

**Matter of 559 W. 156 BCR LLC v New York State
Div. of Hous. & Community Renewal**

2024 NY Slip Op 30083(U)

January 8, 2024

Supreme Court, New York County

Docket Number: Index No. 153232/2023

Judge: Shahabuddeen Abid Ally

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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. SHAHABUDDEN ABID ALLY PART 16TR

Justice

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In the Matter of the Application of
559 WEST 156 BCR LLC,

Petitioner,

INDEX NO. 153232/2023

MOTION DATE 08/18/2023

MOTION SEQ. NO. 001

- v -

NEW YORK STATE DIVISION OF HOUSING AND
COMMUNITY RENEWAL, MARGARITA MARTINEZ,

Respondents.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1-17, 19-37, 39, 44-45

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

Petitioner brings this Article 78 proceeding seeking reversal of the determination made by respondent New York State Division of Housing and Community Renewal (“DHCR”) dated February 8, 2023 or, in the alternative, remanding this matter to DHCR for further processing. DHCR cross-moves to remit this matter for further fact-finding, to which petitioner consents. Respondent Martinez opposes both the petition and the cross-motion. Upon the above cited papers, both the petition and DHCR’s cross-motion are granted to the extent that this matter is remitted to the DHCR for further fact-finding and determination.

Background

Petitioner is the current owner of the building located at 559 West 156th Street, New York, New York (“Premises”). Respondent DHCR is the state governmental agency charged with administering and enforcing the Rent Control Law, the Rent Stabilization Law, and related regulations. Respondent Martinez is the current occupant of Apartment 34 at the Premises.

In 2007, Martinez's parents, Manuel and Amelia Martinez (the "Parents") were tenants of Apartment 25 at the Premises, which was rent-regulated pursuant to the Emergency Tenant Protection Act of 1974. In or around September 2007, the Parents entered into an agreement ("Agreement") with the prior owner of the Premises, non-party PSRK Realty, LLC ("PSRK"), to relocate from Apartment 25 to Apartment 34, which was not rent-regulated. The Agreement provided that in exchange for relocation, the Parents would receive the sum of \$4,300.00 and a preferential lifetime monthly rent of \$541.00 for Apartment 34 (Amended Petition, exhibit E, NYSCEF No. 13).

Martinez began to reside in Apartment 34 in December 2007. Amelia Martinez passed away in 2014; later that year, Martinez and Manuel signed a joint two-year extension lease with petitioner, who had purchased the Premises in the interim. In March 2016, approximately ninety days before the extension lease was set to expire, Martinez and Manuel requested a renewal lease from petitioner but did not receive one. Manuel Martinez passed away in June 2016, and Martinez again sought a renewal lease but was denied by petitioner.

Martinez filed a "Failure to Renew Lease" complaint with DHCR under DHCR Docket No. ES-410086-RV. In an order dated August 17, 2018, the Rent Administrator ("RA") denied her application, determining that Apartment 34 was not subject to the Rent Stabilization Code and that the Parents voluntarily vacated their prior rent-regulated unit ("RA Order") (Amended Petition, exhibit B, NYSCEF No. 10). Martinez filed a Petition for Administrative Review ("PAR"), which was denied in an order dated July 12, 2019 ("PAR Order") (Amended Petition, exhibit C, NYSCEF No. 11).

Martinez subsequently commenced an Article 78 proceeding in the Supreme Court. In a decision and order dated March 9, 2020, the Court found that, pursuant to the Court of Appeals

decision in *Matter of Capone v Weaver* (6 NY2d 307 [1959]), “conducting factual inquiries into the circumstances of a tenant’s surrender of a rent controlled unit is a ‘vital matter’ that the DHCR must perform” (Decision and Order, Index No. 451563/2019, Amended Petition, exhibit D, NYSCEF No. 12). Because both the RA Order and the PAR Order relied solely on the terms of the Agreement without examination of other circumstances, the Court remitted the matter to DHCR for further fact-finding consistent with *Capone (id.)*.

On remittal, the Deputy Commissioner issued an order dated February 8, 2023 granting Martinez’s PAR of the August 17, 2018 RA Order was granted (“Remit Order”) (Amended Petition, exhibit A, NYSCEF No. 10). The Remit Order was based upon the Deputy Commissioner’s review of the record developed before the RA with no additional witnesses or documentary evidence presented. Upon review, the Deputy Commissioner concluded that the Parents’ waiver of their rights under the rent control laws was void based on the lack of evidence that the agreement was part of a settlement, that the Parents were represented by counsel, or that the Agreement was approved by DHCR or a court of competent jurisdiction (*id.*).

Petitioner commenced the instant Article 78 proceeding to annul the Remit Order on the grounds that any further fact finding would be impossible because Martinez was not party to the Agreement and the Parents are now both deceased (Amended Petition at par 41-42). Petitioner further contends that to the extent the further fact finding was possible, no additional evidence was ever solicited by DHCR (*id.* at par 44). In response, DHCR cross-moves for an order remitting the matter to DHCR to conduct further fact-finding, conceding that the Remit Order was based on the record before the RA, who made no factual inquires beyond the Agreement (Affirmation in Support of Cross-Motion at par 16, NYSCEF No. 32). Martinez opposes both the Petition and DHCR’s cross-motion, contending that the Deputy Commissioner’s inquiry into the

facts beyond the Agreement to the extent that they were available from the record before the RA was sufficient to satisfy DHCR's mandate under *Capone* and the directive of the prior Article 78 Decision and Order (Affirmation in Opposition at pp 16-19, NYSCEF No. 19; Affirmation in Opposition to Cross-Motion to Remit pp 7-11, NYSCEF No. 44).

Discussion

In the context of an Article 78 proceeding, the court's function is to evaluate whether, upon the facts before an administrative agency, that agency's determination had a rational basis in the record or was arbitrary and capricious (CPLR § 7803[3]; *see, e.g. Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222 [1974]; *Matter of E.G.A. Assoc. v New York State Div. of Hous. & Community Renewal*, 232 AD2d 302 [1st Dept 1996]). The administrative determination will only be found arbitrary and capricious if it is "without sound basis in reason, and in disregard of . . . the facts" (*see Matter of Century Operating Corp. v Popolizio*, 60 NY2d 483, 488 [1983], citing *Matter of Pell, supra* at 231). A reviewing court may not substitute its own judgment for that of the agency making the determination (*see Partnership 92 LP v New York State Div. of Hous. & Community Renewal*, 46 AD3d 425 [1st Dept 2007]). If the administrative determination has a rational basis, there can be no judicial interference (*Matter of Pell, supra* at 231-232).

As the agency charged with administration of the Rent Stabilization Law, DHCR "has broad discretion in evaluating pertinent factual data and determining the inferences to draw from it" (*Hawthorne Gardens, LLC v New York State Div. of Hous. & Community Renewal*, 4 AD3d 135 [1st Dept 2004]). As such, DHCR is entitled to deference as to issues of credibility and the weight of evidence (*Matter of Ansonia Residents Assn.*, 75 NY2d 206, 213 [1989]; *see Jane St.*

Co. v New York State Div. of Hous. & Community Renewal, 165 AD2d 758 [1st Dept 1990]).

The Court of Appeals has also recognized DHCR's broad powers and authority to alter its own prior determinations upon remittal (*see, e.g. Matter of Alamac Estates v McGoldrick*, 2 NY2d 87 [1956]).

It is well established that a court has the authority to remit an administrative determination for further proceedings, including additional fact-finding or issuance of a new determination (*50 Plaza Co. v New York City Conciliation and Appeals Board*, 104 AD2d 886, 889 [2d Dept 1984]). Remittal is appropriate where DHCR concedes that its prior determination was based on error (*see Matter of Hakim v New York State Div. of Hous. & Community Renewal*, 273 AD2d 3 [1st Dept 2000]), incomplete documentation (*see Matter of 47 Clinton St. Co. v New York State Div. of Hous. & Community Renewal*, 161 AD2d 402 [1st Dept 1990]), or inadequate review of issues raised (*see Matter of Porter v New York State Div. of Hous. & Community Renewal*, 51 AD3d 417 [1st Dept 2008]).

On review of the parties' submissions, the Court finds that remit of this matter to DHCR for the purpose of further fact-finding is warranted. As was concluded in the prior Article 78 Decision and Order, *Capone* compels that DHCR to conduct factual inquiries into the circumstances of tenant's surrender of a rent-controlled unit beyond the four corners of any surrender agreement (*see Matter of Capone v Weaver*, 6 NY2d 307 [1959]). As DHCR concedes, however, upon remittal there were no additional factual inquiries into the circumstances of the Parents' surrender. Although the Remit Order was based on the Deputy Commissioner's examination of facts not considered in the PAR Order, it was necessarily limited by the record elicited by the RA at the initial hearing of this matter. As it is undisputed that the RA at that

proceeding made no factual inquires beyond the Agreement itself, remittal is appropriate so that a sufficient record supported by fact-finding as to all relevant circumstances may be developed.

Based on the foregoing, the Court finds that remitting this matter to DHCR for further fact-finding on the issue of whether the Parents were sufficiently advised of the rights they relinquished in their agreement with petitioner is warranted. Accordingly, it is hereby:

ORDERED and ADJUDGED that the petition and cross-motion are granted to the extent that this matter is remitted to DHCR for further fact-finding and determination as to whether the Parents were sufficiently informed of the statutory rights they surrendered; and it is further


ORDERED that petitioner shall serve a copy of this decision and order upon all parties and upon the Clerk of the General Clerk’s Office with notice of entry within twenty days thereof; and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and county Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that any requested relief not expressly considered herein has been considered and is denied.

This constitutes the decision and order of the Court.

01/08/2024
DATE



SHAHAR UDDEEN ABID ALLY, A.J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<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"/>		<input type="checkbox"/>	REFERENCE