

**Matter of 15 Humboldt LLC v New York State Div. of
Hous.**

2020 NY Slip Op 30071(U)

January 7, 2020

Supreme Court, Kings County

Docket Number: 2435/2019

Judge: Loren Baily-Schiffman

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This opinion is uncorrected and not selected for official publication.

At an IAS Part 65 of the Supreme Court of the State of New York, County of Kings at a Courthouse Located at 360 Adams Street, Brooklyn, New York on the 7th day of January, 2020.

PRESENT: HON. LOREN BAILY-SCHIFFMAN
JUSTICE

In the Matter of the Application of
15 HUMBOLDT LLC,

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

- against -

NEW YORK STATE DIVISION OF HOUSING
and COMMUNITY RENEWAL,

Respondent.

Index No.: 2435/2019
(E-Filed)
Motion Seq. # 1

DECISION & ORDER

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KINGS COUNTY CLERK

As required by CPLR 2219(a), the following papers were considered in the review of this motion:

	<u>PAPERS NUMBERED</u>
Notice of Petition Affirmation & Exhibits	1
Notice of Amended Petition & Exhibits	2
Answer to Petition	3
Affirmation in Opposition to Petition	4
Memorandum of Law in Opposition	5
Petitioner's Reply Affirmation	6

Upon the foregoing papers, 15 HUMBOLDT LLC, owner of the subject property (Petitioner), moves this Court for an Order pursuant to CPLR § 7803 (3) reversing the NEW YORK STATE DIVISION OF HOUSING and COMMUNITY RENEWAL's (DHCR) Order and Opinion dated April 15, 2019 or in the alternative, remanding this matter back to Respondent for further proceedings, and granting such other, further and different relief as this Court deems just and proper.

Discussion

The relevant facts of the instant case began on October 18, 2017 when the Tenant Protection Unit (TPU) of the Office of Rent Administration (ORA) for the DHCR filed a complaint alleging that Petitioner/building owner had been over-charging the tenants of the subject premises, 15 Humboldt Street, Apartment 1L, Brooklyn New York. ORA is charged with making determinations of such complaints and is authorized to establish a "base date" for its review. **RSC §2520.6(f)(1)**. A base date is four years prior to the date of the complaint and in this case, ORA determined that the base date was October 18, 2013. **RSC § 2526.1 (a) (2)**. Once an overcharge complaint is filed, the owner of the subject premises is responsible for submitting proof of the base date rent either in the form of a lease or a rent ledger. The applicable regulations require that a default rent formula be used if the owner fails to submit sufficient proof of the base date rent. **RSC §2522.6(b)(2)(i)**. Also, if ORA determines that the rent overcharge was willful the regulations require that the building owner be charged treble damages.

In an Order and Opinion dated June 21, 2018, the ORA found that Petitioner: 1) overcharged the tenants of Apartment 1 L; ORA found that Petitioner 2) had failed to provide sufficient proof of the rent charged on the base date; and 3) failed to demonstrate that the overcharge was not willful. Thereafter, the owner filed a Petition for Administrative Review (PAR) alleging that the ORA made the following errors: 1) there was no consideration of the fact that the apartment was reconfigured into a duplex prior to the base date thereby entitling Petitioner to a market rent; 2) improperly utilized the default procedure to set the rent when Petitioner had submitted a rent ledger; 3) ignored the terms of a settlement agreement

entered into with TPU; 4) improperly awarded treble damages; 5) failed to consider the tenants' arrears; and 6) failed to include a former Tenant of Record in ORA's order.

In an Order and Opinion dated April 15, 2019 the PAR was denied and the findings of the ORA were confirmed. Petitioner now seeks review by this Court of that Administrative Appeal. The law requires that when deciding Article 78 Petitions a court must limit its review to 1) whether the record supports the agency's findings, and 2) whether there is a rational basis for the determination. *Matter of Velasquez v. DHCR, 130 A.D.3d 1045, 1046 (2d Dept 2015)*; *Matter of Gomez v. DHCR, 79 A.D.3d 878, 878-879 (2nd Dept 2010)*. Further, the court may not substitute its judgment for that of the DHCR. *Matter of Velasquez v. DHCR, supra at 1046-1047*. The DHCR's interpretation of the statutes and regulations it administers is entitled to deference and must be upheld if reasonable. *65-61 Saunders St. Assoc., LLC v DHCR, 154 AD3d 930, 931 (2d Dept 2017), citing Kripalani v. DHCR, 126 A.D.3d 904, 905 (2nd Dept 2015)*.

Petitioner contends, as it did in the PAR, that the ORA erred in utilizing the default formula and that the proof that was provided of the rent charged on the base date was sufficient. However, the regulations specifically require either a lease or the appropriate rent ledger be submitted. In the case at bar, the owner provided a "Tenant Summary" indicating that the apartment was vacated on August 31, 2012. Petitioner, therefore, failed to submit the records which are required to establish the legal stabilized rent for the subject apartment. Rather, the owner submitted a rent ledger for Apartment 1 L beginning on October 1, 2014. Since the proof submitted by Petitioner for the base date rent was inadequate as a matter of law, the ORA had a rational basis for utilizing the default rate to set the base rent. *65-61*

Saunders St. Assoc., LLC v DHCR, supra at 932, citing Matter of Bondam Realty Assoc., L.P. v. DHCR, 71 A.D.3d 477, 478 (1st Dept 2010).

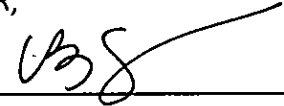
Contrary to the Petitioner's contention, the imposition of treble damages was not arbitrary or capricious and had a rational basis in the record. RSC § 26–516(a) provides that once the occurrence of a rent overcharge has been established, it is the owner's burden to establish by a preponderance of the evidence that the overcharge was not willful. ***S. Lexington Assoc., LLC v DHCR, 170 AD3d 733, 734-35 (2d Dept 2019).*** The ORA's determination, as affirmed by the DHCR, that Petitioner failed to meet that burden was not arbitrary and capricious and had a rational basis in the record. ***Matter of Velasquez v. DHCR, supra at 1048, citing Century Tower Assoc. v DHCR, 83 NY2d 819, 823 (1994).***

Petitioner submitted documentation to the ORA and again with the PAR to support the claim that it was entitled to a market rate because Apartment 1 L had previously been reconfigured into a duplex. However, the DHCR correctly noted that the changes to the subject premises occurred before the base date but in no way relieves the building owner of responsibility to submit the proper rent record for the base date. Accordingly, DHCR was correct in affirming the findings of the ORA because improvements to the premises are meaningless even if they could provide a basis for a rent increase, without the proper proof of the base date rent record.

Petitioner further contends that the ORA failed to consider the amount of arrears owed by the tenants and that there was a prior settlement agreement of this matter with TPU. The DHCR confirmed that there was no proof in the record as to any arrears owed by the tenants, nor proof of a prior settlement agreement with the TPU. Petitioner's remaining contentions are

without merit. This Court affirms the DHCR's findings that no reversible error has been shown by Petitioner and there was a rational basis for the ORA's Order finding a rent overcharge by 15 HUMBOLDT LLC. This is the Decision and Order of the Court.

ENTER,



LOREN BAILY-SCHIFFMAN

JSC

HON. LOREN BAILY-SCHIFFMAN

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