

Barry Martin 546 Corp. v New York State Homes & Community Renewal

2025 NY Slip Op 34230(U)

November 3, 2025

Supreme Court, New York County

Docket Number: Index No. 161169/2025

Judge: Lyle E. Frank

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK **PART** **11M**

Justice

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BARRY MARTIN 546 CORP.

Petitioner,

- v -

NEW YORK STATE HOMES AND COMMUNITY
RENEWAL, FORMERLY KNOWN AS NEW YORK STATE
DIVISION OF HOUSING AND COMMUNITY RENEWAL,

Respondent.

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INDEX NO. 161169/2025

MOTION DATE 08/21/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, the motion is denied.¹

Background:

Petitioner moved by Order to Show Cause, seeking a preliminary injunction granting CPLR Article 78 §7803(1) mandamus relief to compel the Division of Housing and Community Renewal Office of Rent Administration (“DHCR”) to (1) conduct an Administrative Determination proceeding to review the Tenant Protection Unit determination of the legally regulated rent of the rent-controlled unit at 546 W. 147th Street Apartment 3D, (2) to assign a docket number to the Administrative Determination petition made by petitioner on DHCR, and (3) to consolidate the pending overcharge proceeding with the Administrative Determination proceeding. DHCR has rejected petitioner’s application for an Administrative Determination, and in doing so, has declined to assign a DHCR docket number to the matter (NYSCEF Doc.

¹ The Court would like to thank Noah Lowen for his assistance in this matter.

28). A separate overcharge proceeding (DHCR Doc. MX410063R) is pending before the DHCR against the landlord of the subject apartment.

Legal Standard:

It is well settled that only ministerial acts that involve no exercise of discretion are subject to the extraordinary remedy of mandamus to compel. “The extraordinary remedy of mandamus is available in limited circumstances only to compel the performance of a purely ministerial act which does not involve the exercise of official discretion or judgment, and only when a clear legal right to the relief has been demonstrated”. *Matter of Rose Woods, LLC v. Weisman*, 85 AD3d 801, 802 [2d Dep’t 2011]. “[A]dministrative agencies have flexibility in determining the best methods for pursuing objectives articulated by the legislature. *Matter of LeadingAge N.Y., Inc. v Shah*, 32 N.Y.3d 249, 260 [Court of Appeals 2018]. “Further, courts must defer to an administrative agency’s rational interpretation of its own regulations in its area of expertise.” *Matter of Peckham v. Calogero* 12 N.Y.3d 424, 431 [Court of Appeals 2009].

Discussion:

The application for a preliminary injunction fails, because Petitioner has failed to establish a likelihood of success on the merits. *See, e.g., Cosmos Forms, LTD. v. Furst*, 568 N.Y.S.2d 783, 783 [1st Dept. 1991]. The adjudication of Administrative Determinations lies squarely within the discretion of the DHCR. RSC §2522.6(a) provides that “the DHCR at any time upon written request of either party, or on its own initiative, may issue an order in accordance with the applicable provisions of this code determining the facts, including the legal regulated rent, the dwelling space, required services, and equipment required to be provided with the housing accommodations.” Pursuant to 9 NYCRR § 2527.5(a), DHCR may, at any stage of a proceeding, reject the application or complaint if it is insufficient or defective. Pursuant to 9

NYCRR §2527.6(b), the DHCR, on such terms and conditions as it shall determine, may grant or deny the application for a determination in whole or in part.

First, mandamus to compel DHCR to conduct an Administrative Determination proceeding to review the Tenant Protection Unit determination would be improper because the decision to conduct or not conduct an Administrative Determination proceeding lies in the discretion of DHCR. Next, petitioner has failed to demonstrate that this standard should not apply to assigning a docket number to proceedings. Under New York law, and in the interest of administrative efficiency, DHCR has the broad discretion to deny applications for review. Accordingly, assigning a docket number to an application for an Administrative Determination may be rationally interpreted as a component of DHCR administrative procedure for which the agency is afforded discretion. Declining to docket the Administrative Determination upon receipt of the petitioner's application is a manifestation of the agency's rejection of petitioner's application for Administrative Determination. Respondent's assertion that the legally regulated rent amount will be decided through the pending overcharge proceeding such that an Administrative Determination is redundant is a rational interpretation of the governing statute and is a sound determination of the best method for pursuing objectives articulated by the legislature which permit the DHCR to deny applications.

Finally, regardless of the status of the Administrative Determination proceeding, mandamus to compel DHCR to consolidate the pending overcharge proceeding with it is improper because this is a discretionary act under 9 NYCRR § 2527.5(f) which permits the DHCR to consolidate complaints but does not require it to do so. *Manko v. N.Y. State Div. of Hous. Cmty Renewal* 88 A.D.3d 719, 721 [2d Dep't 2011]. The relief sought would compel the respondent to take discretionary action, and not compulsory ministerial action with which the

DHCR has a legal obligation to comply. Thus, writ of mandamus is improper. Additionally, because the respondent asserts that the overcharge proceeding will yield a determination of the legally regulated rent amount, the petitioner has not exhausted all administrative remedies and has thus failed to demonstrate a clear legal right to a mandamus judgment. The Court has considered Petitioner’s other arguments and found them unavailing. Accordingly, it is hereby

ORDERED and ADJUDGED that the petitioner’s Order to Show Cause is denied; and it is hereby

ORDERED that the temporary restraining order issued when the Order to Show Cause was signed is hereby lifted.


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11/3/2025
DATE

LYLE E. FRANK, 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: