

**Matter of Helm v New York State Div. of Hous. &
Community Renewal**

2023 NY Slip Op 34388(U)

December 13, 2023

Supreme Court, New York County

Docket Number: Index No. 152368/2023

Judge: John J. Kelley

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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. JOHN J. KELLEY **PART** **56M**

Justice

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In the Matter of
FREDERICK HELM,

Petitioner/Cross-Respondent,

- v -

NEW YORK STATE DIVISION OF HOUSING AND
COMMUNITY RENEWAL,

Respondent,

And

DAVID ELLIS REAL ESTATE, L.P.,

Respondent/Cross-Petitioner.

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INDEX NO. 152368/2023
MOTION DATE 08/08/2023
MOTION SEQ. NO. 001

**DECISION, ORDER, and
JUDGMENT**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 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, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

In this consolidated CPLR article 78 proceeding, the petitioner/cross-respondent, Frederick Helm (hereinafter the tenant), petitions for judicial review of so much of a January 18, 2023 New York State Division of Housing and Community Renewal (DHCR) determination as denied his Petition for Administrative Review (PAR) of the Rent Administrator’s (RA’s) September 22, 2022 determinations under DHCR Docket Nos. KQ410023RT and KQ410017RO, as failed to determine the legal rent applicable to Helm’s allegedly rent-stabilized apartment or to calculate any rent overcharge. Helm’s landlord, the respondent/cross-petitioner, David Ellis Real Estate, L.P. (hereinafter the landlord), cross-petitions for judicial review of so much of the same DHCR determination as denied its PAR of the RA’s determinations that the subject apartment is subject to rent stabilization and that it must offer the tenant a rent-stabilized

renewal lease. The DHCR and the landlord answer and oppose the tenant's petition, and the DHCR answers and opposes the landlord's cross petition. The tenant's petition is deemed to include a cause of action seeking review in the nature of mandamus to compel, and thereupon is denied, the landlord's cross petition is denied, and the consolidated proceeding is dismissed.

The tenant resides in Apartment 4F at 19 East 16th Street, New York, New York 10003, which is a building owned by the landlord. On August 7, 2013, the tenant filed an administrative Tenant's Complaint of Owner's Failure to Renew Lease with the DHCR, alleging that his apartment should be rent-stabilized, and that the landlord unlawfully failed to offer him a rent-stabilized renewal lease, as required for rent-stabilized apartments. He thus requested the DHCR to find that the apartment was rent stabilized, and compel the landlord to offer him a rent-stabilized renewal lease. The DHCR assigned docket number BT 410024 RV to that administrative proceeding. The tenant, however, did not file a formal rent overcharge complaint with the DHCR or a petition to fix the legal rent, calculate the amount of any overcharge, or direct the landlord to refund him that amount. On March 26, 2014, the RA denied the tenant's administrative complaint on the ground that the apartment had been deregulated and that, consequently, the DHCR lacked jurisdiction over the apartment. On June 9, 2014, and thus after the RA had rendered the initial determination, the petitioner wrote to the DHCR asserting, among other things, that the "apartment is properly subject to Rent Stabilization, my expired lease should be renewed at the proper Rent Stabilized rate, and the rent overcharge should be refunded." On December 10, 2014, a designee of the DHCR's commissioner denied the tenant's PAR.

On February 6, 2015, the petitioner commenced a CPLR article 78 proceeding against the DHCR and the landlord, seeking judicial review of the denial of the tenant's PAR. The entirety of the petition in that proceeding addressed only the issue of whether the apartment was properly deregulated, or was ever deregulated, and whether the landlord was obligated to offer the tenant a rent-stabilized renewal lease. In seeking the annulment of the December 10,

2014 determination, the petition did not request the court to direct the DHCR to fix the legal rent or to calculate and award any overcharges. The petition mentioned overcharges only incidentally, in the context of the tenant's contention that, by unlawfully entering into a non-stabilized lease with his predecessors, as well as with him, the landlord overcharged both his predecessors and him.

