

**Matter of Clark Wilson Inc. v State of N.Y. Div. of
Hous. & Community Renewal**

2022 NY Slip Op 32182(U)

June 27, 2022

Supreme Court, Kings County

Docket Number: Index No. 515780/2020

Judge: Carl J. Landicino

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At an IAS Term, Part 81 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 the 27th day of June, 2022.

PRESENT:

CARL J. LANDICINO, J.S.C.

-----X
In the Matter of the Reconsideration Application of

CLARK WILSON INC.

Petitioner,

Index No.: 515780/2020

for Judgment under Article 78 of the Civil Practice Law and Rules setting aside the certificate of eviction terminating Petitioner's tenancy

DECISION AND ORDER

-against-

STATE OF NEW YORK DIVISION OF HOUSING AND COMMUNITY RENEWAL,

Motions Sequence #1, #2

Respondent(s),
-----X

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

Papers Numbered (NYSCEF)

Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed	1-10, 13-18,
Opposing Affidavits (Affirmations)	23-24,
Affidavit (Affirmation) in Reply	25-31

After a review of the papers and oral argument the Court finds as follows:

This is an action brought by Notice of Petition and Petition by Petitioner Clark Wilson, Inc. (hereinafter "the Petitioner") seeking to annul and vacate the final administrative determination made by the New York State Division of Housing and Community Renewal ("Respondent" or "DCHR") in its Order and Opinion, dated February 12, 2020 (the "2020 Order") whereby Petitioner's application for reconsideration of DHCR's February 4, 2016 Order (the "2016 Order") was denied. The Petitioner contends that the 2020 Order was in error given that the Hon. Peter P. Sweeney, J.S.C. granted summary judgment in the Petitioner's favor in a related action (Index No. 12230/2015). This Decision/Order was

dated October 10, 2018 and found that the tenants were not subject to the rent stabilization code (“RSC”). This was followed by a letter dated January 16, 2019 requesting reconsideration of the prior DHCR 2016 Order. As a result, the Petitioner argues this Court should vacate the Respondent’s Order and Opinion dated February 12, 2020 (motion sequence #1).

Respondent moves (motion sequence #2) for an Order dismissing the Petition pursuant CPLR Section 3211(a)(5) on the ground that it was filed after the statute of limitations had expired. Specifically, the Respondent contends that the Petition is untimely as the underlying decision issued on February 4, 2016 was the final decision in this matter. The Respondent argues that on January 16, 2019 the Owner filed a Request for Reconsideration to reopen the February 4, 2016 RA Order, which was denied on February 12, 2020.

In opposition, the Petitioner contends that its request for reconsideration is timely as it is based on new material related to fraud, illegality and/or irregularity in vital matters. Specifically, the Petitioner contends that the 2016 Order should be considered under both 9 NYCRR § 2527 and DHCR Policy Statement 91-5 given that the Decision/Order by the Hon. Peter P. Sweeney, J.S.C. dated October 10, 2018 purportedly found that the tenants were not subject to rent stabilization. Petitioner argues that this finding by Justice Sweeney, that was determined after the determination by DHCR, raises an issue as to whether the prior determination was contrary to Justice Sweeney’s holding and was therefore not pursuant to applicable law. Petitioner reasons that insofar as its application relates to new material it is not time barred. The Petitioner also contends, in the alternative, that the instant application was otherwise timely as a result of Executive Order No. 202.8 (9 NYCRR 8.202.8) and subsequent executive orders.

Generally, pursuant to Rent Stabilization Law [Administrative Code of City of NY] 26-516(d), “[a]ny proceeding pursuant to article seventy-eight of the civil practice law and rules seeking review of any action pursuant to this chapter shall be brought within sixty days” after the determination is rendered.

See *Matter of Hudson House, LLC v. New York State Div. of Hous. & Community Renewal*, 89 A.D.3d 1084, 933 N.Y.S.2d 592 [2d Dept 2011]; see also *77 Ave. D Assocs. v. State Div. of Hous. & Community Renewal*, 249 A.D.2d 113, 670 N.Y.S.2d 106 [1st Dept 1998]. A determination is final and binding when the agency has “reached a definitive position on the issue that inflicts actual, concrete injury and second, the injury inflicted may not be prevented or significantly ameliorated by further administrative action or by steps available to the complaining party.” *Best Payphones, Inc. v. Dep’t of Info. Tech. & Telecommunications of City of New York*, 5 N.Y.3d 30, 34, 832 N.E.2d 38, 40 [2005]. However, in the instant action, Justice Sweeney’s Decision/Order granting Petitioner summary judgment, and the recognition of this Decision/Order by Respondent as indicated by the February 24, 2021 RA Order and the subsequent March 5, 2021 RA Order Amending February 24, 2021 RA Order (NYSCEF Docs. 29 and 31), indicate that this matter was subject to reconsideration. In the event that DHCR believes that reconsideration is not appropriate it is required to explain why. See *Riverso v. New York State Dep’t of Env’t Conservation*, 125 A.D.3d 974, 976, 3 N.Y.S.3d 414, 417 [2d Dept 2015]; *Delbello v. New York City Transit Auth.*, 151 AD2d 479, 480, 542 N.Y.S.2d 270 [2d Dept 1989].

The Court finds that the matter should be remanded to Respondent DHCR to review and determine whether the 2016 Order should be reconsidered under both 9 NYCRR § 2527 and DHCR Policy Statement 91-5 given that the Decision/Order by Justice Sweeney, found that the tenants were not subject to rent stabilization and the 2016 Order was arguably not pursuant to applicable law. Moreover, the Petition is not time barred.¹ The Respondent’s February 4, 2016 “Order Reducing Rents for Rent Stabilized Tenants”

¹ The instant application is timely pursuant to Executive Order No. 202.8 (9 NYCRR 8.202.8) and the subsequent executive orders. “Governor Cuomo later issued a series of nine subsequent executive orders that extended the suspension or tolling period, eventually through November 3, 2020.” *Brash v. Richards*, 195 AD3d 582, 583, 149 N.Y.S.3d 560, 562 [2d Dept 2021]. The fact that Executive Order No. 202.8 of March 20, 2020 was issued about six weeks after DHCR’s denial of Petitioner’s application for reconsideration and the toll of the statute of limitations lasted until November 3, 2020, the Petitioner’s instant petition was timely commenced on August 26, 2020. Moreover, as a result of this Court’s decision to have the DHCR re-consider its Order dated February 12,

was issued well before Justice Sweeney’s Decision/Order dated October 10, 2018. The determination made by Justice Sweeney is significant and should be addressed by the Respondent directly in relation to both 9 NYCRR § 2527 and DHCR Policy Statement 91-5. *See Siegel v. New York State Div. of Hous. & Cmty. Renewal*, 173 A.D.3d 408, 409, 99 N.Y.S.3d 627 [1st Dept 2019]; *Weinreb Mgmt. v. New York State Div. of Hous. & Cmty. Renewal*, 297 A.D.2d 221, 222, 746 N.Y.S.2d 153, 155 [1st Dept 2002]. As stated above, the February 24, 2021 RA Order and the subsequent March 5, 2021 RA Order Amending February 24, 2021 RA Order (NYSCEF Docs. 29 and 31) were apparently a product of reconsideration of the February 4, 2016 Order. However, it appears to have only related to one tenant (Apartment 5A). The matter should be remanded so that the Respondent re-considers the Petitioner’s application as it applies to the remaining tenants as well. To the extent that Respondent denies reconsideration it must explain its reasoning in light of this holding.

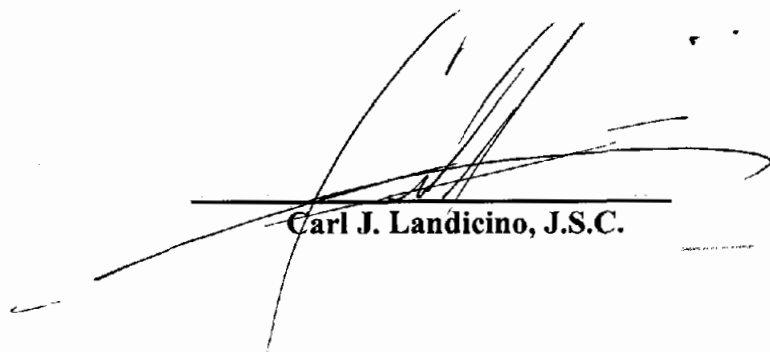
Based on the foregoing, it is hereby ORDERED as follows:

The Petition (Motion Sequence #1) is granted to the extent that the matter is remanded to DHCR for re-consideration.

The Respondent’s cross-motion (motion sequence #2) to dismiss is denied.

The foregoing constitutes the Decision and Order of the Court.

ENTER:



Carl J. Landicino, J.S.C.

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2020, pursuant to 9 NYCRR § 2527 and DHCR Policy Statement 91-5, the Respondent’s motion (motion sequence #2) is denied.