent Stabilization Law specifically provide that a PAR against an order of the rent administrator must be filed with the DHCR within thirty-five days after the date that the order is issued. NYCRR 2529.2. The courts have consistently held that petitioner's untimely filing of a "PAR more than 35 days after the issuance of the overcharge order constitute[s] a failure to exhaust administrative remedies justifying dismissal of petitioner's subsequent Article 78 proceeding." *Matter of Nelson Mgt. Group v New York State Division of Housing and Community Renewal*, 259 A.D.2d 411, 412 (1st Dep't 1999). In the present case, it was appropriate for DHCR to dismiss Savoy's PAR on the ground that it was filed more than 35 days after the issuance of the rent administrator order being challenged.

The allegation by petitioner that the decision below should be vacated on the ground that it was never served with any of the papers in the overcharge proceeding is without merit. The First Department has specifically upheld the DHCR's mailing procedure for mailing out notices. In *Woodner v Higgins*, 179 A.D.2d 444 (1st Dep't 1992), the First Department held that :

Proof that a regular office practice and procedure is followed with respect to mailing raises a presumption of receipt that cannot be rebutted by a bare denial of receipt (citation omitted). Such a presumption was raised here by respondent's [DHCR] affidavit from mailroom personnel and the mailroom supervisor attesting to the deposit of orders in a United States Post Office's mailbag, which is sealed and taken to an officially designated area under exclusive care of the postal service. Petitioner's failure to rebut the presumption required dismissal of this Article 78 proceeding for failure to file an administrative appeal in a timely fashion.

See also H.C. Black Realty Co v State Division of Housing and Community Renewal, 201 A.D.2d 432, 432-33 (1st Dep't 1994)(a petitioner's "bare denial of receipt of respondent's overcharge order was insufficient to rebut the presumption of receipt raised by the sworn statements of respondent's mail-room personnel as to the routine office procedures followed in mailing such orders").

In the present case, as in the foregoing cases, there is a presumption based on DHCR's submission of statements of its mail room personnel as to the routine procedures that they followed in mailing notices that the rent administrator's order which Savoy seeks to challenge and the other papers in the rent overcharge proceeding were received by Savoy at the address it provided to DHCR for the mailing of papers. Moreover, Savoy has failed to rebut that presumption. Other than its bare denial that it received any of the documents mailed by DHCR, Savoy's primary argument is that the final notice sent by DHCR was not properly served by certified mail. This argument fails for a number of reasons. Initially, DHCR has attached to its

