SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DENIS REO** **PART** **65**

Acting Justice

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FOXWOOD REALTY LLC,

Plaintiff,

- v -

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, JOHN F. QUINAN

Defendant.

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INDEX NO. 154146/2025

MOTION DATE 03/28/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 26, 28, 29, 30 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 26, 28, 29, 30 were read on this motion to/for DISMISS.

Foxwood Realty LLC (petitioner) commenced the instant Article 78 proceeding on March 28, 2025, seeking an order vacating, modifying, or setting aside the Division of Housing and Community Renewal (DHCR) order dated January 28, 2025, granting John F. Quinan's (Quinan) petition for administrative review (PAR). Quinan interposed an answer and opposition to the petition.[1] The court denies the petitions for the reasons that follow.

BACKGROUND FACTS

Petitioner is the current owner of the building located at 323 First Avenue, New York, New York (subject building) (NYSCEF Doc No. 1, petition at 1, ¶ 1). DHCR is the New York State agency responsible for the administration of the Rent Stabilization Law of 1969 (RSL)

[1] On March 31, 2025, Quinan also commenced an Article 78 proceeding under the index no. 154289/2025, challenging the DHCR's PAR order dated January 28, 2025 (NYSCEF Doc No. 1, petition). In that matter, Quinan seeks to recover overcharge amounts from May 1, 2017 through June 30, 2021—a period the January 28, 2025 order does not cover—as well as the interest that has accrued to date and attorneys' fees. By a stipulation dated December 5, 2025, the parties agreed to stay a determination of that matter pending the determination of the instant Article 78 proceeding (NYSCEF Doc No. 154289/2025).

(Administrative Code of City of NY § 26-501 *et seq.*) and the Rent Stabilization Code (RSC) (9 NYCRR § 2520.1 *et seq.*). Quinan is the tenant of apartment 4R (apartment) in the subject building (NYSCEF Doc No. 1 at 2, ¶ 3). Petitioner allegedly purchased the subject building on or about December 21, 2010 (*id.* at 2, ¶). The previous owner was allegedly Realty 19 First Associates, LLC (prior owner) (*id.* at 2, ¶ 6). Quinan and the prior owner entered into an initial vacancy lease for the apartment dated March 30, 2004 (original lease) for the period of May 1, 2004 through April 30, 2005 (NYSCEF Doc No. 3). The initial lease was on a rent-stabilized form, which included a DHCR rent stabilization lease rider (DHCR rider), containing a provision listing the legal regulated monthly rent for the apartment as $1,630.68 (NYSCEF Doc No. 3 at 3). However, the DHCR rider also listed the lower "New Tenant's Rent" as $1,100, with a printed notation stating that this was a "Preferential Rent For John F. Quinan Only" (*id.*).

After the initial lease period expired, Quinan and the prior owner entered into a second lease for the period of May 1, 2005 through April 30, 2007, with the legal regulated rent listed as $1,736.67, but containing a lower preferential rent of $1,125 (NYSCEF Doc No. 4). Upon the expiration of the second lease, the parties renewed the tenancy by executing a third lease for the period of May 1, 2007 through April 30, 2009, with a legal regulated rent listed as $1,862.57 and a lower preferential rent of $1,165 (NYSCEF Doc No. 5). After the expiration of the third lease, the parties entered into yet another lease for the period of May 1, 2009 through April 30, 2011, with a legal regulated rent of $2,020.89 and a preferential rent of $1,200 (NYSCEF Doc No. 6). For the lease period commencing on May 1, 2011 and running through April 30, 2013, petitioner, as the new owner, and Quinan executed a lease that listed the legal regulated rent at $2,111.83 (NYSCEF Doc No. 7). Once again, the lease contained a preferential rent, which was listed as $1,500 for the period of May 1, 2011 through April 30, 2014 (*id.*). This preferential rent

period exceeded the lease period by one year (*id.*). Nevertheless, the following lease renewal commenced on July 1, 2013 (NYSCEF Doc No. 8). The duration of this lease is unclear from the face of the lease, but it listed the legal regulated rent for a two-year period as $2,196.30 and the lower preferential rent as $1,900 (NYSCEF Doc No. 8). The lease renewal for the following lease period commenced on July 1, 2015 and ran through June 30, 2017 but did not include a preferential rent (NYSCEF Doc No. 9). The legal regulated rent for this lease renewal period was $2,256.70 (*id.*).

