

<b>Matter of Campbell v New York State Div. of Hous. &amp; Community Renewal</b>
2020 NY Slip Op 32877(U)
August 27, 2020
Supreme Court, Kings County
Docket Number: 524266/2019
Judge: Dawn M. Jimenez-Salta
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At an IAS Term, Part 88 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on August 27, 2020.

PRESENT:

HON. DAWN JIMENEZ-SALTA,  
Justice.

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**In the Matter of the Application of  
LINDA CAMPBELL, VIOLET MURPHY,  
MICHAEL TETTEH, RICARDO HONEYWELL,  
YOLANDA GODDARD, ELIZABETH THOMPSON,  
GISELLE BROWN, WAYNE ROSS, JAMES GAYNOR,  
BARBARA PETERS, S. NICHOLSON, AUGUSTIN  
STUART, MONTIE HAMILTON, MAXINE JAMES,  
HATSHEPSUT SHAW and WILLIAM HENRY,**

*Petitioners,*

**For a Judgment under Article 78 of the  
Civil Practice Law and Rules,**

- against -

**NEW YORK STATE DIVISION OF HOUSING  
AND COMMUNITY RENEWAL, MARINE EQUITIES  
101 LLC and MERIDIAN PROPERTIES LLC,**

*Respondents.*

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Recitation, as required by *CPLR 2219(a)*, of the papers considered in the review of:

- 1) Petitioners Linda Campbell, Violet Murphy, Michael Tetteh, Ricardo Honeywell, Yolanda Goddard, Elizabeth Thompson, Giselle Brown, Wayne Ross, James Gaynor, Barbara Peters, S. Nicholson, Augustin Stuart, Montie Hamilton, Maxine James, Hatshepsut Shaw and William Henry's ("Petitioners" or "Tenants") *Article 78* Petition for a Judgment Reversing New York State Division of Housing and Community Renewal's ("DHCR") September 6, 2019 Determination Along with Costs and Disbursements, Including Reasonable Attorney Fees and Expenses and For Such Other and Further Relief As the Court Deems Just and Proper Along with Exhibits A-J, dated November 4, 2019;
- 2) Respondents Marine Equities 101 LLC ("Marine") and Meridian Properties LLC's ("Meridian") (collectively "Owner") Verified Answer with Exhibits A-G and Affirmation in Opposition, dated January 21, 2020;
- 3) Respondent New York State Division of Housing and Community Renewal's ("DHCR") Verified Answer with Answering Affirmation, dated March 9, 2020, all of which submitted July 22, 2020.

Papers

Numbered

Notice of Petition and

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Mot. Seq. # 47

**DECISION AND ORDER**

Affidavits Annexed.....	Petitioners 1 [Exh. A-J]
Notice of Cross-Motion and Affidavits Annexed.....	
Order to Show Cause and Affidavits.....	
Verified Answer.....	Respondents Marine and Meridian 2 [Exh. A-G] with Affirmation in Opposition Respondent DHCR 3 with Answering Affirmation
Replying Affidavit.....	
Supplemental Affidavits.....	
Exhibits.....	
Other [Memorandum of Law] .....	

Upon the foregoing cited papers, the Decision/Order regarding Petitioners' *Article 78* Petition for a Judgment Reversing Respondent DHCR's September 6, 2019 Determination and Request for Costs and Disbursements, including Reasonable Attorney Fees and Expenses and For Such Other and Further Relief is as follows: This Court denies Petitioners' requests because this Court finds Respondent DHCR's actions and determinations have a rational basis because they are supported by substantial evidence. Thus, they are not arbitrary, capricious, unreasonable and unlawful [Petitioner 1, Exhs. A-J; Respondents Marine and Meridian 2, Exhs. A-G with Affirmation in Opposition; Respondent DHCR 3 with Answering Affirmation].

**BACKGROUND AND PROCEDURAL HISTORY**

This proceeding involves various housing accommodations located at 101 Lincoln Road, Brooklyn, New York. Respondents Marine and Meridian are the owners of the subject building ("building"). The apartments in the building are regulated under the *New York City Rent Stabilization Law and Code ("RSL")* and the *Rent Stabilization Code ("RSC")*. Petitioners are tenants ("Tenants") in the building.

Petitioners filed a PAR to challenge the April 27, 2018 rent restoration order. The PAR alleged that the compactor room on the 2<sup>nd</sup> Floor of the west wing is "filthy"; that there are stains and dirt on the floor and a foul odor; that the 5<sup>th</sup> Floor compactor room was unsanitary, dirty and often not cleaned; there is often garbage on the floor; and there is an accumulation of junk and stains on the floor.

In its final order ("Final Order"), issued September 6, 2019, DHCR's Deputy Commissioner denied Petitioners' PAR and reaffirmed the Rent Administrator's rent restoration order.

After earlier orders found that several of the bases for the June 27, 2015 rent reduction order had been corrected, DHCR's Final Order noted that Owner filed a rent restoration order application regarding the remaining outstanding condition cited in the June 27, 2015 rent reduction order: inadequate janitorial service in the west wing compactor rooms on the 2<sup>nd</sup> and 5<sup>th</sup> floors. DHCR's Rent Administrator requested an on-site inspection of the condition of the two compactor chute rooms. The inspection was conducted on April 16, 2018. The inspection report indicated that janitorial service had been restored in the compactor chute rooms on the 2<sup>nd</sup> and 5<sup>th</sup> floors of the west wing of the building at the time of inspection. Based upon the inspection report, the DHCR Deputy Commissioner held that the Rent Administrator properly determined that a rent restoration was warranted and

DHCR's Final Order is under review in the present *CPLR Article 78* proceeding.

### COURT RULINGS

This Court's function in a *CPLR Article 78* proceeding is to determine whether the action of an administrative agency had a rational basis or was arbitrary and capricious. See *Matter of Borenstein v. New York City Employees' Retirement System*, 88 NY2d 716 (1996); *Pell v. Board of Education*, 34 NY2d 222, 356 NYS2d 833, 313 NE2d 321 (1974). "Arbitrary action is without sound basis in reason and is generally taken without regard to the fact." See *Pell v. Board of Education* at 231, 356 NYS2d 833, 313 NE2d 321. Administrative agencies must act "lawfully with regard to the essential evidence and in a nonarbitrary fashion." See *VR Equities v. New York City Conciliation & Appeals Board*, 118 AD2d 459, 461 (1<sup>st</sup> Dept., 1986). "Moreover, when an administrative agency has not observed its own standards or has violated procedure by denying an applicant his or her statutory rights, its determination cannot be sustained." See *CPLR Section 7803[3]*; *In the Matter of Lidakis v. New York City Employees Retirement System*, 27 Misc.3d 1150, Kings County (2010).

A rational basis exists where the determination is "[supported] by proof sufficient to satisfy a reasonable [person], of all the facts necessary to be proved in order to authorize the determination." See *Ador Realty, LLC v. Division of Housing and Community Renewal*, 25 AD3d 128, 139-140, 802 NYS2d 190 (2<sup>nd</sup> Dept., 2005), quoting *Pell v. Board of Education* at 231, 356 NYS2d 833, 313 NE2d 321. See *Consolation Nursing Home, Inc., v. Commissioner of New York State Dept. Of Health*, 85 NY2d 326, 331, 624 NYS2d 563, 648 NE2d 1326 (1995); *300 Gramatan Ave. Associates v. State Div. Of Human Rights*, 45 NY2d 176, 180, 408 NYS2d 54, 379 NE2d 603 (1971); *Sewell v. City of New York*, 182 AD2d 469, 583 NYS2d 255 (1<sup>st</sup> Dept., 1992), lv. denied 80 NY2d 756, 588 NYS2d 824, 602 NE2d 232 (1992). If the reviewing court finds that the agency determination has a rational basis, supported by substantial evidence, such determination must be sustained, and the reviewing court is prohibited from substituting its own judgment for that of the agency. See *Navaretta v. Town of Oyster Bay*, 72 AD3d 823, 898 NYS2d 237 (2<sup>nd</sup> Dept., 2010); *Halperin v. City of New Rochelle*, 24 AD3d 768, 809 NYS2d 98 (2<sup>nd</sup> Dept., 2005); *Dawson v. Zoning Board of Appeals of Town of Southold*, 12 AD3d 444, 785 NYS2d 84 (2<sup>nd</sup> Dept., 2004); *Morley v. Arricale*, 66 NY2d 665, 495 NYS2d 966, 486 NE2d 824 (1985); *Purdy v. Kreisberg*, 47 NY2d 354, 418 NYS2d 329, 391 NE2d 1307; *Pell v. Board of Education*, at 230-232, 356 NYS2d 833, 313 NE2d 321; *Procaccino v. Stewart*, 25 NY2d 301 (1969).

As the Court of Appeals succinctly summarized, "[B]ecause of the severe limitations on the availability of judicial review of determinations made by bodies . . . such bodies must make a careful and painstaking assessment of all the available evidence and should defer final determination until they are satisfied that all the evidence has been fully and fairly considered." See *Brady v. City of New York*, 22 NY2d 601 (1968), quoting *Matter of Kilgus v. Board of Estimate of City of New York*, 308 NY 620, 626-627, 127 NE2d 705; *Matter of Watson v. McGoldrick*, 286 NY 47, 55, 35 NE2d 645.

This Court finds that DHCR's Final Order, dated September 6, 2019 which restored rents following an inspection was supported by a rational basis in the record and the law because whether services have been restored is strictly for an administrative agency's determination. See *RSL Section 26-514*; *Fresh Meadows Assocs., v. Conciliation and Appeals Board*, 88 Misc.2d 1003, 390 NYS 351, affd 55 AD2d 559, 390 NYS2d 69, affd 42 NY2d 925, 397 NYS2d 1007 (1976); *Schoberle v. New York State Division of Housing and Community Renewal*, 14 AD3d 438, 788 NYS2d 361 (1<sup>st</sup> Dept., 2005).

DHCR has broad discretion in ascertaining whether a required service is not being provided. See *Matter of Croes Nest Realty, LP v. New York State Division of Housing and Community Renewal*, 92 AD3d 402, 938 NYS2d 42 (1<sup>st</sup> Dept., 2012); *Melohn v. New York State Division of Housing and Community Renewal*, 234 AD2d

NYSCEF DOC 650 NYS2d 166 (1st Dept., 1996); *Matter of ANF Co., v. Division of Housing and Community Renewal*, 176 AD2d 518 (1st Dept., 1991). RECEIVED NYSCEF 09/01/2020

DHCR may rationally rely upon the reports of the observations of DHCR's inspectors. See *Matter of 333 E. 49th Assoc., LP v. New York State Division of Housing and Community Renewal*, 9 NY3d 982, 849 NYS2d 19 (2007); *Matter of Jamaica Estates, LLC v. New York State Division of Housing and Community Renewal*, 78 AD3d 1053, 910 NYS2d 918 (2nd Dept., 2010); *Matter of 68 Apt. Assoc., Inc., v. New York State Division of Housing and Community Renewal*, 71 AD3d 1031 (2nd Dept., 2010).

No tenant filed an administrative appeal to challenge Rent Administrator Orders DU210049OR and EX210006OR which found that some of the service reductions had been restored. Because those orders are now beyond challenge, they are binding on all tenants in the building. Therefore, collateral estoppel bars Petitioners from asserting that some items were not repaired and that the rent reduction based on the June 27, 2015 order be reinstated. See *Joseph v. Roldan*, 289 AD2d 243, 733 NYS2d 721 (2nd Dept., 2001); *RSL Section 26-514*; *Matter of ANF Co., v. Division of Housing and Community Renewal*, 176 AD2d 518, 574 NYS2d 709 (1st Dept., 1991).

A Petitioner in a *CPLR Article 78* proceeding may not raise new matters upon judicial review that it failed to raise upon administrative review. See *Fanelli v. New York City Conciliation and Appeals Board*, 58 NY2d 952, 460 NYS2d 534 (1983); *Matter of Croes Nest Realty, LP v. New York State Division of Housing and Community Renewal*, *supra*; *Acevedo v. New York State Division of Housing and Community Renewal*, 67 AD3d 785, 889 NYS2d 78 (2nd Dept., 2009).

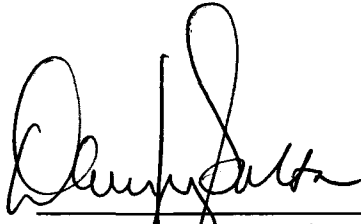
Consequently, this Court will not consider a DHCR rent reduction order which was submitted by Petitioners because it was issued nearly a year after the rent restoration order (No. FW210098OR) which is the subject of the instant proceeding. This Court will also not consider the purported reports of various building violations issued by the New York City Department of Housing Preservation and Development ("HPD"). *RSL Section 26-514* expressly extends only to rent reductions and rent restorations based upon complaints filed with DHCR.

Based on the foregoing, it is hereby ORDERED as follows:

Petitioners' *Article 78* Petition for a Judgment, reversing Respondent DHCR's September 6, 2019 determination and a request for costs and disbursements, including reasonable attorney fees and expenses is DENIED, and the Petition is DISMISSED.

This constitutes the Decision and Order of the Court.

DATE: August 27, 2020  
In the Matter of Linda Campbell et al v.  
New York State Division of Housing and  
Community Renewal et al  
(#524266.2019)

  
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DAWN JIMENEZ-SALTA  
J.S.C.

Hon. Dawn Jimenez-Salta  
Justice of the Supreme Court

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