

**Dream Winter Castle LLC v New York City Dept. of
Hous. Preserv. & Dev.**

2024 NY Slip Op 33111(U)

September 4, 2024

Supreme Court, New York County

Docket Number: Index No. 152409/2024

Judge: Lynn R. Kotler

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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. LYNN R. KOTLER PART 08

Justice

DREAM WINTER CASTLE LLC Petitioner,
INDEX NO. 152409/2024
MOTION DATE 03/21/2024
MOTION SEQ. NO. 001

- v -

NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT,

DECISION + ORDER ON MOTION

Respondent.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

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

Upon the foregoing documents, this motion is decided as follows. This is a special proceeding brought pursuant to CPLR Article 78 to annul a decision by the New York City Department of Housing Preservation and Development ("HPD"). Respondent HPD moves to dismiss the petition filed by Dream Winter Castle LLC ("Petitioner") on grounds that it is brought outside the applicable statute of limitations. The cross-motion has been submitted without opposition despite proof of service and an opportunity to respond. For the reasons that follow, the cross-motion is granted and the petition is dismissed.

On September 27, 2022, HPD issued Vacate Order No. 212082 on a premises owned by Respondent in connection with a holdover proceeding to evict an occupant living on the premises. In the order, HPD states that the dwelling was unfit for human habitation for the following reasons:

- 1) Illegal apartment created at cellar: other: one way in, no way out at illegal cellar apartment,

- 2) Illegal apartment created at cellar: inadequate light/ ventilation: no light, no ventilation at illegal cellar apartment; and
- 3) Illegal apartment created at cellar: other: illegal class "A" apartment created at cellar.

The occupant of the premises filed a relocation request in September of 2022 with HPD and was relocated on September 29, 2022. Administrative Code § 26-305(1) permits HPD to recover costs for relocation services from the owner of buildings from which tenants were relocated when "the conditions giving rise to the need for such relocation arose as a result of the negligent or intentional acts of such owner, or as a result of his or her failure to maintain such dwelling in accordance with the standards prescribed by the housing or health code governing such dwelling."

Petitioner received a quarterly property tax bill dated August 19, 2023, containing the HPD relocation charges in the amount of \$16,232.89. On November 18, 2023, Petitioner received another quarterly tax bill showing the HPD relocation charges as unpaid. Both notices were sent by the New York City Department of Finance ("DOF") in accordance with Administrative Code § 11-129. Petitioner filed this petition on March 15, 2024, alleging that the occupant was a "squatter" rather than a tenant eligible for relocation services under 28 RCNY 18-01 and therefore the determination was without basis and should be annulled.

Petitioner has brought this action pursuant to NY City Charter § 26-305(4)(d)(4), which allows the owner of a property to seek judicial review of charges placed pursuant to subdivision 1 of this section through an Article 78 proceeding. CPLR § 7801 sets forth the procedure for challenging determinations of agencies such as HPD. Petitioner argues that

HPD's decision was arbitrary and capricious and may be challenged pursuant to CPLR § 7803.

HPD asserts that the petition should be dismissed as untimely. Petitioner did not oppose the cross-motion to dismiss, but in its verified petition alleges that the proceeding is timely and that the four-month statute of limitations should begin to run as of the notice issued on November 18, 2024.


The court agrees with HPD's contention that Petitioner did not bring this action within the applicable statute of limitations. CPLR § 217 states in the relevant part "[u]nless a shorter time is provided in the law authorizing the proceeding, a proceeding against a body or officer must be commenced *within four months after the determination* to be reviewed becomes final and binding upon the petitioner..." (emphasis added). NY City Charter § 26-305(2) states that the notice by the DOF constitutes a final determination, upon which the statute of limitations would begin to run.

In the verified petition, Petitioner concedes that the DOF notice constitutes a final determination, however they only reference the November 18, 2023, notice which would have given them until March 18, 2024 to file. Petitioner fails to address the August 19, 2023 notice which constitutes a final determination, and therefore the four month statute of limitations period began to run on that date and ended on December 19, 2023. Since the petition was not filed until March 15, 2024, it is time barred and must be dismissed.

Accordingly, it is hereby

ORDERED that the cross-motion to dismiss this Article 78 proceeding is granted, the petition is dismissed and the Clerk is directed to enter judgment accordingly.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

<u>9/4/2024</u> DATE	 LYNN R. KOTLER, 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