

**Miller v State of N.Y. Div. of Hous. &  
Community Renewal**

2023 NY Slip Op 31888(U)

June 5, 2023

Supreme Court, New York County

Docket Number: Index No. 160605/2022

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14**

*Justice*

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ROBERT MILLER,

Petitioner,

- v -

STATE OF NEW YORK DIVISION OF HOUSING AND  
COMMUNITY RENEWAL, CHELSEA HOTEL OWNER LLC

Respondents.

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INDEX NO. 160605/2022

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38

were read on this motion to/for Article 78.

The petition to annul a portion of a decision by respondent the State of New York Division of Housing and Community Renewal (“DHCR”) is decided as described below.

**Background**

This Article 78 arises out of a decision by DHCR that found that an apartment where petitioner resides is subject to rent stabilization. The Court explored the rationality of the substance of that decision in a related Index Number (160643/2022).

In this proceeding, petitioner seeks to annul the portion of that decision that declined to award petitioner treble damages or legal fees. DCHR stated that “The Commissioner is of the opinion that a determination as to the amount of overcharges, if any, should be made by the Civil Court as the parties have a nonpayment proceeding pending in the Civil Court of the City of New York, Housing Part F (Index No. L&T 057993/2018). Further, the Commissioner finds that there

was no proof of payments provided during the Rent Administrator's proceeding, nor on appeal, to substantiate what the tenant paid during their tenancy” (NYSCEF Doc. No. 3 at 5).

DHCR claims that it rationally decided that it did not have sufficient information to make such a calculation. It explains that when it calculates damages, it includes a calculation chart and other documents to substantiate its findings. But, here, it could not fill out those forms because petitioner did not show what he paid, such as rental checks or bank statements. DHCR observes that while there was some information contained in the owner (respondent Chelsea Hotel Owner, LLC)’s folio records, that information ended at the beginning of 2009. DHCR also observes that the ongoing landlord-tenant proceeding raises questions about what has actually been paid by petitioner.

The Owner insists that petitioner is not entitled to treble damages. It argues that treble damages are permissible where DHCR has found that an overcharge was collected and where the landlord’s conduct was willful. The Owner questions how treble damages could be appropriate where petitioner did not meet his burden to show what he paid, and therefore, what was collected. It also argues that legal fees are discretionary and the statute provides that these fees “may” be awarded. The Owner also makes arguments about the merits of the DHCR’s decision regarding the rent stabilization status of the unit.

Petitioner insists that DHCR’s opposition makes clear that the order provides for an award of treble damages and that it is part of the calculation to be done in Housing Court. He also argues that legal fees were sought before the Rent Administrator and that he should be awarded those here.

## Discussion

As an initial matter, the Court observes that DHCR's opposition papers suggest that the subject decision awarded treble damages and that it is to be determined in Housing Court. But the actual underlying decision says different. Footnote nine states that "The Commissioner finds that given the specific facts of this case, treble damages are not warranted" (NYSCEF Doc. No. 3, n 9). No rational interpretation of that assertion insists that the Housing Court should award treble damages.

And the Court sees no reason to disturb that finding. As is clear in DHCR's decision, petitioner did not submit any information to allow a calculation of any overcharges. Of course, treble damages cannot be awarded where DCHR is unable to calculate the overcharge at all (a requirement for treble damages) and the exact amount of the overcharge certainly relates to the willfulness finding (another requirement). Petitioner does not argue that he presented the relevant information to DHCR and it was ignored or even that he has it now and wants a remand to DHCR.

The question of legal fees compels a different outcome. DHCR's decision noted that petitioner had requested legal fees (NYSCEF Doc. No. 3 at 2) but DHCR did not make a specific finding about it. The Court could, theoretically, conclude that DHCR denied that request *sub silento*. But, given the fact that the Court must consider the rationality for DHCR's decision, the Court cannot simply assume DHCR has a rational basis for this decision.


"Notably, a fundamental principle of administrative law long accepted limits judicial review of an administrative determination solely to the grounds invoked by the respondent, and if those grounds are insufficient or improper, the court is powerless to sanction the determination by substituting what it deems a more appropriate or proper basis. Consequently, neither Supreme

Court nor this Court may search the record for a rational basis to support respondent's determination, or substitute its judgment for that of respondent” (*Matter of Figel v Dwyer*, 75 AD3d 802, 804-05, 907 NYS2d 75 [3d Dept 2010] [internal quotations and citations omitted]).

Therefore, the Court finds that the best course of action is to remand this decision to DHCR only for the purpose of making a finding about legal fees.

Accordingly, it is hereby

ADJUDGED the petition is denied (without costs or disbursements to any party) to the extent it sought to vacate the portion that denied petitioner’s request for treble damages and the second cause of action concerning legal fees is remanded so that DHCR can make a determination on this issue.

<u>6/5/2023</u> DATE	 ARLENE P. BLUTH, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input checked="" type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE