Matter of 186 Norfolk LLC v New York State Div. of Hous. & Community Renewal
2025 NY Slip Op 32458(U)
July 3, 2025
Supreme Court, New York County
Docket Number: Index No. 158325/2024
Judge: Verna L. Saunders

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. VERNA L. SAUNDERS, JSC** **PART** **36**

Justice

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INDEX NO. 158325/2024

In the matter of the application of
186 NORFOLK LLC,

Petitioner,

MOTION SEQ. NO. 001

- v -

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL,

Respondent.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 24, 26, 27, 28, 29, 30, 31 were read on this motion to/for **ARTICLE 78**.

In this application concerning petitioner's ability to charge market rate or first rent after renovating a rent stabilized unit, petitioner moves the court for an order reversing and/or revoking the Petition for Administrative Review Order (hereinafter, "PAR Order") dated July 12, 2024, issued by respondent, which denied petitioner's charge of a first rent.[1] In the alternative, petitioner urges the court to remand the proceeding to respondent to reconsider and/or review the PAR Order based on the fact that petitioner increased the perimeter and dimensions of unit 3H, a rent stabilized unit. Petitioner claims that it undisputedly increased the perimeter and dimensions of unit 3H; however, respondent erroneously determined that the perimeter and dimensions did not reach the threshold to qualify as a "significantly changed" unit, to entitle petitioner to charge first rent. (NYSCEF Doc. No. 1, *verified petition*).

According to petitioner, it added a laundry room to unit 3H by removing non-residential space from the building, which significantly changed the perimeters of said unit. Said alteration satisfies one of the two grounds under Operational Bulletin ("OB") 95-2 for which a first rent could be charged. To create the laundry space, plaintiff asserts that it removed a wall and added three additional walls, a significant change to unit 3H. Petitioner maintains that respondent does not proffer an established standard to guide building owners and respondent itself when analyzing what constitutes a significant expansion of the outer perimeter of an apartment after construction work has been concluded.

The second ground for an owner to legally charge a first rent is when an owner "creates a housing accommodation in space previously used for nonresidential purposes". As such, petitioner contends that respondent incorrectly concluded that a laundry room is not a "housing accommodation" and the space taken from the building's hallway is residential space similar to a private internal hallway of an apartment. Even though the laundry room itself is not a housing

1 Pursuant to New York State Division of Housing and Office of Rent Administration Operational Bulletin 95-2 (hereinafter, "OB-95-2), an owner of a building is permitted to charge a first rent when creating a housing accommodation in space previously used for nonresidential purposes.

accommodation, the resultant apartment, created by the addition of the laundry room, with space previously belonging to the building's hallway, was a housing accommodation that differed from the former unit, argues petitioner. Petitioner insists that OB 95-2 merely requires that the housing accommodation be created "in space previously used for nonresidential purposes." A building's public hallway is not analogous to an apartment's internal private hallway in that a tenant cannot live, store belongings, or cook in a building's public hallway, posits petitioner. Further, petitioner contends that since a resident is not legally permitted to reside in a building hallway, the building's hallway is nonresidential space.

Next, petitioner contends that in addition to denying it the right to charge first rent, respondent's determination was arbitrary and capricious insofar as petitioner renovated unit 3H and created appealing housing stock which is in line with DHCR's mission to combat the lack of residential buildings and dwelling units in New York City. By denying petitioner the right to charge a first rent, respondent acted against its own interest by not incentivizing owners to continue to invest, renovate, and increase New York City's housing stock, claims petitioner (NYSCEF Doc. No. 11, *memo of law*). In support of the application, petitioner submits, *inter alia*, a copy of OB-95-2, DOB Work Permit, Building Plan, and the PAR Order (NYSCEF Doc. Nos. 3-8).

Respondent interposed an answer, wherein it denied the allegations (NYSCEF Doc. 21, *verified answer*). Respondent found that the installation of laundry equipment was eligible for a rent increase as Individual Apartment Improvements (hereinafter, "IAI"s). Under the Rent Stabilization system, an owner is permitted a rent increase based upon the documented cost of new equipment or IAIs installed within a particular apartment. According to respondent, prior to the amendment of its regulations in 2023,[2] its longstanding policy permitted an owner who could demonstrate that it significantly changed the perimeter and dimensions of an existing apartment or created a housing accommodation in space previously used for nonresidential purposes, to charge a first rent (see OB 95-2). Respondent asserts that the imposition of a first rent is appropriate when there have been substantial changes to the perimeter walls of an apartment and where a previous apartment, essentially, ceases to exist, thereby rendering its rental history obsolete and meaningless.

Respondent insists that courts have routinely held that small changes to an apartment's dimensions, such as changes caused by the removal of, or addition of closets, do not entitle petitioner to charge a first rent. Based on the evidence submitted by the petitioner, it was found that the work completed was merely an extension of the size of the bathroom, not a significant change to the perimeter and dimensions of the existing apartment. Respondent notes that petitioner did not contest this finding. In addition, respondent posits that the hallway at issue in this case was a residential space prior to its inclusion in unit 3H. Respondent argues that since its determination is not irrational or unreasonable, it is entitled to deference as the government agency responsible for administering the statute. Lastly, respondent contends that to allow a market rate or first rent to be charged where, as here, a unit was only renovated to add twenty (20) square feet in the bathroom to provide space for a laundry machine, would contravene the goals of rent regulation and encourage profiteering (NYSCEF Doc. No. 16, *memo in opposition*).

In reply, petitioner insists that since the language of OB 95-2 is unclear and ambiguous regarding when a building owner is permitted to charge a first rent, respondent makes administrative determinations without adhering to a set standard that owners could comply with or that would aid

[2] Even though the DCHR replaced OB 95-2 with "Operational Bulletin 2023-3", effective November 21, 2023, the subject administrative proceeding was commenced before the effective date.

courts in their review of the administrative determination. Petitioner reiterates that it performed a complete renovation of the entire unit, in addition to adding the laundry room amenity. The combination of an entire renovation and the addition of a new laundry room from space previously used for nonresidential purposes created a completely new apartment, and it is entitled to charge a first rent, asserts petitioner. Petitioner also argues that if the IAI was its only option, it would have left the apartment vacant and kept it off the rental market, as the rental increase under the IAI rules beginning in 2019 would not be sufficient to justify an apartment renovation. Petitioner urges the court to find that New York was and is in desperate need of quality housing and therefore, the first rent charge is appropriate. Lastly, petitioner sets forth that since respondent eliminated the incentive to renovate and charge first rent in November 2023, granting petitioner's relief herein would not open the floodgate on the issue of first rent (NYSCEF Doc. No. 26, *reply affirmation*).

The administrative agency charged with enforcing a statutory mandate has broad discretion in evaluating the pertinent factual data and the inferences to be drawn from that data (see *Matter of Wembly Mgt. Co. v New York State Div. of Hous. & Community Renewal, Off. of Rent Admin.*, 205 AD2d 319, 319 [1st Dept 1994]). "Under the Rent Stabilization Code and Operational Bulletin 95-2, DHCR determines applications for substantial rehabilitation exemptions based on the totality of the circumstances" (*Matter of 8 Ave. Holdings LLC v New York State Div. of Hous. & Community Renewal*, 234 AD3d 568, 569 [1st Dept 2025]).

As a general proposition, administrative agencies are required to follow their own precedent (see e.g., *Matter of Lantry v State of New York*, 6 NY3d 49, 58 [2005]) and an agency that deviates from its established rule must provide an explanation for the modification so that a reviewing court can "determine whether the agency has changed its prior interpretation of the law for valid reasons, or has simply overlooked or ignored its prior decision" (see *Terrace Ct., LLC v New York State Div. of Hous. & Community Renewal*, 18 NY3d 446, 453 [2012], citing *Matter of Charles A. Field Delivery Serv. [Roberts]*, 66 NY2d 516, 520 [1985]).

"First Rents: Where an owner significantly changes the perimeter and dimensions of an existing housing accommodation, or creates a housing accommodation in space previously used for nonresidential purposes, the DHCR may find that the resultant housing accommodation was not in existence on the applicable base date. Such a finding may entitle the owner to charge a market or 'first rent,' subject to guidelines limitations for future rent adjustments." (DHCR Operational Bulletin No. 95-2 [December 15, 1995], page 4).

Here, petitioner fails to establish sufficient grounds to warrant the reversal or vacatur of the July 12, 2024, PAR Order, issued by respondent, which found that petitioner failed to meet the requirements for a first rent charge. The Appellate Division, First Department has described "the test for whether alterations qualify for first rent as 'reconfiguration plus obliteration of the prior apartment's particular identity'" (*Dixon v 105 W. 75th St. LLC*, 148 AD3d 623, 627 [1st Dept 2017], quoting *Matter of Devlin v New York State Div. of Hous. & Community Renewal*, 309 AD2d 191, 194 [1st Dept 2003]). Petitioner's assertion that the addition of twenty (20) square feet in unit 3H's bathroom, albeit space previously belonging to the building's hallway, to provide space for a laundry machine significantly altered the outer dimensions of the original apartment such that it can charge first rent is unpersuasive. The mere addition of space in the unit is not conclusive that there was a substantial rehabilitation entitling petitioner to charge first rent (see *Steffey v New York State Div. of Hous. & Community Renewal*, 276 AD2d 407, 408 [1st Dept 2001]). Furthermore, there has been no showing that the apartment unit at issue has been so reconfigured such that its identity has been obliterated. Given that the "substantial rehabilitation" exemption is to be strictly construed (see *Pape*

v Doar, 160 AD2d 213, 215 [1st Dept 1990]), the court finds no basis to disturb respondent's PAR determination. All other arguments have been considered and are without merit. Accordingly, it is hereby

ORDERED that the petition is denied; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for respondent shall serve a copy of this decision and order, with notice of entry, upon petitioner.

This constitutes the decision and order of this court.

July 3, 2025

HON. VERNA L. SAUNDERS, JSC

CHECK ONE:	[X]	**CASE DISPOSED**		[ ]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[X] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**