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

2025 NY Slip Op 33234(U)

August 29, 2025

Supreme Court, Kings County

Docket Number: Index No. 511704/25

Judge: Anne J. Swern

At an IAS Term, Part 75 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 29th day of August 2025.

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

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In the Matter of the Application of GENEA BARNES,

Petitioner,

For Judgment under Article 78 of the Civil Practice Law and Rules,

-against-

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL,

Respondent.

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DECISION & ORDER

Motion Sequence 001
Calendar Number 13

Index No. 511704/25

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

	Papers Numbered
Notice of Petition and Supporting Documents (NYSCEF 1-3)	1, 2
Answer in a Special Proceeding (NYSCEF 6)	3
Affirmation in Opposition and Supporting Documents (NYSCEF 7-13)	4
Reply Affirmation (NYSCEF 16)	5

Upon the foregoing papers, petitioner Genea Barnes seeks judicial review, under Article 78 of the CPLR, of an order issued by respondent New York State Division of Housing and Community Renewal (DHCR) which granted, in part, her petition for Administrative Review (PAR) and modified a decision of the Rent Administrator (RA) which determined that the legal regulated rent on the "base date" was $1,550, and granted petitioner an award of rent overcharges thereon in the total amount of $1,410.75.

Petitioner filed a complaint with the DHCR on November 1, 2018, claiming that the monthly rent of $1,600 collected by the owner constituted an overcharge. On April 3, 2024, the RA issued an order applying the law as it existed prior to the effective date of the Housing Stability and Tenant Protection Act (HSTPA) (L 2019, ch 36), establishing November 1, 2014 (four years prior to the filing of the complaint) as the base date and the legal regulated rent as the rent charged to petitioner on the base date ($1,550). The RA's calculation of overcharges was based on the amount paid by petitioner over the legal regulated rent, as increased according to the relevant Rent Guidelines Board percentages, from March 1, 2015 to October 31, 2023, the date of the last payment in the record. The RA noted that on December 31, 2018, a timely refund check was offered to petitioner but was not accepted, and that since a timely offer was made, only interest was assessed on the overcharge amount. The RA did not award treble damages otherwise available where the owner fails to establish that the overcharges were not willful.

Petitioner subsequently filed a PAR, wherein she argued that the base date rent was the product of a fraudulent scheme to deregulate the apartment; that the 2013 registration for the subject apartment stated that the legal rent was $762.93; that, when petitioner moved into the subject apartment in 2014, she paid a rent of $1,550.00 per month under an illegal free market lease, dated March 1, 2014, which lease lacked any rider or other disclosure to explain how the $1,550.00 monthly rent was calculated; that the 2014 registration for the subject apartment was not timely filed in 2014 but retroactively in 2015; that, in 2016, the owner fraudulently registered the rent for the subject apartment at $2,700.00 per month; that the rent stabilized status and lower registered rent of the subject apartment was hidden from petitioner; and that the owner's concealment of these facts was indicative of fraud triggering application of the default formula to calculate the rent. Petitioner argued that, in the alternative, the RA should have set the base date

rent premised on the owner's rent registrations for 2014 or 2015 and the legal regulated rent should have been frozen at the amount in the registrations from the base date through the entire period of rent overcharge because none of the monthly rents set forth in the relevant registrations ever reflected the monthly rent actually paid by petitioner or contained in her leases. Further, petitioner argued that rent overcharges occurring after the passage of the HSTPA should have been calculated in accordance with the unlimited look-back provision of HSTPA and that treble damages should have been awarded because the rent records evinced the owner's willful overcharging of petitioner.

By order dated February 5, 2025, the Deputy Commissioner mostly upheld the RA's determination but found that the owner had failed to rebut the presumption of willfulness and that treble damages should therefore be imposed on overcharges occurring after November 1, 2016 (two years before petitioner filed her complaint). The Deputy Commissioner found that the owner did not engage in any fraudulent scheme to deregulate the apartment resulting in unreliability of the base date rent because, although petitioner's initial lease was not clearly a rent stabilized lease on its face, the owner did register a stabilized rent of $1,103.58 per month for this lease, and all of petitioner's subsequent leases were rent stabilized leases. The Deputy Commissioner also noted that although the owner registered a rent stabilized rent of $762.93 per month prior to petitioner's occupancy, a rent stabilized rent of $1,103.58 per month for petitioner's initial lease, and a rent stabilized rent of $2,700.00 per month from April 1, 2016 through February 28, 2020, such did not establish fraud considering that all registrations contained stabilized rents, the apartment was always registered as rent stabilized and treated as rent stabilized by the owner, and petitioner was never charged a rent that approached the threshold for deregulation. The Deputy Commissioner stated that given the totality of the

circumstances, the rents set forth in the registrations appeared to evidence owner confusion, which supported the owner's allegation that the errors in the registrations were merely clerical.

Regarding whether HSTPA should apply to rent overcharges that occurred after July 1, 2019, the Deputy Commissioner cited the Court of Appeals' decision in *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal* (35 NY3d 332 [2020]) in stating that HSTPA does not apply to overcharge proceedings, such as the instant matter, which were filed before June 14, 2019. As to the issue of whether the rent should have been frozen based on erroneous registrations, the Deputy Commissioner stated that while RSC § 2528.4 (a) imposes a rent freeze when an owner fails to timely file rent registrations, it does not impose a rent freeze for erroneous rent registrations.

The instant Article 78 proceeding ensued.

In her petition, petitioner reiterates her arguments that: (1) the legal regulated rent was the product of a fraudulent scheme to deregulate, as the initial lease lacked the mandatory disclosure that her apartment was rent stabilized which was intended to mislead her into thinking the apartment was a free market apartment and deprive her of notice to bring an earlier proceeding whereby use of the prior tenant's registered rent of $762.63[1] to calculate the overcharges would have been timely; (2) that, alternatively, the legal regulated rent and overcharges should have been based on the lower $1,103.58 amount which was actually registered on the base date; and (3) that the expanded lookback provisions of the HSPTA should have been applied to calculate those overcharges occurring following the effective date of the Act, using the prior tenant's rent of $762.63 as a basis.

[1] The petition appears to transpose numbers asserting that the prior tenant's registered rent was $792.63 instead of the $762.93 figure set forth in the PAR determination.

The DHCR's "determination must be upheld unless it lacked a rational basis and was arbitrary and capricious" (*Matter of Sydney Leasing, L.P. v New York State Div. of Hous. & Community Renewal*, 185 AD3d 942, 943 [2d Dept 2020]; *see* CPLR 7803 [3]). "Administrative action is irrational or arbitrary and capricious if 'it is taken without sound basis in reason or regard to the facts'" (*Matter of Madison County Indus. Dev. Agency v State of N.Y. Auths. Budget Off.*, 33 NY3d 131, 135 [2019], quoting *Matter of Wooley v New York State Dept. of Correctional Servs.*, 15 NY3d 275, 280 [2010]). "If a determination is rational, it must be sustained even if the court concludes that another result would also have been rational" (*id.*). Stated simply, this court "may not substitute its judgment for that of the [DHCR]," so long as the agency's decision is rationally based in the record (*Matter of 85 E. Parkway Corp. v New York State Div. of Hous. & Community Renewal*, 297 AD2d 675, 676 [2d Dept 2002]). Moreover, "[a]n agency's interpretation of the statutes and regulations that it administers is entitled to deference and must be upheld if reasonable" (*Matter of Ellis v Division of Hous. & Community Renewal of State of N.Y.*, 45 AD3d 594, 595 [2d Dept 2007] [internal quotation marks omitted]; *see Matter of CHT Place, LLC v New York State Div. of Hous. & Community Renewal*, 219 AD3d 486, 487-488 [2d Dept 2023]).

Application of the default formula (RSC § 2622.6 [b] [3]) may be used to calculate the legal regulated rent where it is shown, "under the totality of the circumstances," that there was a fraudulent scheme to deregulate an apartment (*Gomes v Vermyck, LLC*, 238 AD3d 26, 44 [2d Dept 2025]; *see* L 2024, ch 95, § 4 [chapter amendments]). "For the fraud exception to apply under the standard set forth in the chapter amendments, [it must be established] that the [owner] ***knowingly*** engaged in a fraudulent scheme to deregulate an apartment unit (*Gomes*, 238 AD3d at 51[emphasis in original] [citation and internal quotation marks omitted]). "A good-faith mistake

is not a 'circumstance' that supports a finding of a fraudulent scheme to deregulate an apartment unit" (*id.* at 48), and "[m]ere ignorance of the law - or even good-faith confusion about the law - cannot be sufficient to equate with knowingly engaging in a fraudulent scheme" (*id.* at 51).

Taking into consideration, among other things, the owner's consistent treatment of the apartment as rent stabilized and the charging of a rent which did not surpass or even approach the deregulation threshold in effect at the time, the DHCR had a rational basis to determine that, under the totality of the circumstances, the owner did not knowingly engage in a scheme to deregulate the apartment. If the court were to determine differently, it would constitute an improper substitution of its judgment for that of the DHCR.

The Deputy Commissioner also properly established the legal regulated rent and measures of overcharges based on the rent charged to petitioner four years prior to the filing of the complaint, rather than the lower rent registered in the 2014 registration or the rent charged to the prior tenant in 2013. The most recent version of the RSC, in effect at the time the RA rendered his decision, sets forth separate provisions for the determination of the legal regulated rent for those overcharge proceedings commenced on or after June 14, 2019 (RSC § 2526.7) and those proceedings initiated prior to June 14, 2019 (RSC § 2526.1). Because this proceeding was commenced in 2018, RSC § 2526.1 applies. RSC § 2526.1 (a) (3) (i) provides that "[t]he legal regulated rent for purposes of determining an overcharge shall be deemed to be the rent charged on the base date [four years prior to the filing of the complaint], plus in each case any subsequent lawful increases and adjustments" (*see Matter of Fairley v State of New York Div. of Hous. & Community Renewal*, 214 AD3d 800, 801 [2d Dept 2023]). RSC § 2526.1 (a) (2) (ii) further provides that "subject to subparagraphs (iii), (iv), (v), (vi), (vii), (viii) and (ix) of this paragraph," which are not relevant to this matter, "the rental history of the housing accommodation prior to

the four-year period preceding the filing of a complaint pursuant to this section . . . shall not be examined; and examination of a rent registration for any year commencing prior to the base date, as defined in section 2520.6 (f) of this Title, whether filed before or after such base date shall be precluded." RSC § 2520.6 (f) (1) defines the base date "[f]or claims filed before June 14, 2019," as "the date four years prior to the filing date of such claim except where a special provision of this Code, the RSL or other law required maintenance of records or review for a longer period."

The case of *Matter of Syllman v New York State Div. of Hous. & Community Renewal* (233 AD3d 977 [2d Dept 2024]), relied on by petitioner in support of her argument that HSTPA (and its increased lookback provisions) must be applied toward the calculation of overcharges occurring after June 14, 2019, is inapposite. The proceeding at issue in *Syllman* involved the DHCR's determination of an unknown legal regulated rent pursuant to RSC § 2522.6 and not, as here, determination of the legal regulated rent for purposes of an overcharge proceeding pursuant to RSC § 2526.1, which by its terms must be applied to any overcharge proceeding occurring prior to June 14, 2019.

However, the court finds the failure of the RA to assess and award reasonable attorney's fees, despite the absence of a demand for same in petitioner's complaint, was contrary to the Rent Stabilization Law (RSL) which makes such award mandatory (RSL § 26-516 [a] [4] ["An owner found to have overcharged ***shall*** be assessed the reasonable costs and attorney's fees of the proceeding and interest from the date of the overcharge at the rate of interest payable on a judgment pursuant to section five thousand four of the civil practice law and rules"] [emphasis added]). The DHCR has not cited any provision in the RSL or RSC to support its ostensible argument that petitioner waived attorney's fees by failing to demand same in her complaint, nor

does the agency otherwise contend that the aforesaid statute is not applicable to the instant proceeding.

As a result, the instant Article 78 is petition is granted to the extent that this matter shall be remitted to the DHCR for determination and award of reasonable attorney's fees and costs incurred by petitioner in the RA proceeding pursuant to RSL § 26-516 (a) (4). The April 3, 2024, order of the RA, as modified by the Deputy Commissioner's February 5, 2025 order, shall otherwise remain in effect. The petition is in all other respects denied.

The court finds unavailing any other arguments presented by petitioner, and any relief not expressly granted herein, has been considered, and is denied.

Accordingly, it is hereby

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

The foregoing constitutes the decision and order of the court.

E N T E R:

Hon. Anne J. Swern, J.S.C.
Dated: 8/29/2025

For Clerks use only:

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