SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PAUL A. GOETZ **PART** 47

Justice

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300 WADSWORTH LLC,

Plaintiff,

- v -

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, RUTHANNE VISNAUSKAS

Defendants.

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INDEX NO. 158207/2020

MOTION DATE N/A, 03/24/2021

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 43, 45, 47, 53, 54, 55, 56

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 38, 39, 40, 41, 42, 44, 46, 48, 50, 51, 52, 57

were read on this motion to/for DISMISSAL.

In this residential real estate action, plaintiff 300 Wadsworth, LLC (landlord) seeks declaratory and injunctive relief against the defendant New York State Division of Housing and Community Renewal (DHCR), and its Commissioner, Ruthanne Visnauskas (Commissioner Visnauskas; together, respondents), by order to show cause (motion sequence number 001), and the DHCR moves separately to dismiss landlord's complaint (motion sequence number 002).

FACTS

Landlord is the owner of a residential apartment building located at 300-314 Wadsworth Avenue, a/k/a 651-663 West 188th Street, in the County, City and State of New York (the building). *See* verified complaint, ¶ 7. The DHCR is the administrative agency which oversees rent stabilized housing accommodations located within New York City. *Id.*, ¶¶ 2-3.

Landlord avers that it took title to the building in 2014, and that it hired a construction contractor to perform renovation work in apartment 1M on May 1, 2019. *See* verified complaint, ¶¶ 8-13. Landlord further avers that, on that same day, it also filed an application with the New York City Department of Buildings (DOB) for a permit to perform that renovation work. *Id.*, ¶ 14. Landlord presents a copy of the work permit that the DOB subsequently issued on May 15, 2019 which authorized "general construction-interior renovation" work. *Id.*, ¶ 15; exhibit D. Landlord states that its contractor commenced work on May 29, 2019 and thereafter continued through at least June 2019.[1] *Id.*, ¶¶ 16-17. Landlord characterizes the renovations in apartment 1M as "individual apartment improvement" (IAI) work.[2] *Id.*, ¶¶ 14-24.

Landlord notes that, on June 14, 2019, the "Housing Stability and Tenant Protection Act of 2019" (HSTPA) took effect while the renovation work in apartment 1M was ongoing. *See* verified complaint, ¶ 17. Landlord complains that the HSTPA amended the provisions of the RSL and RSC, which govern IAI rent increases, such that it is no longer legal to increase apartment 1M's rent by the same dollar figure as would have been permitted under the pre-HSTPA versions of those statutes. *Id.*, ¶¶ 18-24. Landlord takes the position that it should be allowed to impose an IAI rent increase on apartment 1M's rent equal to the amount that would have been collectible under the pre-HSTPA version of RSL § 26-511 (c) (13) because it commenced the IAI work before the HSTPA's effective date. *Id.*

Landlord also notes that the DHCR has issued several publications detailing the policy and procedure that the agency follows regarding post-HSTPA IAI rent increase applications and

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[1] Landlord does not specify the date on which the renovation work in apartment 1M was completed.

[2] IAI increases are governed by Rent Stabilization Law (RSL) §§ 26-511 (c) (13) and 26-511.1 and by Rent Stabilization Code (RSC) § 2522.4.

argues that they are improper. *See* verified complaint, ¶¶ 22-24. Landlord particularly objects to "Operational Bulletin 2016-1" ("Individual Apartment Improvements"), which provides, in part, as follows:

> This Operational Bulletin is being revised to reflect the changes in the rent laws made by the Housing Stability and Tenant Protection Act (HSTPA) of 2019 regarding Individual Apartment Improvements (IAIs).
>
> For IAI installations that commenced on or after the passage of HSTPA on June 14, 2019, owners are required to file a Notification Form, related before and after photographs and a Tenant's Informed Consent Form, described in this document.
>
> This Operational Bulletin provides guidance to owners and tenants of apartments subject to rent control and rent stabilization both inside and outside of New York City on how DHCR will review the installation of IAIs when a complaint of rent overcharge has been filed or there is an investigation with respect to IAI installations.
>
> Pursuant to Rent Stabilization Code Section 2522.4 (a)(1), Tenant Protection Regulations Section 2502.4 (a) (4), NYC Rent and Evictions Regulations Section 2202.4 and NYS Rent and Eviction Regulations Section 2102.3, an owner is entitled to a rent increase for an IAI when there has been a substantial increase of dwelling space, an increase in the services provided by the owner, improvements installed in the housing accommodation, or new furniture or furnishings provided by the owner. This Operational Bulletin provides the criteria which will be used when assessing an owner's substantiation for IAI expenditures which is submitted to DHCR in an overcharge proceeding and other investigations. Pursuant to HSTPA, for verifiable IAI rent increases that take effect on or after June 14, 2019, in a building that contains 35 or fewer apartments, the permitted increase in the legal regulated rent is 1/168th of the total cost incurred by an owner. For IAI increases in a building with more than 35 apartments, the permitted increase is 1/180th of the total cost of the improvements. Such rent increases must be removed from the legal regulated rent thirty years from the date the increase became effective, inclusive of any increases granted by the applicable rent guidelines board. IAI increases are based on the total substantiated cost of an improvement including installation cost but excluding finance charges and excluding any costs exceeding reasonable costs as established by DHCR. Owners are limited to an aggregate cost of $15,000 (fifteen thousand dollars) that may be expended on no more than three separate individual apartment improvements in a fifteen-year period.
>
> If the IAI was completed prior to June 14, 2019 and the rent increase for that IAI became effective prior to June 14, 2019, the IAI is governed by the law in place prior to the enactment of HSTPA. For IAIs where the work was completed after June 14, 2019 and the rent increase for that IAI was effective after June 14, 2019, the rent increase is based on the new HSTPA amortization formulas and related limitations. If an IAI was completed prior to June 14, 2019, but the rent increase for that IAI did not become effective until after June 14, 2019 the IAI rent increase is based on the new HSTPA amortization formulas but the IAI does not count toward the $15,000 limitation and/or the three installations in a 15-year period limitation. The following applies to leases offered or entered into prior to June 14, 2019 but commencing effective on June 14, 2019 or

> thereafter that used the old amortization formula. Owners must within 150 days of this Operational Bulletin provide their tenant with a revised lease as well as any refund required based on any needed recalculation of the amortization formula and the legal rent.

Id., exhibit B (as revised, February 3, 2020). Landlord also objects to "Fact Sheet # 26" ("Guide to Rent Increases for Rent Stabilized Apartments"), which provides, in part, as follows:

> When an owner installs a new appliance or makes an improvement to an apartment the owner may be entitled to an IAI rent increase. Tenant written consent for the improvement and rent increase is only required if the apartment is occupied by a tenant at the time of the improvement. Written consent is not required for a vacant apartment.
>
> In buildings with 35 units or less, the amount the rent can be increased for an IAI is limited to 1/168th of the cost of the improvement. In buildings with more than 35 units, the amount the rent can be increased for an IAI is limited to 1/180th of the cost of the improvement.
>
> No more than three IAI increases can be collected in a 15-year period and the total cost of the improvements eligible for a rent increase calculation cannot exceed $15,000. Work must be done by a licensed contractor and there is a prohibition on common ownership between the contractor and the owner. The apartment must be free and clear of any outstanding hazardous and immediately hazardous violations. The written consent provided by the tenant in occupancy must be on a DHCR form. A translated version in the top 6 languages spoken other than English will be made available for review on DHCR's website. Owners are required to maintain supporting documentation and photographs for all IAI installations, which commencing June 14, 2020 will be submitted to and stored by DHCR in an electronic format. The IAI rent increase for improvements collected after June 14, 2019 is temporary and must be removed from the rent in 30 years, and the legal rent must be adjusted at that time for guideline increases that were previously compounded on a rent that included the IAI.
>
> The DHCR Lease Rider included with a vacancy lease must notify the tenant of the right to request from the owner by certified mail Individual Apartment Improvements (IAIs) supporting documentation at the time the lease is offered or within 60 days of the execution of the lease. The owner shall provide such documentation within 30 days of that request in person or by certified mail. A tenant who is not provided with that documentation upon demand may file form RA-90 'Tenant's Complaint of Owner's Failure to Renew Lease and/or Failure to Furnish a copy of a Signed Lease' to receive a DHCR Order that directs the furnishing of the IAI supporting documentation.
>
> IAI rent increases cannot be collected if a DHCR order reducing rent for decreased services is in effect and has an earlier effective date. It can be collected prospectively on the effective date of a DHCR order restoring the rent.

