

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

2014 NY Slip Op 30843(U)

March 31, 2014

Supreme Court, New York County

Docket Number: 101613/13

Judge: Cynthia S. Kern

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

Index Number : 101613/2013

KRELOFF, WENDY

vs

NYS DIVISION OF HOMES

Sequence Number : 001

ARTICLE 78

PART _____

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the annexed decision.

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

FILED

APR 04 2014

NEW YORK
COUNTY CLERK'S OFFICE

RECEIVED
APR 3 2014
GENERAL CLERK'S OFFICE
NYS SUPREME COURT - CIVIL

Dated: 3/31/14

PK, J.S.C.

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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

-----x
In the Matter of the Application of

WENDY KRELOFF,

Petitioner,

Index No. 101613/13

For an Order Pursuant to Article 78
of the Civil Practice Law and Rules,

DECISION/ORDER

-against-

NEW YORK STATE DIVISION OF HOUSING
AND COMMUNITY RENEWAL,

Respondent.

-----x
HON. CYNTHIA S. KERN, J.S.C.

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

Papers	FILED	Numbered
Notice of Motion and Affidavits Annexed.....	APR. 04. 2014	<u>1</u>
Notice of Cross Motion and Answering Affidavits.....		<u>2</u>
Affirmations in Opposition to the Cross-Motion.....	NEW YORK	<u>3</u>
Replying Affidavits.....	COUNTY CLERK'S OFFICE	<u>4</u>
Exhibits.....		<u>4</u>

Petitioner Wendy Kreloff ("petitioner") commenced the instant proceeding pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR") seeking to challenge the determination made by respondent the New York State Division of Housing and Community Renewal ("DHCR") which established the base rent for petitioner's rent stabilized apartment and calculated a rent overcharge based thereon. The DHCR cross-moves for an Order remanding the matter to the DHCR for further consideration and the issuance of a new determination. For the reasons set forth below, the DHCR's cross-motion is granted and the petition is denied.

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The relevant facts are as follows. Petitioner is the tenant of Apartment 9A (the "Apartment") in the building located at 220 Park Avenue South, New York, New York. The Apartment is regulated under the New York City Rent Stabilization Law ("RSL") and Rent Stabilization Code ("RSC"). On or about September 15, 2009, petitioner filed a rent overcharge complaint with the DHCR in which she alleged that she moved into the Apartment on September 14, 1984 pursuant to a written lease but that from 1992 to 2009, Gramercy Park Mews Partnership, LLC (the "Landlord") treated the Apartment as deregulated and that the Landlord charged her rent which was not within the rent guidelines.

By Order issued March 15, 2011, DHCR's Rent Administrator established the base rent date as September 15, 2005 - the date four years prior to the date upon which petitioner filed the rent overcharge complaint - and established the base rent, upon which subsequent rent increases are to be added, as \$3,148.20. The Order directed the Landlord to refund to petitioner \$8,068.92, inclusive of treble damages. Thereafter, petitioner filed a petition for administrative review ("PAR") to challenge the Rent Administrator's Order in which petitioner argued, *inter alia*, that DHCR should have established the base rent as \$1,786.02, the last rent that the Landlord registered for the Apartment and that the Rent Administrator improperly allowed rent increases to be taken during a period when the Apartment was not registered.

By Order issued October 9, 2013, DHCR's Deputy Commissioner affirmed the establishment of the base rent as \$3,148.20 but modified the Rent Administrator's Order by disallowing rent increases granted from the base rent date until December 3, 2010, the date the Landlord late-filed annual registration statements pertaining to the Apartment. The Order directed the Landlord to refund to petitioner \$28,705.00, inclusive of treble damages. Petitioner

4] then commenced the instant proceeding seeking to challenge that portion of the Deputy Commissioner's Order affirming the base rent as \$3,148.20.

The court first turns to the DHCR's cross-motion for an order remanding the case back to the DHCR for further consideration and the issuance of a new determination. As an initial matter, although the DHCR is not permitted to *sua sponte* remit a matter back to the agency for further review once an Article 78 proceeding has been commenced in the Supreme Court, the Legislature has granted the Supreme Court the discretion to remand to the DHCR for further review. See CPLR § 7806. Specifically, the Supreme Court has the power to remit to the DHCR for the purpose of compiling a complete record, to engage in fact-finding and to issue a new determination, as that "is necessary in order for the [DHCR] to 'function efficiently and render substantial justice to the parties concerned.'" *Clinton Street Co. v. DHCR*, 161 A.D.2d 402, 403 (1st Dept 1990), citing *Matter of Wiener v. Joy*, 100 A.D.2d 800, 801 (1st Dept 1984). Further, the Court of Appeals has confirmed the DHCR's broad powers and authority to alter its prior determinations after remand by a court. See *Alamac Estates v. McGoldrick*, 2 N.Y.2d 87 (1956).

In the instant action, the court determines that this case must be remanded to the DHCR to conduct further review to determine whether the rent on the base date is a lawful rent based upon petitioner's assertion that the Landlord engaged in a fraudulent scheme to deregulate her Apartment. Under the standard set forth in *Matter of Grimm v. State of N.Y. Div. of Hous. & Community Renewal Off. of Rent Admin.*, 15 N.Y.3d 358 (2010), petitioner has made a sufficient showing of fraud to require DHCR to investigate the legality of the base date rent. See *Matter of Boyd v. New York State Div. of Hous. & Community Renewal*, 110 A.D.3d 594 (1st Dept 2013). "Although the 'look-back' for an apartment's rental history is ordinarily limited to the four-year

