

**Matter of 751 Realty Corp v Division of Hous. &
Community Renewal of the State of N.Y.**

2025 NY Slip Op 31443(U)

April 18, 2025

Supreme Court, Kings County

Docket Number: Index No. 521421/2024

Judge: Anne J. Swern

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 18th day of April 2025

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

In the Matter of the Application of
751 REALTY CORP,

Petitioner,

For a Judgment Pursuant to Article 78 of the
New York Civil Practice Law and Rules,

-against-

Division of Housing and Community Renewal of
the State of New York, and STACEY ANGELES,

Respondents.

DECISION & ORDER

Index No.: 521421/2024

Calendar No.: 2

Motion Seq.: 1

Return Date: 3/13/25

Recitation of the following papers as required by CPLR 2219(a):

	Papers Numbered
Order to Show Cause, Petition, Affirmation, and Exhibits (NYSCEF 1-11)	1, 2
DHCR's Answer in a Special Proceeding (NYSCEF 15).....	3
DHCR's Affirmation and Exhibits in Opposition (NYSCEF 16-24).....	4
Angeles Answer in a Special Proceeding, Exhibit and Memorandum of Law (NYSCEF 25-17).....	5
Reply Affirmations and Exhibit (NYSCEF 28-30).....	6

*Upon the foregoing papers and after oral argument, the decision and order of the Court
is as follows:*

This special proceeding commenced under Article 75 of the Civil Practice Law & Rules challenges the final order dated 6/7/2024 issued by respondent Division of Housing and Community Renewal of the State of New York (DHCR) that affirmed the Rent Administrator's (RA) order determining that petitioner's building is subject to the Rent Stabilization Law.

This is the second Article 78 proceeding commenced concerning Apartment 2L at the premises located at 751 Manhattan Avenue, Brooklyn, New York (premises). This dispute originated when respondent, Angeles, filed a request with DHCR on 2/28/2020 for an administrative determination regarding the rent regulatory status and legal regulated rent for her apartment at the premises. It was Angeles position that Unit 2L was a residential apartment; that the premises had six (6) apartments, two on each floor; and that she was being charged unlawful (market) rent. (NYSCEF 21, pp.1-6). The RA's determination that the building was subject to rent regulation was affirmed by the DHCR on 6/2/2022. Petitioner commenced an Article 78 proceeding under Index #522578/2022. By an order dated 1/29/2024, the Supreme Court vacated the DHCR's order dated 6/2/2022, remanded the matter back to DHCR, and ordered DHCR to re-inspect "Unit 2L" (NYSCEF 5).

On remand, the inspection was conducted on 5/1/2024. The inspector determined that the premises consisted of a first-floor commercial storefront, and six (6) apartments in total on the second, third and fourth floor (two apartments on each floor). Unit/Apartment 2L consisted of a bedroom, bathroom, kitchen and living room. However, all appliances were disconnected, and the kitchen sink and counter and bathroom shower stall were removed. The water connections were visible but blocked by storage bins. The unit/apartment also had an electric service breaker panel, and a two-zone electric baseboard heating system. Based on the inspection the RA reasonably determined that Unit/Apartment 2L is a residential unit and the building is subject to rent stabilization. The petitioner filed a Petition for Administration Review of the RA's order. The DHCR order dated 6/7/2024 denied the petition resulting in the current proceeding. (NYSCEF 17).

It is petitioner's contention that Unit/Apartment 2L is part of the first-floor commercial storefront (NYSCEF 1, ¶32 and Ex. D, NYSCEF 7). However, DHCR alleges that this is contradicted by a filing with DHCR's Office of Rent Administration on 3/10/2014 (NYSCEF 26). This filing acknowledged that the "second floor was partitioned into 2 apartments (2L, 2R) in 1996, as part of a full renovation of the building [premises]." Further, the Department of Finance Notice of Property Value for the 2020/2021 tax year indicated that the premises consisted of six (6) residential Units (NYSCEF 21, p.34). Angeles alleges that the petitioner's allegations are also contradicted by the listing on "Street Easy" advertising Unit/Apartment 2L as a three room, 1 bed, 1 bath apartment for rent for \$2,399.00 [per month]. The listing further indicated that the building consisted of 6 Units and 4 Stories (NYSCEF 23, p.114). This documentation was submitted in the underlying proceedings.

" When reviewing administrative agency determination, the Court must ascertain whether there is a rational basis for the action taken or whether it is arbitrary and capricious. An administrative action is arbitrary and capricious when it is without sound basis in either reason or the facts. (*Matter of Peckham v. Calogero*, 12 NY3d 424, 431 [2009] [internal quotations and citations omitted]). "If the court finds that the determination is supported by a rational basis, it must sustain the determination even if the court concludes that it would have reached a different result than the one reached by the agency... [The Court] must defer to an administrative agency's rational interpretation of its own regulations in its area of expertise" (*id.*).

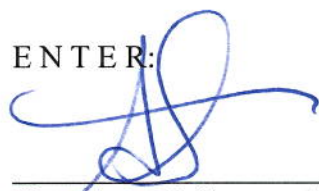
Based on a review of the totality of the evidence in the underlying proceeding, the DHCR order dated 6/7/2024 was not "not arbitrary and capricious, made in violation of lawful procedure, affected by an error of law, an abuse of discretion, or irrational" (*Matter of Coney-Brighton Boardwalk Alliance v. New York City Department of Parks & Recreation*, 122 AD3d

924, 925 [2nd Dept 2014] AND *Matter of Peckham v. Calogero*, 12 NY3d 431). The evidence demonstrates that Unit/Apartment 2L is a residential unit even though it is not being used for residential purposes by the purported tenant, if any.

Accordingly, it is hereby

ORDERED that the petition is denied, and this special proceeding is dismissed in its entirety.

This constitutes the decision and order of the Court.

ENTER:


Hon. Anne J. Swern, J.S.C.
Dated: 4/18/2025

For Clerks use only:
MG _____
MD X
Motion seq. # 1