

**Matter of Pugmire v New York State Div. of Hous. & Community Renewal (DHCR)**

2014 NY Slip Op 31228(U)

May 6, 2014

Supreme Court, New York County

Docket Number: 101365/2013

Judge: Peter H. Moulton

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

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

Index Number : 101365/2013

PUGMIRE, JOHN

vs  
NYS DIVISION OF HOUSING

Sequence Number : 001

ARTICLE 78

PART 57

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~~ <sup>Petition</sup> and ~~cross motion~~ <sup>and cross motion</sup> are

*denied per attached*

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

### 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: 5/6/14

*[Signature]*  
HON. PETER H. MONTON, C.  
SUPREME COURT JUDGE

- 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: IAS PART 57

-----X  
In the Matter of the Application of  
JOHN and HELEN PUGMIRE

Petitioners,

Index 101365/13

-against-

NEW YORK STATE DIVISION OF HOUSING AND  
COMMUNITY RENEWAL (DHCR)

Respondent.  
-----X

HON. PETER H. MOULTON, J.S.C.:

**UNFILED JUDGMENT**

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon until entry, counsel or authorized representative appear in person at the Judgment Clerk's Desk (Room 141B).

Petitioners seek a judgment, pursuant to CPLR Article 78, reversing an Order and Opinion Denying Petition for Administrative Review, dated August 15, 2013, and the underlying decision of the Rent Administrator, dated May 23, 2011, which granted the property owner a rent increase for a major capital improvement ("MCI"). Respondent cross moves to remit that matter to the agency. Petitioners oppose remittal. The owner is not a party to this proceeding.

Petitioners assert many reasons for reversal of the agency decisions. They assert that their apartment was not properly registered during the relevant period and therefore, pursuant to agency rules, there can be no MCI increase for their apartment. They further assert the purported new roof (which was the sole basis for the MCI) was done without the requisite permit and the "liquid roof" does not meet the criteria for a new roof which would permit an MCI increase. Petitioners also point to conflicting stories/evidence which the owner gave (including evidence of payment to the now defunct roof contractor "Aris" prior to the contractor's actual proposal). Moreover, petitioners argue that an MCI increase was improper in light of the building's

hazardous conditions, which were on record with the agency. Further, they assert that the agency arbitrarily disregarded petitioners' room count argument based on their failure to provide a diagram to substantiate that their apartment has five and not seven rooms. This was arbitrary, they contend, because DHCR never asked for the diagram and because the Initial Registration "RR1" and petitioners' July 5, 2011 diagram supported petitioners' argument that the room count is five rooms.

Respondent cross moves to remit the matter to the agency "for further consideration of the PAR order in light of the preserved claims raised by the Tenants in their Article 78 proceeding" and for "further processing and issuance of a new determination." Petitioners oppose remittal because they are skeptical that the agency will make a reasoned decision and are concerned about further delay because the proceeding has spanned almost four years. They further contend that if the court remits the proceeding, payment of MCI increases should be stayed and the matter should be expedited.

#### Discussion

The matter is remitted to the agency on the conditions described herein. Remittal is proper under the circumstances to permit the agency to review a complete record which, as the agency states, includes the "preserved claims raised by the Tenants in their Article 78 proceeding" (*see Schoenstein v McGoldrick*, 279 App Div 395 [1st Dept 1952] [remittal to agency over owner's objection to permit agency to review a complete record]; *see also Matter of 47 Clinton St. Co. v New York State Div. of Hous. & Community Renewal*, 161 AD2d 402 [1st Dept 1990] ["petitioner maintains and the respondent Division concedes that the original determination of the District Rent Administrator and the subsequent determination of the petition

for administrative review were made without the benefit of complete, necessary documentation by the petitioner, or the submission of full opposition by the tenants. While for this reason petitioner claims that the determination should be annulled as not rationally based” remittal was proper]). Remittal is also appropriate to permit the agency to correct a potentially erroneous decision for reasons apparent from examination of the record (*Schoenstein, supra* at 397 [“it is true that the application for remission may be criticized because it fails sufficiently to give the reasons why the State Rent Administrator desires to have the proceedings sent back for further consideration. Such reasons, however, are apparent from an examination of the record as a whole”]).

Although the matter is remitted to the agency, the court imposes the following conditions on remittal. This matter may involve additional evidence and a particular time line which this court cannot anticipate; however respondent is directed to expedite the matter and render in a decision in no more than five months, but within the shortest time possible (*see Matter of Kibel v State of N.Y. Div. of Hous. & Community Renewal*, 187 AD2d 338 [1st Dept 1992] [agency directed to render a final determination within a reasonable and definite time period where the court could “discern no valid reason why it should have taken DHCR over four years (as of the date of the judgment appealed from) to render a final decision”]). Respondent is also directed to take any initial steps on reviewing this matter within 20 days hereof.

The matter is also remitted on the condition that petitioners do not have to resubmit any evidence which they previously submitted. However the agency, in its discretion, may permit submission of any new evidence. Further, should petitioners wish to appeal the decision of the agency which will be issued after remittal, petitioner must file a new article 78 proceeding within

the appropriate time frame, but the court shall waive the cost of the index number and RJI.

It is hereby

ADJUDGED that the cross motion to remit the matter to the agency is granted on the conditions stated herein; and it is further


ORDERED that the petition is denied as moot; and it is further

ORDERED that should petitioners wish to appeal the decision of the agency after remittal, petitioners must file a new article 78 proceeding within the appropriate time frame but the Clerk of the Court is directed to provide them with an index number and RJI free of any cost upon the presentation of a copy of this Decision, Order and Judgment.

This constitutes the Decision, Order and Judgment of the Court.

Dated: New York, New York  
May 6, 2014

ENTER

  
Hon. Peter H. Moulton

**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).