Id., exhibit A.

The DHCR has not issued any determinations on landlord's IAI increases for apartment 1M. Landlord commenced this action on October 4, 2020 by order to show cause with an annexed complaint that sets forth causes of action for: 1) a declaratory judgment that Operational Bulletin 2016-1 and Fact Sheet # 26 are invalid because they seek to apply the HSTPA retroactively; 2) a declaratory judgment that Operational Bulletin 2016-1 and Fact Sheet # 26 are unconstitutional as applied to the IAI rent increases landlord hopes to secure; and 3) a permanent injunction enjoining defendants from applying the HSTPA changes to RSL § 26-511(c)(13) retroactively to IAIs commenced prior to June 14, 20219 (motion sequence number 001). *See* verified complaint, ¶¶ 25-67. Rather than answer, the DHCR filed a motion to dismiss landlord's complaint (motion sequence number 002).

DISCUSSION

RSC § 2527.11 ("Advisory opinions and Operational Bulletins") provides as follows:

> (a) *The DHCR may render advisory opinions as to the DHCR's interpretation of the RSL, this Code or procedures, on the DHCR's own initiative* or at the request of a party.
> "(b) In addition to the advisory opinion issued under subdivision (a) of this section, the DHCR may take such other required and appropriate action as it deems necessary for the timely implementation of the RSL and this Code, and for the preservation of regulated rental housing in accordance with section 2520.3 of this Title. *Such other action may include the issuance and updating of schedules, forms, instructions, and the official interpretative opinions and explanatory statements of general policy of the commissioner, including operational bulletins, with respect to the RSL and this Code.*

9 NYCRR § 2527.11 (emphasis supplied). Further, the post-HSTPA version of RSL § 26-511.1 (a) specifically provides that the DHCR "shall promulgate rules and regulations applicable to all rent regulated units" which govern certain "major capital improvements and individual apartment improvements in rent regulated units." Therefore, landlord's assertion that DHCR promulgated Operational Bulletin 2016-1 and Fact Sheet # 26 without authority is without merit

because they were authorized pursuant to RSL § 26-511.1 and RSC § 2527.11. *See* plaintiff's reply mem at 10-11.

In the context of an Article 78 proceeding, DHCR Operational Bulletins may be reviewed under the "error of law" standard set forth in CPLR 7803 (3). *See 87th Street Sherry Associates, LLC v New York State Div. of Housing and Community Renewal*, 2020 NY Slip Op 34061[U] [Sup Ct, NY County 2020]). Landlord asserts that *87th Street Sherry Associates* "is not binding on the court," and it challenges the legality of Operational Bulletin 2016-1 and Fact Sheet # 26 via claims for declaratory relief. *See* verified complaint, ¶¶ 25-63. Therefore, only the viability of landlord's declaratory judgment and injunctive relief claims will be analyzed and not whether its claims survive under a CPLR Article 78 analysis.

Pursuant to CPLR 3001, declaratory judgment is a discretionary remedy which may be granted "as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed." *See e.g. Jenkins v State of N.Y., Div. of Hous. & Community Renewal*, 264 AD2d 681 (1st Dept 1999). The Court of Appeals has long recognized that

> It is basic that a court should decline to apply the discretionary relief of declaratory judgment to administrative determinations unless these arise in the context of a controversy "ripe" for judicial resolution. The ripeness doctrine and the related rule that there must be an actual controversy between genuine disputants with a stake in the outcome serve the same purpose: to conserve judicial machinery for problems which are real and present or imminent, not to squander it on abstract or hypothetical or remote problems.

Church of St. Paul & St. Andrew v Barwick, 67 NY2d 510, 518 (1986) (internal citations and quotation marks omitted); *see also Matter of Town of Riverhead v Central Pine Barrens Joint Planning & Policy Commn.*, 71 AD3d 679, 680-681 (2d Dept 2010), quoting *Self-Insurer's Assn. v State Indus. Commn.*, 224 NY 13, 16 (1918) ("'The function of the courts is to determine

controversies between litigants. They do not give advisory opinions. The giving of such opinions is not the exercise of the judicial function.'"). As a result, New York law requires that a court considering a request for declaratory relief perform a two-part analysis, "first, to determine whether the issues presented are 'appropriate for judicial resolution' and second, to 'assess the hardship to the parties if judicial relief is denied.'" *Matter of Committee to Save Beacon Theater v City of New York*, 146 AD2d 397, 402-403 (1st Dept 1989), quoting *Church of St. Paul & St.Andrew v Barwick*, 67 NY2d at 519.

The "appropriateness inquiry" is related to the "ripeness doctrine," and "looks to whether the administrative action is final, that is, whether the agency has arrived at a 'definitive position' on the issue inflicting 'an actual, concrete injury' or whether the action relies on factors as yet unknown." *Matter of Committee to Save Beacon Theater v City of New York*, 146 AD2d at 403, citing *Church of St. Paul & St. Andrew v Barwick*, 67 NY2d at 519; *see also Matter of Ranco Sand & Stone Corp. v Vecchio*, 27 NY3d 92, 98 (2016). "'Even if an administrative action is final . . . it will still be "inappropriate" for judicial review and, hence, unripe, if the determination of the legal controversy involves the resolution of factual issues . . . or consideration of extraneous problems or factors beyond the legal question presented.'" *Matter of Hospital Assn. of N.Y. State v Axelrod*, 164 AD2d 518, 525 (3d Dept 1990), quoting *Church of St. Paul & St. Andrew v Barwick*, 67 NY2d at 519. Here, landlord's first cause of action for declaratory relief fails the "appropriateness inquiry."

Landlord's first cause of action seeks a declaration "that the HSTPA amendment to RSL §26-511 (c) (13) is not retroactive insofar as Plaintiff and the IAIs to the Apartment are concerned." *See* verified complaint, ¶¶ 25-53. Defendants initially argue that landlord "cannot establish that the issues are appropriate for judicial resolution when no administrative action has

taken place." *See* defendants' mem of law at 9-14. They observe that the "DHCR has not yet acted and may not act until a tenant elects to file a complaint with the agency challenging the IAI installation." *Id*. at 11. They then cite *Matter of Committee to Save Beacon Theater v City of New York* for the proposition that landlord's claims fail the ripeness test because it would be "inappropriate" for the court to review them in the absence of a final agency determination. 146 AD2d at 402-404. However, defendants' observation undercuts their argument. It is true that the DHCR has not issued any determinations regarding the IAI work to apartment 1M. However, it is not a landlord's actions that trigger review of IAI increases at DHCR rather the onus is on tenants to file an administrative complaint with DHCR challenging an IAI increase. Defendants' mem of law at 3-4. Here, because apartment 1M is currently vacant and consequently no tenant has filed an IAI challenge with the DHCR, there is no agency action pending. Indeed, there may well never be any agency action commenced. For as long as that circumstance persists, the law does not oblige landlord to keep "waiting for Godot." Therefore, the question of administrative finality which is normally part of "ripeness" review is inapplicable to the facts of this case and that argument as a basis for dismissal is rejected. This does not however end the inquiry.

The second prong of a "ripeness" inquiry requires a reviewing court to "'assess the hardship to the parties if judicial relief is denied.'" *Matter of Committee to Save Beacon Theater v City of New York*, 146 AD2d at 402-403, quoting *Church of St. Paul & St.Andrew v Barwick*, 67 NY2d at 519. Here, landlord asserts that the "Court of Appeals in *Regina Metropolitan* has determined that amendments to the HSTPA must not be applied retroactively where application of those amendments destroys vested rights or settled expectations of the parties that accrued before the enactment of the HSTPA." *See* plaintiff's mem of law at 12-13. Landlord then argues

that it "entered into an enforceable contract to perform a minimum of $99,580.00 in IAIs to the Apartment," and that it "may not be constitutionally deprived of its pre-HSTPA vested rights and settled expectations" to collect a higher rent resulting from that IAI work. *Id.*

The Court of Appeals in *Regina Metropolitan* was not merely addressing the retroactive application of how future rent increases may be calculated, but rather whether the HSTPA amendments that "extend the statute of limitations [for rent overcharge claims], alter the method for determining the legal regulated rent for overcharge purposes and substantially expand the nature and scope of owner liability in rent overcharge cases . . . [should be applied] to appeals that were pending at the time of the HSTPA's enactment . . ." *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 35 NY3d 332, 349 (2020). A close reading of the "retroactivity" portion of the *Regina Metropolitan* holding makes clear that landlord does *not* possess a "vested right" or "settled interest" to collect the higher rent that it calculated under the pre-HSTPA formula. The Court of Appeals specifically stated that "'[t]he Constitution merely mandates that a landlord earn a reasonable return,' and no party doing business in a regulated environment like the New York City rental market can expect the RSL to remain static, as we have repeatedly made clear in cases challenging prospective legislation altering the formula for rent increases under prior schemes." *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 35 NY3d 332, 369 (2020), quoting *I. L. F. Y. Co. v City Rent & Rehabilitation Admin.*, 11 NY2d 480, 492 (1962).

The HSTPA-amended version of RSL §26-511 (c) (13) "alters the formula" for rent increases that may be collected for IAI work but those changes to the formula are to be expected as an inevitable consequence of doing business in the New York City rental market and landlords do not have a protected interest in a right to collect a rent increases for IAIs pursuant to one

formula as opposed to another. *Id.*; *cf Schutt v DHCR*, 278 AD2d 58, (1st Dept 2000) (holding rent regulation scheme does not confer vested rights). That is what landlord seeks to do here contrary to the Court of Appeals holdings that it does not have a protected right to do so. Since landlord does not have a vested interest in the pre-HSTPA IAI rental increase formula, it will not suffer a "hardship" from the court's refusal to entertain its challenge to RSL §26-511 (c) (13). Accordingly, landlord's first cause of action fails the second prong of the "ripeness" test and therefore, it will be dismissed for that reason.

Landlord's second cause of action seeks a declaration "that the HSTPA amendment to RSL §26-511 (c) (13) is unconstitutional, as applied, with respect to the IAIs that Plaintiff commenced prior to the enactment of the HSTPA." *See* verified complaint, ¶¶ 54-65. The Court of Appeals' jurisprudence on requests for declaratory relief holds that:

> The second part of the inquiry requires an evaluation of the hardship to the parties of withholding [or granting] court consideration. The effect on the administrative agency and its program and the need for judicial economy should be taken into account as well as the degree of hardship to the challenging party. Essentially, this inquiry, from the standpoint of the challenging party, entails an examination of the certainty and effect of the harm claimed to be caused by the administrative action: whether it is sufficiently direct and immediate and whether the action's effects [have been] felt in a concrete way. If the anticipated harm is insignificant, remote or contingent the controversy is not ripe.

Church of St. Paul & St. Andrew v Barwick, 67 NY2d at 520 (internal citations and quotation marks omitted). Here, landlord specifically avers that "[i]f the [statute] were improperly applied retroactively to the IAIs herein, it would result in the elimination of the *constitutionally protected economic benefits and antecedent rights* that Petitioner would have realized." *Id.*, ¶ 57 (emphasis provided). However, the complaint does not identify which portion of either the U.S or the New York State Constitutions protect these alleged "economic benefits and antecedent rights." Landlord's memoranda of law are similarly vague, making passing references to the "due process" and "substantive due process" analysis that the Court of Appeals set out in *Regina*

Metropolitan. *See* petitioner's mem of law at 8-9; petitioner's reply mem at 3-9. Landlord's argument - that unspecified constitutional protections attach to the "economic benefits and antecedent rights" that it might have realized under the regulations derived from the pre-HSTPA version of RSL §26-511 (c) (13) - is unpersuasive. In its initial decision in *Dugan v London Terrace Gardens, L.P.* (*Dugan* I), the Appellate Division, First Department, reiterated the long-standing general rule that:

> . . . absent deliberate or negligent delay, '[w]here a statute has been amended during the pendency of a proceeding, the application of that amended statute to the pending proceeding is appropriate and poses no constitutional problem.'

177 AD3d 1, 10 (1st Dept 2019), quoting *Matter of St. Vincent's Hosp. & Med. Ctr. Of N.Y. v New York State Div. of Hous. & Community Renewal*, 109 AD2d 711, 712 (1st Dept 1985), *affd* 66 NY2d 959 (1985). The First Department later recalled and vacated a portion of its initial decision following the Court of Appeals' holding in *Regina Metropolitan*. *Dugan v London Terrace Gardens, L.P.*, 186 AD3d 12 (1st Dept 2020) (*Dugan* II). However, it did so because *Dugan* I had upheld the DHCR's application of rent overcharge regulations derived from RSL §26-516, a statute that had been amended by the HSTPA. In *Regina Metropolitan* the Court of Appeals held that Part F of the HSTPA (which included the amendment to RSL §26-516) could *not* be applied retroactively since doing so would violate principles of "substantive due process." 35 NY3d 375-388. As a result, the First Department issued *Dugan* II, in which it recalled *Dugan* I and:

> vacate[d] that part of the [trial court] order setting forth the methodology for calculating the legal rents and the amount of any overcharges, and otherwise affirmed [it], without costs, and [ordered] the matter remanded for the [trial] court, after further submissions from the parties, to set forth a methodology for calculating rents and any overcharges, and the amount of use and occupancy, consistent with the Rent Stabilization Law as interpreted by the Court of Appeals in *Regina*; . . .

186 AD3d at 21. *Dugan* II "otherwise affirmed" *Dugan* I; which affirmance extends to the court's recognition of the general rule that:

> . . . absent deliberate or negligent delay, '[w]here a statute has been amended during the pendency of a proceeding, the application of that amended statute to the pending proceeding is appropriate and poses no constitutional problem.

177 AD3d at 10. The holding of *Dugan* II simply acknowledged that *Regina Metropolitan* had identified an exception to the general rule enunciated in *Dugan* I which applied to Part F of the HSTPA. Neither *Dugan* II nor *Regina Metropolitan* abrogated that general rule any further. Indeed, the Court of Appeals in *Regina Metropolitan* specifically observed that "[e]ach of the HSTPA's fifteen parts contains its own effective date provision," and that "[t]he legislation is almost entirely forward-looking" particularly including Part K, which contains the amendment to RSL §26-511 (c) (13) at issue here. *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 35 NY3d at 373. This holding invalidates landlord's argument that the DHCR's retroactive application of HSTPA, Part K, to its IAI increase for apartment 1M would somehow violate its right to due process. Landlord's reliance on the First Department's recent decision in *Matter of Harris v Israel* is misplaced, since that decision dealt with Part I of the HSTPA another section of the HSTPA that, like Part F in *Regina Metropolitan*, "impairs rights owners possessed in the past, increasing their liability for past conduct and imposing new duties with respect to transactions already completed". 191 AD3d 468 (1st Dept 2021). Under the provision landlord is challenging, Part K, it is not facing increased liability and new duties but rather merely a diminished return on its investment in the improvements to apartment 1M. Consequently, landlord has failed to support its constitutionality argument, and this failure also constitutes a failure to establish "the certainty and effect of the harm claimed to be caused by the administrative action," since the absence of a constitutional violation means that the "claimed

harm" is also non-existent. *Matter of Committee to Save Beacon Theater v City of New York*, 146 AD2d at 403. Therefore, landlord's second cause of action fails to satisfy the second prong of the test for the viability of declaratory judgment claims that the Court of Appeals promulgated in *Church of St. Paul & St. Andrew v Barwick*, 67 NY2d at 519. Accordingly, landlord's second cause of action for declaratory relief and third cause of action for injunctive relief fail, as a matter of law, and will be dismissed.

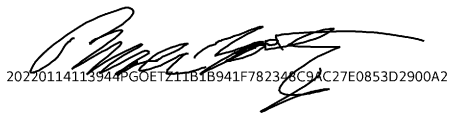
Accordingly, having determined that none of landlord's three causes of action can stand, as a matter of law, respondents' cross motion to dismiss them (and the entire complaint), pursuant to CPLR 3211 (a) (7), for failure to state claims for relief is granted.

DECISION

ACCORDINGLY, for the foregoing reasons it is hereby

ORDERED that the order to show cause of plaintiff 300 Wadsworth, LLC (motion sequence number 001) is denied; and it is further

ORDERED that the motion, pursuant to CPLR 3211, of the defendants New York State Division of Housing and Community Renewal, and Ruthanne Visnauskas, in her official capacity as Commissioner of New York State Homes and Community Renewal (motion sequence number 002) is granted, and this proceeding is dismissed.



1/14/2022
DATE

PAUL A. GOETZ, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[X]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE