Matter of HP Promenade Hous. Dev. Fund Co. Inc. v New York State Div. of Hous. & Community Renewal
2025 NY Slip Op 34443(U)
November 6, 2025
Supreme Court, New York County
Docket Number: Index No. 151779/2025
Judge: Verna L. Saunders
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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. 151779/2025

In The Matter of The Application of HP PROMENADE HOUSING DEVELOPMENT FUND COMPANY INC. (as nominee for "Promenade Nelson Apartments LLC" and "Promenade Tower Nelson Apartments LLC"),
Petitioner,

MOTION SEQ. NO. 001

- v -

DECISION + ORDER ON MOTION

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL,
Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 8, 9, 10, 11, 12, 13, 14, 15 were read on this motion to/for **ARTICLE 78**.

Petitioner is the owner and landlord of the real property located at 150 West 225th Street, Apartment 3H, Bronx, New York, 10025 ("subject apartment"). The apartment is subject to the Rent Stabilization Law, and respondent New York State Division of Housing and Community Renewal ("DHCR") is the agency charged with administering the Rent Stabilization Law ("RSL") and Rent Stabilization Code "RSC"). The tenant of the subject apartment was a recipient of housing assistance from the New York City Housing Authority voucher program, and she filed a rent overcharge complaint with the DHCR on October 9, 2019, alleging that petitioner was improperly charging her for electricity. In this application, petitioner seeks an order annulling the DHCR Deputy Commissioner's order and opinion which denied the landlord's petition for Administrative Review ("PAR"). Petitioner appealed the Rent Administrator's determination that petitioner, as an owner, had overcharged the tenant of the subject apartment. Specifically, petitioner contends that, to the extent the Rent Administrator's determined that there was a $188.20 overcharge but also found that the tenant underpaid the owner by $355.65, the Rent Administrator should have deducted any overcharge from the underpayment before applying treble damages. As relevant here, petitioner notes that while the DHCR Deputy Commissioner's order and opinion found that there was a rent overcharge on March 1, 2016, June 1, 2018, June 1, 2019, February 1, 2020, and September 1, 2023, the DHCR Deputy Commissioner's determination fails to reflect that petitioner issued credits to the tenant for any excess rent billed during the relevant period. To the extent there were any billing errors, petitioner asserts that the billing errors were inadvertent and not willful. According to petitioner, the Deputy Commissioner relied on the documents supplied by the tenant to determine the rent overcharge calculations, but it did not give petitioner an opportunity to review and reconcile the tenant's billing and payment documents. As such, petitioner urges the court to find that the DHCR Deputy Commissioner's order and opinion was arbitrary and capricious since the determination did not consider that the owner issued credits where there was an overcharge, and

that any overcharge was *de minimis* and not willful. Lastly, petitioner avers that the imposition of treble damages is not mandated by the Housing Stability and Tenant Protection Act of 2019 ("HSTPA") (NYSCEF Doc. No. 1, *petition*). In supports of the application, petitioner submits a copy of the rent ledger; the DHCR order and opinion denying petitioner's PAR; and the Rent Administrator's order finding that there was an overcharge (NYSCEF Doc. Nos. 2-4).

The DHCR filed an answer wherein it denied all allegations (NYSCEF Doc. No. 10, *answer*). In opposition, the DHCR contends that the Rent Administrator's order finding that there was rent overcharge was rational and supported by the record because the rental history submitted by the tenant and the rent ledger submitted by the petitioner demonstrate that petitioner charged more than the regulated legal rent. Specifically, the DHCR contends that the rent ledger and the billing statements reveal that an overcharge of $188.20 was billed at various times from August 1, 2015, through September 2023. As such, respondent avers that petitioner's contention that the Rent Administrator only relied on tenant's submissions to arrive at a determination is unsupported by the record. The DHCR insists that the PAR order evinces that petitioner's ledger was considered and it found that there were rent charges in excess of the legal rent as calculated by the Rent Administrator for the months listed in the PAR order. To the extent petitioner contends that no overcharge should be found because petitioner allegedly issued credits for overcharges and the tenant also underpaid, the DHCR posits that same is without merit because neither the RSL nor the RSC authorizes DHCR to offset the overcharges by the underpayments or any rent credits petitioner allegedly issued.

Next, the DHCR asserts that the RSL establishes a presumption that an overcharge is willful, and that the imposition of treble damages is warranted, unless the owner establishes by a preponderance of the evidence that the overcharge was not willful. DHCR further contends that pursuant to the amended RSL § 26-516, an owner's offer of a refund of the overcharge amount after an overcharge complaint is filed and served on the owner is not evidence of a lack of willfulness. According to DHCR, the credits petitioner allegedly issued to the tenant totaled $169.21, which is less than the $188.20 overcharge amount and as such, the credits did not make the tenant whole. Petitioner's alleged partial rent credits issued do not meet the pre-HSTPA requirements, argues DHCR, as the DHCR's former Policy Statement 89-2 which clarified the DHCR's position on the application of treble damages, established that a landlord seeking to take advantage of the safe harbor against treble damages must show that it "in good faith" tendered a full refund to a complaining tenant. Thus, DHCR argues that the PAR determination which affirmed the Rent Administrator's order was neither arbitrary nor capricious as there is no legal basis for petitioner's claim that treble damages do not apply when the overcharge is *de minimis* (NYSCEF Doc. No. 11, *Shia affirmation*). DHCR attaches a copy of the PAR Order; DHCR former Policy Statement 89-2; and the transcript of the administrative proceeding (NYSCEF Doc. Nos. 12-14).

In reply, petitioner reiterates that the DHCR did not provide it with copies of the tenant's rent payment, and that the finding of the overcharge was based solely upon the rental history. To the extent the rent ledger submitted was reviewed as part of the PAR process, petitioner contends that the DHCR Deputy Commissioner misunderstood or misinterpreted the rent ledger and did not use same to prepare the rent/overcharge calculation chart. Petitioner posits that since it was not permitted to review and respond to tenant's rent payment documentation, its due process

rights were denied. Next, petitioner asserts that the DHCR Deputy Commissioner overlooked entries in the owner's rent ledger evincing various rent credits having been given to the tenant cancelling any claimed overcharge during the relevant period. According to petitioner, the tenant underpaid rent in August 2015 where an overcharge was incorrectly found. Petitioner insists that in some instances since the tenant did not pay the higher amount that was billed, there could not have been any overcharges. Petitioner reiterates that billing errors were inadvertent and not willful as the owner provided these credits unprompted, and prior to the tenant's complaint and thus, the imposition of the treble damages are unwarranted. Lastly, petitioner argues that it could be negatively affected by the alleged overcharge erroneously found by DHCR Deputy Commissioner because the order could deny petitioner the right to Individual Apartment Improvements ("IAIs") for making an apartment ready for occupancy, as the right to higher IAIs is jeopardized by an award of treble damages (NYSCEF Doc. No. 15, *reply*).

The standard of review in this Article 78 proceeding is whether the respondents' determination "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion" (CPLR 7803[3]). Whether an administrative decision is arbitrary or capricious depends on whether the determination "'is without sound basis in reason and is generally taken without regard to the facts'" (*Matter of Galaxy Bar & Grill Corp. v New York State Liq. Auth.*, 154 AD3d 476, 482 [1st 2017], citing *Pell v Board of Education*, 34 NY2d 222, 231 [1974]). A rational or reasonable basis for an administrative agency determination exists if there is evidence in the record to support its conclusion (see *Sewell v New York*, 182 AD2d 469, 473 [1st Dept. 1992]). As such, "[i]f the determination is rational, it must be upheld, even though the court, if viewing the case in the first instance, might have reached a different conclusion" (*Sullivan County Harness Racing Ass'n v Glasser*, 30 NY2d 269, 278 [1972]).

Willfulness of an overcharge is presumed, and treble damages are imposed, unless the owner establishes, by a preponderance of the evidence, that the overcharge was not willful (see *H.O. Realty Corp v State Div. of Housing and Community Renewal*, 46 AD3d 103, 107 [1st Dept 2007]; Rent Stabilization Law § 26-516[a]).

Here, petitioner has failed to demonstrate that the challenged PAR order lacked a rational basis or was arbitrary and capricious. As the agency responsible for the administration of the Rent Stabilization Law, DHCR "has broad discretion in evaluating pertinent factual data and determining the inferences to be drawn therefrom" (*Wembly Management Co. v. New York State Div. of Hous. & Community Renewal, Office of Rent Admin.*, 205 AD2d 319, 319 [1st Dept 1994]). As such, the DHCR is entitled to deference as to issues of credibility and the weight of evidence (see *Matter of Ansonia Residents Assn.*, 75 NY2d 206, 213, [1989]) when considering the tenant's rental payments history and petitioner's rent ledger submitted. Contrary to petitioner's contentions, the PAR evinces that the DHCR Deputy Commissioner considered petitioner's rent ledger and determined that petitioner's purported credit does not offset the overcharges billed. Lastly, petitioner fails to provide sufficient grounds for the court to disturb the PAR determination that the overcharging was willful, especially since such a determination rests solely within the DHCR's discretion (see *Crockett v 351 St. Nicholas Ave. LLC*, 2019 NY Slip Op 31177[U], *8 [Sup Ct, NY County 2019]). All other arguments have been considered and are without merit. Accordingly, it is hereby

ORDERED and **ADUDJGED** 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.

November 6, 2025

HON. VERNA L. SAUNDERS J.S.C.

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**