In the 2015 CPLR article 78 proceeding, the landlord argued that the apartment had initially been owner-occupied, and thus not subject to rent regulation, and that, thereafter, the removal of the building from the J-51 real property tax abatement program (Admin. Code of City of N.Y. §§ 11-243-11-244) also exempted it from rent regulation. In an order dated November 28, 2016, the Supreme Court, New York County (Lobis, J.), granted the petition to the extent of remitting the matter to the DHCR for the “development of a record *and further consideration of the rent stabilization status of 19 East 16 Street*” (*Matter of Helm v New York State Div. of Housing & Community Renewal*, Supreme Court, New York County, Index No. 100203/2015, *4 [Nov. 28, 2016] [emphasis added]).

. The court reasoned that,

“if the apartment was not properly removed from rent stabilization and a rent set based on a high rent vacancy decontrol, David Ellis must offer petitioner a renewal lease pursuant to rent stabilization. The record is devoid of support for the determination that prior rent stabilization status was based solely on J-51 tax abatement at the subject premises. The agency's conclusion that a C[oncilation] [and] A[ppeals] B[oard] determination on an adjacent building, 31 Union Square West, has not been adequately addressed. The building at 31 Union Square West, a large high-rise[,] is sufficiently dissimilar from 19 East 16th Street that without more information in the record, DHCR's reliance on the J-51 status of the larger building to determine the legal status of the subject premises is arbitrary and capricious”

(*id.*). The court continued, that,

“[i]f the subject building was stabilized and then exempted for a period of years by occupancy by a family member of the landlord, the legality of applying a high rent vacancy decontrol should also be examined. After a J-51 exemption expires a building reverts to its previous rent stabilized status. Without knowing the history of the building, DHCR could not determine whether David Ellis circumvented the rent stabilization law by establishing a family member in an apartment in a rent-stabilized building, creating a vacancy, and then renting at a

market rent without reference to the prior-rent stabilized status. If a vacancy occurred, the tenants before petitioner should have been offered a rent-stabilized lease”

(*id.*).

The matter first was remitted to a DHCR Deputy Commissioner for Rent Administration who, in turn, remitted it to the RA on February 5, 2019 for reconsideration of the March 26, 2014 decision. In a decision dated April 22, 2022, made after the parties submitted additional documentation and argument to the agency, the RA granted the tenant’s complaint to the extent of finding that the apartment was indeed subject to rent stabilization, and that the landlord unlawfully failed to offer him a rent-stabilized renewal lease, as required for rent-stabilized apartments. The RA ordered the landlord to offer the tenant such a renewal lease. Specifically, the RA found that,

“[t]he owner’s claim that the subject apartment and the building became Rent Regulated solely because of J-51 Tax Benefits it received and was subject to exemption from Rent Regulation upon expiration of J-51 Tax Benefits is without merit.

“Evidence indicates that the subject building contained both Rent Control and Rent Stabilized units prior to the beginning of J-51 Tax Benefits and therefore, must continue to be rent regulated upon expiration of J-51 Tax Benefits.

“Based on the foregoing, it is determined that the subject housing accommodation is subject to Rent Stabilization Laws and Code. Therefore, the owner is directed to offer the complainant a Rent Stabilized renewal lease within 21 days of the issuance of this order. Any terms and conditions in the initial vacancy lease or subsequent renewal leases which are not in compliance with Rent Stabilization Laws and Code [are] null and void.”

The RA, however, did not address the tenant’s allegations that he had been overcharged, and thus failed to make a finding with respect to that issue. In addition, the RA declined to fix the legal rent applicable to the renewal lease.

