

**Matter of Promesa Found., Inc. v New York City Dept.
of Hous. Preserv. & Dev.**

2025 NY Slip Op 34654(U)

December 8, 2025

Supreme Court, New York County

Docket Number: Index No. 151868/2025

Judge: Mary V. Rosado

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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

-----X

INDEX NO. 151868/2025

In the Matter of the Application of
PROMESA FOUNDATION, INC.,

MOTION DATE 02/10/2025

Petitioner,

MOTION SEQ. NO. 001

For a judgment pursuant to Article 78 of the CPLR

- v -

NEW YORK CITY DEPARTMENT OF HOUSING
PRESERVATION & DEVELOPMENT, and THE NEW YORK
CITY DEPARTMENT OF FINANCE

DECISION + ORDER ON
MOTION

Respondents.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1 through 47
were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

Appearances:

Petitioner: Nixon Peabody LLP (Richard J. Shore, Esq.)

Respondents: The New York City Law Department (Andrea H. Brustein, Esq.)

Upon the foregoing documents, and after oral argument, which took place on November 6,
2025, Promesa Foundation, Inc.'s ("Petitioner") Petition is granted.

Petitioner is a not-for-profit corporation and holds title to properties affiliated with Acacia
Network Housing, Inc. ("Acacia"), a not-for-profit corporation that provides social services,
including integrated health and housing programs. Acacia operates more than 50 shelters across
New York City and provides services to approximately 7,000 individuals. In 2015, in furtherance
of Acacia's housing program, Petitioner purchased the building located at 115 Henwood Place,
Bronx, New York (the "Building"). Petitioner leases the Building to Acacia to operate a
transitional homeless shelter. Prior to Petitioner purchasing the Building, the Building was granted
a tax exemption under RPTL § 421-a which began in 2008 and will expire in 2032. As part of the

RPTL § 421-a program, Petitioner was required to register certain rent stabilized units with DHCR, even though the units were temporarily exempt from rent stabilization because the Building was operated as a homeless shelter (*see* RSC § 2520.11[k]).

In 2019, Petitioner received notice from HPD that it failed to file annual registrations with DHCR from 2015 to 2018, and it received a 2019 Notice of Impending Revocation (“NOIR”) warning that the failure to cure the filing violations by October 14, 2019 would result in revocation of the 421-a benefits. Petitioner retained counsel and filed the registrations within the cure period. Subsequently, Petitioner did not file its annual registrations with DHCR from 2020 through 2024. Petitioner received an e-mail from DHCR on September 13, 2024 advising that the 2024 registration had not been filed, and on October 4, 2024, Petitioner filed the 2024 registrations. But on October 9, 2024, HPD sent Petitioner a Determination Notice advising Petitioner its 421-a benefits were retroactively revoked for failure to file annual registrations with DHCR from 2020 through 2023. HPD instructed the Department of Finance to require repayment of all taxes from January 1, 2020, that would have been owed but for the 421-a tax benefits (this amounted to a tax liability of \$1,190,493.40). The Determination Notice stated that HPD provided Petitioner with a NOIR on May 1, 2024, but Petitioner never received a NOIR in 2024 as it did in 2019. Petitioner cured the violation on February 6, 2025, but the tax liability has not been reduced and HPD’s determination remains in effect.

According to Respondents, a NOIR was served via regular mail on May 1, 2024 to Petitioner at three separate addresses, and to the holder of the mortgage on the Building, Banco Popular, yet multiple individuals employed by Petitioner and Banco Popular swear they never received the May 1, 2024 NOIR. Petitioner also paid a late registration penalty to DHCR in the amount of \$2,300. Petitioner now requests a judgment annulling HPD’s determination to revoke

retroactively Petitioner's 421-a benefits and directing HPD to accept Petitioner's cure of filing annual registrations for 2020 through 2024.

In an article 78 proceeding, judicial review is limited to determine whether an administrative decision is arbitrary and capricious, or an abuse of discretion (*Slesinger v Department of Housing Preservation and Development of City of New York*, 39 AD3d 246 [1st Dept 2007]). An administrative sanction must be upheld unless it so shocks the judicial conscience as to constitute an abuse of discretion as a matter of law due to being so disproportionate to the alleged offense (*see Mirza v College of Mount Saint Vincent*, 241 AD3d 1163, 1164 [1st Dept 2025] quoting *Matter of Zirino v Diamond*, 259 AD2d 443, 443 [1st Dept 1999]).

Here, the Court finds Respondents' sanction to be so disproportionate and so severe that it shocks the judicial conscience and constitutes an abuse of discretion as a matter of law. Respondents are imposing a seven-figure retroactive tax liability on the operator of a homeless shelter based on filing annual registrations with DHCR late, an error which was corrected and harmed no one considering the apartments are temporarily exempt from registration as the Building is being operated as a homeless shelter. The penalty has future consequences too, as the revocation of the § 421-a tax benefits will foist millions in future tax liabilities on a homeless shelter operator at a time when New York City is dealing with housing and affordability crises. Respondents' disproportionate multi-million-dollar penalty stands in stark contrast to DHCR's penalty of \$2,300, highlighting the abuse of discretion which took place here.

While the Court expects Petitioner to employ a system in the future to ensure rent registrations are filed timely, considering the Building was exempt from rent stabilization because it is a homeless shelter where residents do not pay rent or sign leases, and because the technical violation harmed no one, the Court grants the Petition and annuls HPD's determination as so

shocking to the Court’s conscience that HPD’s determination constituted an abuse of discretion as a matter of law. Moreover, HPD is directed to accept Petitioner’s late DHCR filings for 2020 through 2024. Because the Court grants the Petition on the basis that Respondents’ determination is an abuse of discretion and shocks the conscience, the Court does not reach the other grounds set forth in the Petition. The Court has considered the remainder of the parties’ contentions and finds them unavailing.

Accordingly, it is hereby,

ORDERED and ADJUDGED that the Petition is granted and Respondent New York City Department of Housing Preservation & Development’s determination to revoke retroactively Petitioner’s 421-a benefits dated October 9, 2024 is declared null and void; and it is further

ORDERED that Respondents shall accept Petitioner’s late DHCR filings for 2020 through 2024 *nunc pro tunc*; and it is further

ORDERED that within ten days of entry, counsel for Petitioner 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.

<u>12/8/2025</u> DATE		<u>Mary V Rosado JSC</u> HON. MARY V. ROSADO, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE