

**Beach Lane Mgt. Inc. v State of N.Y. Div. of Hous. & Community Renewal**

2014 NY Slip Op 31625(U)

June 23, 2014

Supreme Court, New York County

Docket Number: 100227/14

Judge: Jr., Alexander W. Hunter

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: ALEXANDER W. HUNTER JR  
Justice

PART 33

Beach Lane Management Inc.  
NYS Division of Housing and  
Community Renewal

INDEX NO. 100227/14  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 01

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

*decided in accordance with the memorandum judgment and order annexed hereto.*

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: 6/23/14

*AH*, J.S.C.  
**ALEXANDER W. HUNTER JR.**

- 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 33

-----X  
In the Matter of the Application of  
BEACH LANE MANAGEMENT INC.  
a/k/a BEACH LANE MANAGEMENT,

Petitioner

For a Judgment Pursuant to Article 78 of the Civil  
Practice Law and Rules,

Index Number  
100227/14

-against-

STATE OF NEW YORK DIVISION OF HOUSING  
AND COMMUNITY RENEWAL,

Respondent

IRENE METAXATOS,

Respondent  
-----X

**ALEXANDER W. HUNTER, Jr., J.:**

Petitioner Beach Lane Management Inc., a/k/a Beach Lane Management (Beach Lane), brings this Article 78 proceeding to annul the December 27, 2013 order and opinion (Order) of Woody Pascal, deputy commissioner of respondent State of New York Division of Housing and Community Renewal (DHCR) granting, in part, petitioner's petition for administrative review (PAR). Petitioner contends that the Order is contrary to law, and arbitrary and irrational. Respondent Irene Metaxatos is the tenant of apartment 2C in the building located at 256 East 10th Street in Manhattan (Building). The DHCR proceeding was commenced when Metaxatos filed an application for a rent reduction, dated April 24, 2012, alleging a failure to maintain services in the common areas of the Building. Insofar as is relevant here, the Order affirmed the

Rent Administrator's December 19, 2012 order reducing Metaxatos's rent on the grounds that janitorial and maintenance services to the common areas of the Building were not maintained.

The Rent Administrator's order was based upon an October 18, 2012 inspection of the common areas of the Building. The DHCR inspector noted, among other things, plastered but unpainted areas on the walls of the lobby, unworkmanlike patched repairs on some walls, a hole and exposed wires on a wall on the third floor, bicycles locked to handrails on two floors, and boards stored against a wall. Petitioner argues that: the plastered but unpainted areas show that work was being performed, but had not been completed; that other findings are de minimis; and, inconsequentially, that the owner, obviously, did not place the bicycles found in the halls.

The first of those arguments is undercut by the fact that Metaxatos's March 16, 2012 letter to Beach Lane and her subsequent application to DHCR complained about building materials in a hall, hanging electrical wiring, and unpainted areas on walls. *See* Return, A-1. The inspector's report, mentioning stored boards, unpainted areas, and exposed electrical wiring postdated Metaxatos's letter to Beach Lane by approximately seven months. It was not irrational for the Rent Administrator not to intuit that repairs might be in progress and to find that the owner had failed to maintain janitorial services. *See Matter of 333 E. 49th Assoc., LP v New York State Div. of Hous. & Community Renewal, Off. or Ent Admin.*, 40 AD3d 516, 516 (1st Dept), *affd* 9 NY3d 982 (2007) ("Reduction in services is a matter to be determined by [DHCR]," citing *Matter of Wembly Mgt. Co. v New York State Div. of Hous. & Community Renewal, Off. of Rent Admin.*, 205 AD2d 319 (1st Dept 1994) and *Matter of ANF Co. v New York State Div' of Hous. & Community Renewal*, 176 AD2d 518 (1st Dept 1991).

Petitioner's second argument fails because "DHCR has broad discretion in ascertaining

whether a required service is not being properly provided.” *Matter of Croes Nest Realty, LP v New York State Div. of Hous. & Community Renewal*, 92 AD3d 402, 403 (1st Dept 2012). DHCR properly relied upon its inspector’s report. *See* Rent Stabilization Code § 2527.5 (authorizing inspection at any stage of a DHCR proceeding); *see also Matter of 333 E. 49th Assoc., LP*, 9 NY3d at 983 (DHCR’s decision, “implicitly rejecting petitioners’ claim that the violation was de minimis, is rationally based on the inspector’s observations”). Nothing required DHCR to perform a second inspection to ascertain whether, perchance, the conditions that had been observed had been remedied.

New York City Rent Stabilization Law (RSL) § 26-514 provides, in relevant part, that “any tenant may apply to [DHCR] for a reduction in rent to the level in effect prior to its most recent adjustment and for an order requiring services to be maintained as required in this section, and the commissioner *shall* reduce the rent if it is found that the owner has failed to maintain such services.”

Italics added. Accordingly, once DHCR found a failure to maintain services, DHCR was required to reduce Metaxatos’s rent. *See Matter of 780 P.P. Assoc. v State of N.Y. Div. of Hous. & Community Renewal*, 271 AD2d 352 (1st Dept 2000) (the reduction in rent is mandatory). Petitioner argues, however, that DHCR acted irrationally, to the extent that it reduced Metaxatos’s rent on the basis of conditions that the inspector observed, that differed from those contained in Metaxatos’s application for a reduction. Notably, while Metaxatos complained of unpainted areas in the halls, the inspector observed unpainted areas in the lobby of the Building.

The services that landlords are required to maintain, as a condition of collecting the rent increases provided for in the RSL, are:

“all services furnished on the date upon which the emergency tenant protection act of nineteen seventy-four becomes a law, or required by any state law or local law,

ordinance or regulation applicable to the premises.”

RSL § 26-514. It is a failure to maintain “such services” that entitles a tenant to a reduction in rent. Here, in the course of an inspection that petitioner requested, the inspector found a number of failures to maintain janitorial services in the common areas of the Building. Accordingly, it was not irrational for DHCR to reduce Metaxatos’s rent, even though the conditions found were not identical to those about which Metaxatos had complained seven months earlier.

Accordingly, it is hereby

ADJUDGED that the petition is denied and the proceeding is dismissed, with costs and disbursements to respondent; and it is further

ADJUDGED that respondent, having an address at 25 Beaver Street, Room 707, New York, New York 10004, do recover from petitioner, having an address at 256 East 10<sup>th</sup> Street, New York, New York 10530, costs and disbursements in the amount of \$ \_\_\_\_\_, as taxed by the Clerk, and that respondent have execution therefor.

Dated: June 23, 2014

ENTER:

**UNFILED JUDGMENT**

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J.S.C.

**ALEXANDER W. HUNTER JR.**