Both the tenant and the landlord submitted PARs in connection with the RA’s decision. In a determination dated January 18, 2023, a designee of the DHCR’s Commissioner denied both PARs. With respect to the tenant’s PAR, the Commissioner’s designee found that,

“the RA's Order that is the subject of the instant PARs was the result of a remand to the RA by the Commissioner on February 5, 2019, under PAR Order Docket Number GU410005RP. Said PAR Order was the result of an Order of the Supreme Court, NY County, issued on November 28, 2016, which Order remanded the matter to this Agency ‘for development of a record and further consideration of the rent stabilization status of 19 East 162 Street.’ The scope of the instant proceeding is therefore confined to the ‘development of a record and further consideration of the rent stabilization status of 19 East 16 Street.’

“Accordingly, the only issue herein is the rent stabilization status of the apartment, as mandated by the Supreme Court Order and issues of rent overcharge or of attorney's fees may not be addressed in this proceeding.

“Moreover, the original complaint filed herein was one for lease violation and the RA order that is the subject of this PAR specifically noted that the tenant could file a rent overcharge complaint, which, to date, the tenant has not done.”

In connection with the landlord's PAR, the Commissioner' designee reasoned that

“the apartments in the subject building were subject to rent control in the 1950s, while a D[eartment] O[f] B[uildings] document, dated December 1, 1970, states that the subject building has six ‘Class “A” . . .(6 Apts.)’. The J-51 benefits referred to by the owner were approved by Certificate of Approval dated April 30, 1979, and while said Certificate does reference the subject building, as correctly pointed out by the tenant, said Certificate has boxes under ‘Type of Improvement’, and only the box for ‘Commercial to “A” Alteration’ is filled in, while the box stating “‘SRO’ to “A” Alteration’ is not filled in and therefore does not apply. Accordingly, the owner's allegation that there was a substantial rehabilitation of the subject premises, converting SROs and/or lofts to Class “A” apartments, and that such conversion was a substantial rehabilitation warranting deregulation of the subject building, is not persuasive and any rehabilitation was from commercial to residential and did not affect the pre-existing regulated apartments.”

The Commissioner's designee went on to explain that, while a Conciliation and Appeals Board (CAB) decision relied upon by the landlord did indeed find that a rehabilitation changing the status of housing accommodations took place at 31 Union Square West, “it is clear from the above-referenced documentation/evidence that such rehabilitation did not occur in the subject building,” and that there was “nothing in the record to show that any J-51 benefits were granted as a condition of any rehabilitation.” According to the Commissioner's designee, the CAB's decision reflected that, rather, the building at 31 Union Square West became rent-regulated because the owner received J-51 benefits, and, “while the subject building appears to have

also received such benefits, it was subject to rent regulation prior to receipt of the J-51 benefits for the reasons set forth above.” The Commissioner’s designee concluded that, “[a]ccordingly, the apartment at issue was regulated prior to receipt of the J-51 benefits, the building in which the apartment is located was not rehabilitated in a way that would warrant deregulation of the building or of its apartments, and the subject apartment therefore remained rent-regulated after expiration of the J-51 benefits.”

The Commissioner’s designee rejected the landlord’s contention that the subject apartment had been deregulated by virtue of high rent vacancy deregulation. Although the landlord had argued that the apartment was registered with the DHCR as “Temporarily Exempt” from regulation between 1990 and 2001, the record revealed that apartment was registered as occupied by Wiesia Dlugosz from 1984 until 1992, was then registered and classified as a “J-51 Expired” apartment in 1993, and was not registered thereafter because it was classified as an “Exempt Apartment-Reg Not Required.” The Commissioner’s designee also rejected the landlord’s contention that, immediately after the apartment no longer was owner-occupied, it leased the unit to Hannah Law and David Law for \$1,920.00 per month. Specifically, the record revealed that the landlord claimed that the apartment was owner-occupied until July 28, 2005, after which it first offered Hannah Law and David Law a non-stabilized lease at a monthly rent of \$2,000.00, which met the existing \$2,000.00 threshold for luxury deregulation, and that the landlord thereafter offered the tenant a non-stabilized lease at a monthly rent of \$2,206.00, beginning on September 1, 2008. The Commissioner’s designee asserted that “while the allegation of the owner, as supported by [its managing agent’s] affidavit, is that the premises were temporarily exempt due to owner-occupancy, the registration history does not support this statement.” He concluded, however, that “even if there [were] a temporary exemption due to owner-occupancy, and the owner had a right under then applicable Rent Stabilization Code § 2526.1(a)(3)(iii) to a first rent after such exemption ended, *that first rent had to be a rent-stabilized rent, as set forth in the RSC and as conceded by the owner*” (emphasis added).

Thus, even though the tenant was offered a non-stabilized rent due to the fact that the monthly rental charged to his immediate predecessor had exceeded the then-existing threshold for deregulation, the Commissioner's designee concluded that, since the "apartment was never properly treated by any owner as rent-stabilized, it could not have been removed from rent-stabilization based on high-rent vacancy deregulation," quoting (*Matter of AEJ 534 East 88th, LLC v New York State Div. of Housing & Community Renewal*, 194 AD3d 464, 471 [1st Dept 2021]). Therefore, even if there were a temporary exemption prior to the of Hannah and David Laws, inasmuch as the apartment was never treated as rent stabilized thereafter, it was never deregulated and could not be deregulated at any time thereafter.

This consolidated proceeding ensued.

In his petition, the tenant asserted that so much of the DHCR's determination as declined to consider or address his rent overcharge claim or fix the legal rent was arbitrary and capricious. In effect, however, he is seeking relief in the nature mandamus to compel the DHCR to consider those claims, and thereafter render determinations thereon.

"Mandamus to compel lies where an administrative body has failed to perform a duty enjoined upon it by law, the performance of that duty is mandatory and ministerial rather than discretionary, and there is a legal right to the relief sought (see CPLR 7801[1]; *New York Civ. Liberties Union v State of New York*, 4 NY3d 175, 184 [2005]; see also *Klostermann v Cuomo*, 61 NY2d 525, 540 [1984] [explaining that the 'function of mandamus (is) to compel acts that officials are duty-bound to perform']). Under CPLR article 78, a writ of mandamus to compel governmental bodies or officers 'must be commenced within four months . . . after the respondent's refusal, upon the demand of the petitioner or the person whom he represents, to perform its duty' (CPLR 217[1]; see *Austin v Board of Higher Educ.*, 5 NY2d 430, 442 [1959] [where the relief sought is in the nature of a mandamus to compel, the "aggravement does not arise from the final determination but from the refusal of the body or officer to act or perform a duty enjoined by law"]). It is therefore necessary to make a 'demand and await a refusal before bringing a proceeding in the nature of mandamus,' wherein the statute of limitations does not run out until 'four months after the refusal' (*id.*; see *Matter of Bottom v Goord*, 96 NY2d 870, 872 [2001]; see also *Donoghue v New York City Dept. of Educ.*, 80 AD3d 535, 536 [1st Dept 2011])"

(*Matter of Hoffmann v New York State Ind. Redistricting Commn.*, _____ NY3d _____, 2023 NY Slip Op 06344, *11 [Dec. 12, 2023]).

The Rent Stabilization Code (9 NYCRR 2520.1-2531.9) sets forth the regulatory procedures applicable to proceedings before the DHCR. With respect to the DHCR's obligations to adjudicate administrative complaints, 9 NYCRR 2520.1 provides that,

“[a] proceeding is instituted by an owner or a tenant with the filing of an application or complaint for adjustment of rent, *or for other relief provided by the Rent Stabilization Law or this Code*. Such application or complaint shall be verified or affirmed by the applicant or complainant and filed *upon the appropriate form* prescribed by the DHCR”

(emphasis added). The DHCR requires a complaining tenant to submit forms RA-90 and RA-90 EPTA, entitled Tenant's Complaint of Owner's Failure to Renew Lease and/or Failure to Furnish a Copy of a Signed Lease, which was the form employed by the tenant here or forms RA-89 and RA-89-C, entitled Tenant's Complaint of Rent and/or Other Specific Overcharges, which the tenant did not employ here. 9 NYCRR 2527.10 permits a tenant who has initiated an administrative proceeding before the DHCR to amend the application or complaint, an opportunity of which the tenant here did not avail himself. Moreover, 9 NYCRR 2527.6 authorizes the DHCR to

“(a) dismiss the application or complaint if it fails to substantially comply with the provisions of the RSL or this Code; (b) grant or deny the application or complaint in whole or in part; (c) issue an appropriate order in a proceeding instituted on DHCR's own initiative; (d) issue conditional or provisional orders as may be deemed appropriate under the circumstances.”

The DHCR correctly argued that, since the tenant never filed an administrative overcharge complaint, the tenant never formally demanded that it fix the legal rent, calculate any rent overcharge, or direct the reimbursement of that overcharge. Rather, the tenant's administrative complaint only demanded that the DHCR deem the apartment to be rent-stabilized and thereupon compel the landlord to offer the tenant a rent-stabilized renewal lease. The DHCR persuasively asserted that it has always deemed the administrative proceedings before it to be limited solely to the regulatory status of the apartment and the concomitant failure of the landlord to renew the lease. The DHCR is not authorized to grant relief that was not requested in the administrative complaint. Since a formal demand to fix the legal rent and

compel the reimbursement of overcharges has yet to be made, the DHCR was not obligated to render a determination on those issues. As such, the tenant does not, at this juncture, have a clear right to that relief. In this regard, the DHCR and the landlord both correctly argue that neither of them had notice of those claims, and did not have an opportunity to address them at the administrative level. Hence, relief in the nature of mandamus may not be granted.

Where, as here, an administrative determination is made, and there is no statutory requirement of a trial-type hearing, that determination must be confirmed unless it is arbitrary and capricious, affected by an error of law, or made in violation of lawful procedure (see CPLR 7803[3]; *Matter of Madison County Indus. Dev. Agency v State of N.Y. Auths. Budget Off.*, 33 NY3d 131, 135 [2019]; *Matter of Lemma v Nassau County Police Officer Indem. Bd.*, 31 NY3d 523, 528 [2018]; *Matter of McClave v Port Auth. of N.Y. & N.J.*, 134 AD3d 435, 435 [1st Dept 2015]; *Matter of Batyreva v New York City Dept. of Educ.*, 50 AD3d 283, 283 [1st Dept 2008]; *Matter of Rumors Disco v New York State Liquor Auth.*, 232 AD2d 421, 421 [2d Dept 1996]). Neither the tenant nor the landlord argued that the DHCR's determination was affected by an error of law or made in violation of lawful procedure. Thus, the determination must be confirmed if it was not arbitrary and capricious.

A determination is arbitrary and capricious where it is not rationally based, or has no support in the record (see *Matter of Gorelik v New York City Dept. of Bldgs.*, 128 AD3d 624, 624 [1st Dept 2015]), or where the decision-making agency fails to consider all of the factors it is required by statute to consider and weigh (see *Matter of Kaufman v Incorporated Vil. of Kings Point*, 52 AD3d 604, 608 [2d Dept 2008]). Stated another way, a determination is arbitrary and capricious when it is made "without sound basis in reason and is generally taken without regard to the facts" (*Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]). Consequently, an agency determination is arbitrary and capricious where the agency provides only a "perfunctory recitation" of relevant statutory factors or other required considerations as a basis for its

conclusions (*Matter of BarFreeBedford v New York State Liq. Auth.*, 130 AD3d 71, 78 [1st Dept 2015]; see *Matter of Wallman v Travis*, 18 AD3d 304, 308 [1st Dept 2005] [“perfunctory discussion”]), provides no reason whatsoever for its determination (see *Matter of Rhino Assets, LLC v New York City Dept. for the Aging, SCRIE Programs*, 31 AD3d 292, 294 [1st Dept 2006]; *Matter of Jones v New York State Dept. of Corrections & Community Supervision*, 2016 NY Misc LEXIS 15778, *1-2 [Sup Ct, Erie County, Jul. 28, 2016]), or provides only a post hoc rationalization therefor (see *Matter of New York State Chapter, Inc., Associated Gen. Contrrs. of Am. v New York State Thruway Auth.*, 88 NY2d 56, 756 [1996]; *Matter of L&M Bus Corp. v New York City Dept. of Educ.*, 71 AD3d 127, 135 [1st Dept 2009]).

To the extent that the tenant’s CPLR article 78 petition alleges that the DHCR’s failure to address any claim for rent overcharges or to fix the legal rent was arbitrary and capricious, the court rejects that argument. “While agency interpretations of their own regulations are generally afforded considerable deference, courts must scrutinize administrative rules for genuine reasonableness and rationality in the specific context presented by a case” (*Matter of Murphy v. New York State Div. of Hous. & Community Renewal*, 21 NY3d 649, 654-655 [2013] [citations and internal quotation marks omitted]; see *Kuppersmith v Dowling*, 93 NY2d 90, 96 [1999]; *Matter of Dworman v New York State Div. of Hous. & Community Renewal*, 94 NY2d 359 [1999]; *Matter of Gaines v New York State Div. of Hous. & Community Renewal*, 90 NY2d 545, 548-549 [1997]). “While as a general rule courts will not defer to administrative agencies in matters of pure statutory interpretation, deference is appropriate where the question is one of specific application of a broad statutory term (*Matter of O’Brien v Spitzer*, 7 NY3d 239, 242 [2006] [citations and internal quotation marks omitted]; see *Matter of KSLM-Columbus Apts., Inc. v New York State Div. of Hous. & Community Renewal*, 5 NY3d 303, 312 [2005]; *Matter of American Tel. & Tel. Co. v State Tax Comm.*, 61 NY2d 393, 400 [1984]). The court concludes that the DHCR, in interpreting the scope of its authority to determine an administrative complaint, as set forth in its own regulations, rationally applied its understanding of those

regulations, and rationally concluded that it could not determine an overcharge claim or request to set a legal rent where that claim and that request were not properly before it.

The court further concludes that the DHCR's determination that the tenant's apartment was subject to rent stabilization, and that the landlord was obligated to offer the tenant a rent-stabilized renewal lease, was rationally based, had support in the record, and was not arbitrary and capricious.

Prior to the enactment of Part D of the Housing Stability and Tenant Protection Act of 2019 (L 2019, ch 36, part D, § 4), which abolished luxury deregulation, the luxury deregulation of rent-stabilized apartments had been triggered either when (a) a unit became vacant and the legal regulated rent, inclusive of vacancy increase allowances and increases permitted for landlord improvements (*see Altman v 285 W. Fourth, LLC*, 31 NY3d 178 [2018]), thereupon exceeded \$2,000.00 per month (\$2,500.00 after June 24, 2011; see L 2011, ch 97) (high rent vacancy deregulation), or (b) the legal regulated monthly rent of the unit exceeded \$2,000.00 (\$2,500.00 after June 24, 2011) and the tenants' annual household income exceeded \$175,000.00 for two consecutive years (high rent/high income deregulation) (*see Admin. Code of City of NY former §§ 26-403.1, 26-504.1*).

With exceptions not applicable here, former § 26-504.1(a) of the Rent Stabilization Law (Admin. Code of City of N.Y. former § 26-504.1[a]; hereinafter RSL) explicitly precluded the deregulation of "housing accommodations which became or become subject to this law by virtue of receiving tax benefits pursuant to Section 421-a or 489 of the real property tax law." The J-51 program, first enacted in 1960, created a municipal real property tax abatement benefit under RPTL 421-a to encourage the improvement and rehabilitation of substandard dwellings. Thus, an apartment in a building receiving J-51 abatements was subject to the regulated rents and limited renewal increases required by the RSL and Rent Stabilization Code (*see Roberts v Tishman Speyer Props., L.P.*, 13 NY3d 270 [2009]; *Altschuler v Jobman 478/480, LLC*, 135 AD3d 439 [1st Dept 2016]; *72A Realty Assoc. v Lucas*, 101 AD3d 401 [1st Dept 2012]; *Matter of*

MHM Sponsors Co. v New York State Div. of Hous. and Community Renewal, 2019 NY Slip Op 30283[U], *4, 2019 NY Misc LEXIS 477, *4 [Sup Ct, N.Y. County, Feb. 7, 2019 [Kelley, J.]]. Crucially, during the time that a landlord received J-51 abatements, it could not deregulate any apartment pursuant to the RSL's luxury decontrol provisions, and those specific decontrol provisions were simply inapplicable where the apartment was exempt from rent regulation for other reasons, such as being owner-occupied. As the DHCR correctly explained in the context of the instant dispute, since the tenant's "apartment was never properly treated by any owner as rent-stabilized, it could not have been removed from rent-stabilization based on high-rent vacancy deregulation" (*Matter of AEJ 534 East 88th, LLC v New York State Div. of Housing & Community Renewal*, 194 AD3d at 471).

Subsequent to receiving J-51 abatements, "the subject apartment must be returned to rent stabilization as of [the date] when the Owner first treated the apartment as exempt" (*Taylor v 72A Realty Assoc., L.P.*, 151 AD3d 95, 97 [1st Dept 2017]; see *Roberts v Tishman Speyer Props., L.P.*, 13 NY3d 270 [2009]; *Altschuler v Jobman 478/480, LLC*, 135 AD3d 439 [1st Dept 2016]; *72A Realty Assoc. v Lucas*, 101 AD3d 401 [1st Dept 2012]). These principles applied to the entire time period that the building was enrolled in the J-51 program, including the present, if applicable (see *Gersten v 56 7th Ave., LLC*, 88 AD3d 189 [1st Dept 2011]). Since the subject apartment was never formally deregulated pursuant to the luxury decontrol regimen then in effect, it must return to the regulated status that it had in 1984, before it became temporarily exempt as an owner-occupied unit.

The court notes that, pursuant to Admin. Code of City of N.Y. § 26-504(c), if a "dwelling unit would have been subject to [the RSL even] . . . in the absence of [J-51 benefits], such dwelling unit shall, upon the expiration of [J-51] benefits, continue to be subject to [the RSL] . . . to the same extent and in the same manner as if [J-51 benefits] had never applied thereto." Hence, a tenant-occupied unit that had previously been rent-regulated could not have been deregulated under the luxury deregulation program while a J-51 abatement was in effect, even if

the unit was in a cooperative building, and even if its status as a rent-regulated unit was not initially a consequence of the landlord's receipt of J-51 benefits (see *Ram I LLC v New York State Div. of Hous. & Community Renewal*, 123 AD3d 102 [1st Dept 2014]).

Hence, the DHCR's denial of the landlord's PAR was not arbitrary and capricious.

In light of the foregoing, it is,

ORDERED that the petition is denied, without prejudice to the petitioner/cross respondent's submission of an administrative rent overcharge complaint to the respondent New York State Division of Housing and Community Renewal; and it is further,

ORDERED that the cross petition is denied; and it is,

ADJUDGED that the consolidated proceeding is dismissed.

This constitutes the Decision, Order, and Judgment of the court.

12/13/2023

DATE

JOHN J. KELLEY, J.S.C.

MOTION:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		GRANTED IN PART	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		SUBMIT ORDER	<input type="checkbox"/>
CROSS MOTION:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		NON-FINAL DISPOSITION	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		GRANTED IN PART	<input type="checkbox"/>
				SUBMIT ORDER	<input type="checkbox"/>
				FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				OTHER	<input type="checkbox"/>
				REFERENCE	<input type="checkbox"/>
				OTHER	<input type="checkbox"/>
				REFERENCE	<input type="checkbox"/>