

<b>Matter of Chosen Realty Corp. v New York State Div. of Hous. &amp; Community Renewal</b>
2020 NY Slip Op 30976(U)
April 7, 2020
Supreme Court, New York County
Docket Number: 0151169/2018
Judge: John J. Kelley
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOHN J. KELLEY PART IAS MOTION 56EFM

Justice

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In the Matter of
CHOSEN REALTY CORP.,
Petitioner,

INDEX NO. 0151169/2018
MOTION DATE 03/31/2020
MOTION SEQ. NO. 001

- v -

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY
RENEWAL, JUVENAL VALENTIN, MARTIN AQUIRRE, IGO
WILLIAM, ANTHONY BURGOS, LETICIA AVILA, LEONARDO
LEDESMA, MERCEDES VICTOR, MONICA CRUZ, JAIME
BUSTAMANTE, YNGRID GUZMAN, JUAN BURGOS, GABRIEL
GARCIA, ALTAGRACIA TEJADA, ALEYDA MARTINEZ, RAFAEL
GUITIERREZ, NORMA DELGADO, GLORIA HESS, MANUEL
MOROCHO, CECILIO LOPEZ, PLACIDO SANCHEZ, ANGELA
VELASQUEZ, LUIS POGYO, BALTAZARA DUTAIN, LUZ
AGUIRRE, and LILLIBETH SEGURA,

DECISION, ORDER, and
JUDGMENT

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 8, 9, 10, 11, 12,
13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37 38, 39, 40, 41,
42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 57, 58, and 59

were read on this motion to/for CPLR ARTICLE 78.

In this CPLR article 78 proceeding, the petitioner seeks judicial review of a December 8,
2017 New York State Division of Housing and Community Renewal (DHCR) determination
denying its Petition for Administrative Review (PAR) of the Rent Administrator's (RA's) January
19, 2017 order granting a rent reduction to the tenant respondents. The DCHR and the tenant
respondents answer the petition, and the DHCR files the administrative record. The petition is
denied, and the proceeding is dismissed.

On September 26, 2016, 25 rent-stabilized tenants, who leased apartments from the
petitioner at its Manhattan apartment building, filed a rent reduction claim with the DHCR,
alleging that the petitioner failed to provide minimum necessary services. Specifically, they

alleged that the building was equipped with an elevator, but that the elevator had been removed from service and was not operable because the elevator shaft-way openings were covered with sheet rock. The RA concluded that, although a November 22, 2002 RA order issued under Docket No. QG430020B found that the elevator was not a “provided service,” a July 2, 2003 RA order issued under Docket No. QK410008B superseded the 2002 order, and found that the elevator was indeed a “provided service.” The RA further noted that, based upon the 2003 order, the New York City Department of Buildings cited the petitioner for Building Code violations referable to the elevator. In addition, the RA explained that the petitioner filed an unsuccessful PAR challenging the RA’s 2003 order, and that the DHCR Commissioner, in a February 27, 2004 order, concluded that the RA’s 2002 order had been issued in error. The RA thus concluded that elevator service was indeed required “provided service” as of the base date for calculating the legal, regulated rent, and that the petitioner’s removal of elevator service entitled all rent-regulated complainants to a rent reduction; to the extent that any complainant’s apartment was not rent-regulated, the RA concluded that such a complainant was not entitled to a rent reduction. The RA also concluded that complainant Lillibeth Segura had already received a rent reduction and, thus, was not entitled to a further reduction.

In an administrative order dated December 8, 2017, the DHCR Commissioner’s designee denied the petitioner’s PAR, concluding that elevator service was indeed a base-date “provided service,” notwithstanding a 1984 owner-provided Building Services Registration that incorrectly omitted elevator services from the list of “provided services.” The Commissioner’s designee found that

“in the instant case, it has been shown that, factually, the owner’s claim is belied by the reality that the subject premises actually had a functional passenger elevator, which had been taken out of service. The Commissioner notes that while services listed under a building’s Building Services Registration entry in the Agency’s database indicate the services which an owner is expected to provide, said list is not exhaustive as recognized in Section 2520.6(5)(3) of the Rent Stabilization Code, and are called ancillary services, i.e., that ‘space and those services not contained within the individual housing accommodation which the owner was providing on the applicable base dates set forth below, and any

additional space and services provided or required to be provided thereafter by applicable law.”

The Commissioner’s designee further found that, under Rent Stabilization Code 2527.8, the RA may appropriately issue a superseding order to correct any irregularity in a vital matter and that the vacatur of the RA’s 2002 order was appropriate here.

In reviewing a DHCR determination granting a rent-reduction complaint, the court is limited to determining whether the determination was arbitrary and capricious, affected by error of law, or not made in accordance with proper procedure (see CPLR 7803[3]; *Matter of Trump Vil. Apts. One Owner v New York State Div. of Hous. & Community Renewal*, 143 AD3d 996, 999 [2d Dept 2016]; *Matter of 333 E. 49th Assoc., LP v New York State Div. of Hous. & Community Renewal, Off. of Rent Admin.*, 40 AD3d 516, 516 [1st Dept 2007]; see also *Matter of Leonard St. Props. Group, Ltd. v New York State Div. of Hous. & Community Renewal*, 178 AD3d 92, 105 [1st Dept 2019] [order compelling restoration of elevator services was not arbitrary and capricious]).

A determination is arbitrary and capricious where is not rationally based, or has no support in the record (see *Matter of Gorelik v New York City Dept. of Bldgs.*, 128 AD3d 624 [1st Dept 2015]), or where the decision-making agency fails to consider all of the factors it is required by statute to consider and weigh (see *Matter of Kaufman v Incorporated Vil. of Kings Point*, 52 AD3d 604 [2d Dept 2008]). Stated another way, a determination is arbitrary and capricious when it is made “without sound basis in reason and is generally taken without regard to the facts” (*Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]). The DHCR’s determination that elevator services was a required, provided service as of the base date for calculating the legal, regulated rent has factual support in the record, and was not irrational.

“While agency interpretations of their own regulations are generally afforded considerable deference, courts must scrutinize administrative rules for genuine reasonableness

and rationality in the specific context presented by a case” (*Matter of Murphy v New York State Div. of Hous. & Community Renewal*, 21 NY3d 649, 654-655 [2013] [citations and internal quotation marks omitted]; see *Kuppersmith v Dowling*, 93 NY2d 90, 96 [1999]; *Matter of Dworman v New York State Div. of Hous. & Community Renewal*, 94 NY2d 359 [1999]; *Matter of Gaines v New York State Div. of Hous. & Community Renewal*, 90 NY2d 545, 548-549 [1997]). The DHCR’s interpretation of the Rent Stabilization Code is entitled to deference here, and it was not legally erroneous.

The petitioner makes no assertion that the challenged determination was not made in accordance with proper procedure.

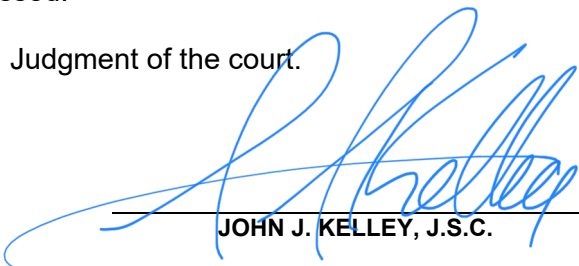
Accordingly, it is

ORDERED that the petition is denied; and it is,

ADJUDGED that the proceeding is dismissed.

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

4/7/2020  
DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
		<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE