

Matter of Peralta v New York State Div. of Hous. & Community Renewal
2018 NY Slip Op 31864(U)
July 2, 2018
Supreme Court, New York County
Docket Number: 101248/15
Judge: Nancy M. Bannon
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: Hon. Nancy Bannon

PART 42

In the Matter of

JACQUELINE PERALTA

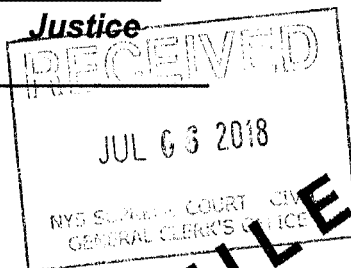
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**NEW YORK STATE DIVISION OF HOUSING AND
COMMUNITY RENEWAL**

INDEX NO. 101248/15

MOTION DATE 1/10/18

MOTION SEQ. NO. 003



FILED
JUL 06 2018
NEW YORK COUNTY
COUNTY CLERK

The following papers were read on this motion for an award of attorneys' fees

Notice of Motion/ Order to Show Cause — Affirmation — Affidavit(s) —
Exhibits — Memorandum of Law-----

No(s). 1

Answering Affirmation(s) — Affidavit(s) — Exhibits -----

No(s). 2

Replying Affirmation — Affidavit(s) — Exhibits -----

No(s). 3

In this proceeding pursuant to CPLR article 78 to review a rent overcharge determination of the respondent, New York State Division of Housing and Community Renewal (DHCR), the petitioner moves pursuant to CPLR 8601 for an award of attorneys' fees. The respondent opposes the motion. The motion is granted.

In a determination dated August 8, 2014, the DHCR's Rent Administrator (RA) concluded that the petitioner's landlord had overcharged her \$19,829.76 in rent in connection with a rent stabilized apartment, and awarded her treble that amount, or \$59,581.58. The landlord filed a Petition for Administrative Review (PAR), arguing that the RA should not have considered rent history beyond four years prior to the filing of the overcharge claim, thus precluding the DHCR from considering a 1993 rent reduction order. The landlord also argued that, since it had only purchased the subject apartment building two weeks after the RA's determination, it should not be liable for treble damages based on a willful overcharge. A DHCR Deputy Commissioner (DC) granted the landlord's PAR to the extent of vacating the determination to award treble damages, and assessed only the \$19,829.76 overcharge, plus interest and an excess security deposit refund, for a total of \$22,660.18. By judgment dated November 17, 2016, the Supreme Court (Schlesinger, J.) annulled the DC's determination, concluding that his determination was not based on the arguments urged on it by the landlord, but on unraised considerations. The court noted, however, that the DC properly applied the Court of Appeals' holding in Carrion v Calogerio (15 NY3d 347 [2010]), which requires the DHCR to go beyond the four-year lookback period where there has been a prior rent reduction order. The court thus remitted the matter to the agency for a reconsideration based only on the facts and arguments submitted to it in the PAR.

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

The petitioner now seeks an award of attorneys' fees pursuant to CPLR 8601, which provides that "a court shall award to a prevailing party, other than the state, fees and other expenses incurred by such party in any civil action brought against the state, unless the court finds that the position of the state was substantially justified or that special circumstances make an award unjust." There is no dispute that the petitioner was the prevailing party, but the DHCR contends that its position in revoking the trebling of the award was substantially justified. The DCHR relies on Matter of Crabtree v New York State Div. of Hous. & Community Renewal (294 AD2d 287 [1st Dept. 2002]), in which the First Department held, in a determination predating Carrion by several years, that although the DHCR's determination not to look back beyond the otherwise applicable four-year period was erroneous, it was substantially justified since the law in this regard was not yet settled. The Court thus found substantial justification for the DHCR's view "that rental history that occurred more than four years prior to the filing of the complaint is not reviewable even if: (a) the history is listed in documents filed within the four-year period (as in the rent registration statements); (b) the history involves a dispute that was resolved within the four-year period . . .; or (c) the tenant was an intervenor in the prior tenant's dispute."

There is no such similar justification here, as the DHCR's determination was not a mere error of interpretation, but a fundamental error in administrative decision making. The overcharge claim here was premised on only one DHCR docket, yet the DC premised his decision on a claim under another docket that he then dismissed. The DC also held that the trebling of the award was improper because a rent restoration application was pending, although the application was unrelated to the overcharge claim before the RA. Importantly, the landlord did not even raise these issues before the DC. The court thus adopted the petitioner's contention that the DC's action "in sua sponte substituting entirely new bases for modifying the Rent Administrator's order—without giving [the petitioner] an opportunity to be heard on them—and its reliance on matters that were outside the record of the underlying docket being reviewed was arbitrary and capricious." Review of a PAR "shall be limited to facts or evidence before a rent administrator as raised in the petition." 9 NYCRR 2529.6; see Matter of 60 E. 12th St. Tenants' Assn. v New York State Div. of Hous. & Community Renewal, 134 AD3d 586 (1st Dept. 2015); The DHCR itself has urged that any argument not raised in a PAR may not be considered by the DC. See Matter of Manhattan Triad Assoc., LLC v New York State Div. of Hous. & Community Renewal, 20 Misc. 3d 1124(A) (Sup Ct, N.Y. County, Jul. 21, 2008) (Feinman, J.). Hence, the DC's determination, which was based on such arguments, was arbitrary and capricious for the reasons stated by Justice Schlesinger, and the determination is not substantially justified for that reason as well.

Accordingly, it is

ORDERED that the petitioner's motion for an award of attorneys' fees is granted; and it is further,

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and report to this Court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose: the issue of the amount due to the plaintiff for attorneys' fees; and it is further,

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119M, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon which the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link under "Courthouse Procedures"), shall assign this matter to an available JHO/Special Referee to hear and report as specified above; and it is further,

ORDERED that counsel shall immediately consult one another and counsel for petitioner shall, within 15 days from the entry of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or email, an Information Sheet (which can be accessed at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further,

ORDERED that the petitioner shall serve a proposed accounting of attorneys' fees within 24 days from the date of entry of this order and the respondent shall serve objections to the proposed accounting within 20 days from service of petitioner's papers, and the foregoing papers shall be filed with the Special Referee Clerk at least one day prior to the original appearance date in Part SRP fixed by the Clerk as set forth above, and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further,

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4320[a]) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completion; and it is further,

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts.

This constitutes the Decision and Order of the court.

Dated: July 2, 2018

FILED

JUL 06 2018

NEW YORK COUNTY
COUNTY CLERK

[Signature] JSC
HON. NANCY M. BANNON

1. Check one: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. Check as appropriate: MOTION IS: ☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER