

**LL 410 E. 78th St. LLC v Division of Hous. &
Community Renewal**

2022 NY Slip Op 34988(U)

March 31, 2022

Supreme Court, New York County

Docket Number: Index No. 159153/2021

Judge: Laurence Love

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

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LL 410 EAST 78TH STREET LLC

Petitioner,

- v -

DIVISION OF HOUSING AND COMMUNITY RENEWAL,

Respondent.

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INDEX NO. 159153/2021

MOTION DATE 01/10/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for RESETTLE ORDER.

Upon the foregoing documents, it is

The following reads on the Notice of Petition to annul the Order and Opinion of Respondent involving the subject premises 410 East 78th Street, New York, New York 10025, on the basis that the determination of the Division of Housing and Community Renewals' Decision as arbitrary and capricious and without rational basis. A Verified Answer was submitted on January 3, 2022.

A Petition states, “[t]he administrative proceeding was commenced by the Petitioner who filed an application with the DHCR dated July 16, 2019, to correct the mistaken registrations of the subject apartment. The apartment had been deregulated in 2002 based upon high rent/vacancy. Mistakenly, however, the Petitioner’s staff filed registrations with the DHCR in 2016 and 2017 and erroneously listing the apartment as ‘temporarily exempt’ from regulation due to ‘owner occupied/employee.’ To avoid future confusion the Petitioner filed an application with the DHCR to withdraw the erroneous registrations and correct the agency rent registration records to make clear that the subject apartment was not subject to regulation in 2016 and 2017.

Although there is no dispute that registrations were clearly filed erroneously in 2016 and 2017 the DHCR's Rent Administrator issued an Order dated August 1, 2019, denying the Petitioner's request to withdraw the registrations and correct the DHCR's records. The Petitioner filed an administrative appeal. On August 11, 2021, the DHCR issued its determination denying the Petitioner's administrative appeal" (see NYSCEF Doc. No. 1 Par. 3, second 3, 5 – 7).

The Division of Housing and Community Renewal Office of Rent Administration made an Order and Opinion Denying Petition for Administrative Review (see NYSCEF Doc. No. 17). The Order states in pertinent part, "[t]he Commissioner finds that the Rent Administrator correctly denied the owner's application to amend the Annual Registrations Summaries for the years 2016 and 2017 as registrations can only be amended for ministerial issues, such as clerical or typographical errors, as indicated by the Rent Administrator's order and in accordance with Section 2528.3(c) of the Rent Stabilization Code ("RSC").

The proper standard for judicial review of an administrative determination is whether it was arbitrary or capricious or was without a rational basis or warrant in the administrative record (see *Greystone Management Corp. v. Conciliation and Appeals Board of the City of New York*, 94 A.D.2d 614 [1st Dept. 1983]). Where a question involves the application of a broad statutory provision, the construction placed on the statute and regulations by the agency with responsibility for their administration is entitled to great weight (see *Salvati v. Eimicke*, 72 N.Y.2d 784 [1988]).

Through a review of the documents submitted, the Commissioner found that the correction requested by the Petitioner was substantive rather than ministerial, and thus unavailable in the context of a registration amendment proceeding. The Commissioner rationally applied the rules and the decision was rational consistent with precedent.

ORDERED that the Petition to annul the Order and Opinion of Respondent is DENIED
in its entirety.

3/31/2022
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE