

**Matter of Kwik Realty, LLC v New York State Div. of
Hous. & Community Renewal**

2025 NY Slip Op 33613(U)

September 22, 2025

Supreme Court, New York County

Docket Number: Index No. 151419/2025

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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INDEX NO. 151419/2025

In the Matter of the Application of
KWIK REALTY, LLC

MOTION DATE 02/03/2025

Petitioner,

MOTION SEQ. NO. 001

- v -

NEW YORK STATE DIVISION OF HOUSING AND
COMMUNITY RENEWAL,

DECISION + ORDER ON
MOTION

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1 through 31
were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Upon the foregoing documents, and after a final submission date of July 7, 2025, Petitioner
Kwik Realty, LLC's ("Petitioner") Petition asking this Court to annul Respondent New York State
Division of Housing and Community Renewal's ("Respondent") Order and Opinion dated
December 3, 2024 which denied Petitioner's Petition for Administrative Review ("PAR") is
denied.

I. Background

On October 31, 2016, Respondent's Tenant Protection Unit ("TPU") advised Petitioner
that it was under audit for claimed individual apartment improvements to Apartment 55 at 520 W.
183rd Street, New York, New York (the "Apartment"). After Petitioner did not comply with the
audit, the TPU, via letter dated November 22, 2017, found the Apartment's legal regulated rent to
be registered at \$1035.09 (NYSCEF Doc. 4). On January 26, 2018, Respondent initiated a rent
overcharge proceeding against Petitioner for Apartment 55 at 520 W. 183rd Street, New York, New
York (the "Apartment") based on the recommendation of the TPU.

On January 31, 2022, Respondent's Overcharge Processing Unit issued a "final notice" to Petitioner warning that the Rent Administrator found evidence of an overcharge and based on the default formula, found the legal regulated rent should be set at \$906.26 (NYSCEF Doc. 12). Petitioner claimed it had no prior notice of the audit or proceedings, and once it learned of the proceedings, Petitioner asked Respondent to re-open the proceedings and consider previously unsubmitted documents.

On June 5, 2024, Respondent issued an order finding that Petitioner failed to provide a lease or ledger for the Apartment in effect on the base date and applied the default formula to determine the legal regulated rent (NYSCEF Doc. 3). Petitioner then commenced a Petition for Administrative Review ("PAR") but the PAR was denied, finding there was no basis to determine Petitioner did not receive notice of the audit or proceedings; Petitioner failed to establish a reliable date for the base date rent, and the application of the default formula was not because of a finding of fraud, but based on a lack of evidence of the base date rent (NYSCEF Doc. 2).

Petitioner alleges none of the decisions made a finding of fraud against it and therefore the default formula should not have applied. It also argues the fact that three different legal regulated rents were calculated by Respondent show the orders are arbitrary and capricious. Petitioner also claims that Respondent relied on a lease from 2014 in making its determination although Petitioner never provided them with that lease and Respondent has never provided that lease to Petitioner. According to Petitioner, that lease does not exist because the Apartment was vacant in 2014. Respondent opposes and argues that the default formula can be applied not only where there is a finding of fraud but also in cases where there are no reliable rental records. Respondent also argues that Petitioner could have submitted evidence of individual apartment improvements, but it failed to do so, and it did not raise the issue of individual apartment improvements until the PAR.

II. Discussion

The petition is denied. In an article 78 proceeding, judicial review is limited to determine whether an administrative decision is arbitrary and capricious, or, in other words, lacks any rational basis (*Slesinger v Department of Housing Preservation and Development of City of New York*, 39 AD3d 246 [1st Dept 2007]). It is well established that “review of administrative determinations is confined to the facts and record adduced before the agency” (*Slesinger, supra* quoting *Matter of Yarbough v Franco*, 95 NY2d 342 [2000]).

As a preliminary matter, Petitioner is incorrect that the default formula only applies in cases where there is a finding of fraud. Courts have repeatedly held that the default formula also applies in cases where the base date rent cannot be determined or rent history is unavailable due to unreliable or non-existent rent records (*see, e.g. Simpson v 16-26 East 105, LLC*, 176 AD3d 418, 418-19 [1st Dept 2019]; *see also 65-61 Saunders Street Associates, LLC v New York State Division of Housing and Community Renewal*, 154 AD3d 930 [2d Dept 2017]). Therefore, Respondent’s application of the default formula where, as here, Petitioner failed to provide it with any documentation through which the base date rent could be determined, was not arbitrary or capricious.

To the extent Petitioner seeks reversal of DHCR’s orders based on a different legal regulated rent calculated by the TPU and the Rent Administrator, the letters from the TPU were not binding orders, and even stated “**This is NOT an Order and contains only proposed findings. These findings are subject to change based on additional evidence and arguments.**” (NYSCEF Doc. 12). Thus, the different calculated numbers between the TPU’s non-binding calculations, which explicitly stated they were subject to change, and the order issued by the Rent Administrator, is not a reason to annul DHCR’s determination.

Moreover, the DHCR registration for 2014 shows the Apartment was vacant and had a legal regulated rent of \$750.07 (NYSCEF Doc. 29). Yet, the earliest available lease included in the record, which began on October 1st, 2015, set the rent at \$2,800.00 with a preferential monthly rent of \$1,800.00 (NYSCEF Doc. 5). Petitioner failed to produce any documentation of how the rent was increased from \$750.07 to \$2,800.00 in one year. In its arguments, Petitioner is erroneously shifting the burden to DHCR to assemble the necessary documentation, when it is Petitioner's burden to justify the rent charged and prove why an apartment is not rent stabilized (*see Power Associates, Inc. v New York State Div. of Hous. and Community Renewal*, 229 AD2d 349, 350-51 [1st Dept 1996]).

The record shows that Petitioner ignored multiple letters from DHCR asking it for documents and warning it that it was under audit for rent overcharge, yet Petitioner did nothing for years, and once it appeared, it failed to submit any evidence of individual apartment improvements. While Petitioner claims it did not receive notice, there is no affidavit from anyone with personal knowledge explaining they never received mail, and to rebut the presumption of proper mailing and receipt, the addressee must go beyond mere denial of receipt (*see e.g. United Nations Federal Credit Union v Diarra*, 194 AD3d 506 [1st Dept 2021]). When Petitioner did decide to defend itself, as early as March 28, 2022, it was granted extensions of time to respond, but it never produced any evidence substantiating the rent spike from 2014 to 2015, nor did it produce any reliable data to establish the base date rent. Given the record before the Court, and given this is an Article 78 proceeding, where the Court's sole role is to determine if DHCR's determination had some rational basis, the Court denies the Petition and finds there was a rational basis for DHCR's orders (*see also 247-253 West 116 LLC v New York State Div. of Hous. & Community Renewal*, 178 AD3d 482 [1st Dept 2019]).

Accordingly, it is hereby,

ORDERED that the Petition is denied in its entirety and is hereby dismissed; and it is further

ORDERED that within ten days of entry, counsel for Respondents shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

9/22/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: