Matter of Chino v New York City Dept. of Hous. Preserv. & Dev. (HPD)

2025 NY Slip Op 33973(U)

October 15, 2025

Supreme Court, New York County

Docket Number: Index No. 150553/2025

Judge: Mary V. Rosado

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. 150553/2025

In the Matter of the Application of
THEO CHINO,

MOTION DATE 01/13/2025

Petitioner

MOTION SEQ. NO. 001

- v -

NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT (HPD), ADOLFO CARRION, in his official capacity as HPD Commissioner; and ERIC ADAMS, in his official capacity as Mayor of the City of New York

DECISION + ORDER ON MOTION

Respondents

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68
were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Appearances:
Petitioner: Theo Chino, *pro se*
Respondents: New York City Law Department (Isabella J. Kendrick, Esq.)

Upon the foregoing documents, and after oral argument, which took place on July 29, 2025, Petitioner Theo Chino's ("Petitioner") Petition for an order permanently restraining Respondents from enforcing an Order and Report of setting and confirming regulated (stabilized) rent (the "Rent Setting Order"), or alternatively annulling the Rent Setting Order, and compelling Respondents to respond to Petitioner's freedom of information law ("FOIL") request is denied, and the Petition is dismissed.

I. Background

Petitioner lives at 640 Riverside Drive (the "Building") in Apartment 10B (the "Apartment"). Pursuant to Article 15 of the New York State Private Housing Finance Law ("PHFL"), loans may be issued to private investors to rehabilitate deteriorating buildings in New

York. Loans are not made until the issuing municipality determines that tenants received proper notice and advised them of expected rent increases resulting from rehabilitation (*see* PHFL § 803). Once rehabilitation is completed, each unit in the rehabilitated building is subject to an initial rent (*see* PHFL § 804).

On June 29, 2018, the City of New York entered a regulatory agreement with a not-for-profit affordable housing developer, GP-UHAB Housing Development Fund Corporation ("UHAB") whereby UHAB was provided financing to rehabilitate the Building, and in exchange UHAB agreed to abide by certain regulatory restrictions (NYSCEF Doc. 43). Prior to entering this agreement, in May of 2018, Respondent HPD advised Building's tenants via letter and at an informational meeting about the rehabilitation work and post-rehabilitation rent restructuring (NYSCEF Doc. 44). On June 11, 2018, tenants were sent another letter about the work and the new rent regulatory status once rehabilitation was completed (NYSCEF Doc. 45). Tenants were further advised that Section 8 subsidies would be made available to eligible families.

In May 2024, HPD advised tenants that the rent restructuring levels previously communicated would be adjusted higher due to increased operating costs and mortgage interest rates, as well as the need for additional rehabilitation work (NYSCEF Docs. 46-47). In August of 2024, HPD determined the rehabilitation work was substantially completed (NYSCEF Doc. 48). On August 14, 2024, HPD sent a letter to tenants, including Petitioner, asking them to report inaccuracies regarding completed work by September 14, 2024 (NYSCEF Doc. 49). Petitioner was advised that the new rent for the Apartment would be $2,036 effective October 1, 2024 and Petitioner would be provided a rent stabilized lease (*id.*). Fifty-eight tenants responded to HPD's letter, but Petitioner did not (NYSCEF Doc. 49). Petitioner received his rent order on September

18, 2024 setting his rent at $2036 (NYSCEF Doc. 50). This was based on the number of rooms in his apartment, and all similarly situated apartments received the same rent.

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 (*Slesinger v Department of Housing Preservation and Development of City of New York*, 39 AD3d 246 [1st Dept 2007]). The "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]).

There is nothing arbitrary and capricious about the rent order issued. All tenants in the Building with similarly situated apartments received the rent. The rent was properly issued pursuant to New York State Private Housing Finance Law § 804. Petitioner was advised, both before and during the rehabilitation project, that each unit's rent would change once the project was completed. While Petitioner claims his apartment was previously subject to rent control, New York State Private Housing Finance Law § 804 provides:

> "[n]otwithstanding the provisions of, or any regulation promulgated pursuant to, the emergency housing rent control law, the local emergency housing rent control act or local law enacted pursuant thereto, upon completion of the rehabilitation of an existing multiple dwelling…aided by a participation loan made pursuant to this article, the agency shall establish the initial rent for each dwelling unit within the rehabilitated…multiple dwelling."

Although Petitioner now claims certain renovations in his apartment did not take place, this record was not before Respondents at the time they issued their rent order because Petitioner decided not to respond to the August 14, 2024 letter providing him an opportunity to contest any of the reported rehabilitation. Because judicial review is limited to the facts put before the agency, and Petitioner failed to put these facts before Respondent, the Court cannot consider it now in this

Article 78 proceeding (*see also Rizzo v New York State Div. of Housing and Community Renewal*, 6 NY3d 104, 110 [2005].

To the extent Petitioner challenges the Building's entry into the third-party transfer program, or whether the Building was properly considered "blighted," these events and determinations happened many years ago. Given the passage of time and what is alleged in the Petition, that issue is not properly before the Court. Thus, there was a rational basis for Respondents' rent order, and the Petition is denied.

Respondents provided FOIL requests where Petitioner is the named requester, making that branch of the Petition moot. Respondent seeks to compel a response to a FOIL request submitted by non-party Roberta Gold – which he does not have standing to do. Therefore, the branch of the Petition seeking to compel a response to FOIL 2024-805-01166 is dismissed. Finally, Petitioner is not entitled to fees or monetary relief.

Accordingly, it is hereby,

ORDERED that the Petition is denied to the extent it has not become moot based on the FOIL responses produced by Respondents; and it is further

ORDERED that the Petition 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.

10/15/2025
DATE

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

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