On April 30, 2015, Quinan filed an overcharge complaint with the DHCR (NYSCEF Doc No. 11). On May 4, 2017, the DHCR issued an order setting April 30, 2011 as the base date[2] for the proceeding and stating that "[a]ll rent adjustments subsequent to the base date, for the complainant, have been lawful. Therefore, it is found that there is no overcharge, and it is ordered that the relief requested is denied" (*id.*). On June 8, 2017, Quinan filed a PAR appealing the May 4, 2017 order (NYSCEF Doc No. 12). The DHCR denied Quinan's PAR on May 11, 2018, and he appealed the denial in an Article 78 proceeding, which the DHCR and Quinan agreed to remit to DHCR for further consideration, thereby settling that matter (NYSCEF Doc No. 15, DHCR Hearings Unit Report at 3; NYSCEF Doc No. 19, stipulation, in *Matter of John Quinan v New York State Division of Housing and Community Renewal*, Sup Ct, NY County, index No. 156391/2018). After some internal delays caused in part by the passage of the Housing Stability and Tenant Protection Act of 2019 (HSTPA), the DHCR issued an order dated May 25,

[2] As relevant here, prior to the passage of the HSTPA, the base date rent was "the rent indicated in the annual registration statement filed four years prior to the most recent registration statement" *Matter of Regina Metro. Co., LLC*, 35 NY3d at 353 [2020], citing former RSL § 26-516; *see also* former 9 NYCRR § 2520.6 [f] [1]; former 9 NYCRR § 2526.1 [a] [2] [ii])). The RSL requires owners of rent-stabilized apartments to file annual registration statements with the DHCR (*id.* at 353-354, citing RSL § 26-517). The base date rent is used to calculate the legal regulated rent of an apartment by adding to it "any subsequent lawful increases and adjustments" (*id.* at 353, citing former RSL § 26-516 [a] [i]), such as Rent Guidelines Board (RGB) increases (*see Nadler v Carmine Ltd.*, 231 AD3d 485, 486 [1st Dept 2024]; *81st Realty Corp. v New York State Div. of Hous. and Community Renewal*, 213 AD3d 610, 610 [1st Dept 2023].

2021, granting Quinan's PAR (NYSCEF Doc No. 15 at 3). The order found, among other things, that "as the ambiguous terms relating to the preferential rent was prepared by the owner, the rent agency is to resolve such ambiguity in favor of the tenant. Based upon the above, the Commissioner finds that the phrase, 'Preferential Rent For John F. Quinan Only' should be interpreted based upon the tenant's understanding of that phrase" (NYSCEF Doc No. 13, order and opinion granting PAR at 6 [citation omitted]). Further, the DHCR determined that based on Quinan's interpretation of the preferential rents and because Quinan enjoyed six separate leases charging a preferential rent, Quinan should be offered renewal leases based upon the preferential rent and the applicable RGB increases (*id.*). The DHCR calculated rent overcharges due to Quinan in the amount of $50,023.69, which included the overcharge amount, excess security, and interest (*id.* at 8).

On July 26, 2021, petitioner commenced an Article 78 proceeding challenging the PAR order dated May 25, 2021 (NYSCEF Doc No. 1, petition, in *Foxwood Realty, LLC v DHCR and John Quinan*, Sup Ct, NY County, Hagler, J., index No.156932/21). In an order dated March 31, 2022, this court (Hagler, J.) resolved the petition by remanding the matter to DHCR "to hold an evidentiary hearing on the issue of the parties' intent concerning the duration of the preferential rent" (NYSCEF Doc No. 33, petition, in *Foxwood Realty, LLC v DHCR and John Quinan*, Sup Ct, NY County, Hagler, J., index No.156932/21).

Pursuant to the order, the DHCR conducted a hearing and issued a 46 page hearings unit report dated June 12, 2024, making a plethora of findings and recommending that the commissioner issue an order requiring petitioner to provide Quinan with a renewal lease form based on the preferential rent plus applicable RGB increases for the duration of his tenancy and that the matter be remitted to the DHCR rent administrator for a determination of overcharges

due to Quinan (NYSCEF Doc No. 15). On January 28, 2025, the DHCR commissioner issued an order granting Quinan's PAR (NYSCEF Doc No. 16). In the order, the commissioner adopted the findings in the hearings unit report and affirmed the findings of the PAR order dated May 25, 2021 (*id.* at 4). Specifically, the PAR order directed petitioner to continue Quinan's preferential rent for the remainder of his tenancy and to offer renewal leases based on the preferential rent (*id.*). Additionally, the order found that there was $50,023.69 due to Quinan in overcharges, excess security, and interest through April 30, 2017 (*id.* at 6). Further, the order directed petitioner to refund Quinan for any additional overcharges collected after April 30, 2017, together with any accrued interest (*id.*). On March 28, 2025, petitioner filed the instant Article 78 petition, Index No. 154146/2025, seeking to set aside the DHCR's determination in the PAR order dated January 28, 2025. This court now considers whether the DHCR's determination was arbitrary and capricious or had a rational basis.

DISCUSSION

A. Relevant statutory framework

It is undisputed that the apartment is subject to the RSL and the RSC. The DHCR promulgates the RSC pursuant to the RSL (9 NYCRR § 2520.1). The agency construes the RSC to carry out the intent of the RSL, including to "prevent the exaction of unjust, unreasonable and oppressive rents and rental agreements" (9 NYCRR § 2520.3; *see* Administrative Code § 26-511). At the time Quinan filed the original complaint with the DHCR, the RSC provided,[3] in relevant part that,

[3] This case predates the enactment of the HSTPA, which, among other things, extended the statute of limitations for overcharge claims from four years to six and permitted the DHCR and the courts to examine the available rent history as far back as necessary to investigate overcharge claims and determine legal regulated rents (L 2019, ch 36). The Court of Appeals in *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 35 NY3d 332 [2020] barred the retroactive application of the HSTPA (*id.* at 381-383). Thus, this court will apply the versions of the laws and rules applicable at

> "(a) [w]here the amount of rent charged to and paid by the tenant is less than the legal regulated rent for the housing accommodation, such rent shall be known as the 'preferential rent.' The amount of rent for such housing accommodation which may be charged upon renewal or vacancy thereof may, at the option of the owner, be based upon either such preferential rent or an amount not more than the previously established legal regulated rent, as adjusted by the most recent applicable guidelines increases and other increases authorized by law" (9 NYCRR § 2521.2 [eff. through November 7, 2023]).

In simple terms, a preferential rent is "rent charged to and paid by a tenant that is less than the legal regulated rent for the housing accommodation" (*Bascom v 1875 Atl. Ave Dev.*, LLC, 227 AD3d 767, 768 [2d Dept 2024]). Prior to the passage of the HSTPA in 2019, the RSC permitted owners to revoke the preferential rent upon renewal of a tenancy and to charge any amount up to the legal regulated rent, unless the original lease made the preferential rent permanent by its explicit terms (*see Bandil Farms Inc. v New York State Div. of Hous. and Community Renewal*, 190 AD3d 403, 404-405 [1st Dept 2021] [applying the law as it existed prior to the HSTPA because the action was commenced before the effective date of the statute]; *Colonnade Mgt., LLC v Warner*, 11 Misc 3d 52, 53 [App Term, 1st and 2nd Dists 2006]).

Additionally, on the issue of preferential rents, the DHCR issues a fact sheet—Fact Sheet # 40 (*see* NYSCEF Doc No. 10 [November 2015 rev.]). The courts have credited Fact Sheet # 40 "as a permissible interpretation of the law" (*Chernett v Spruce 1209, LLC*, 200 AD3d 596 [1st Dept 2021]; *Bandil Farms Inc.*, 190 AD3d at 403 ["["Fact Sheet # 40] summarizes and interprets those provisions of the RSC and RSL pertaining to preferential and legal rents. It establishes guidelines that owners and tenants alike can use in evaluating their respective rights and obligations."]). It is undisputed that prior to the passage of the HSTPA, Fact Sheet # 40 provided, as is pertinent here, that:

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the time Quinan filed the DHCR overcharge complaint (*Matter of W. 147 and 150, LLC v New York State Div. of Hous. and Community Renewal*, 191 AD3d 419, 420 [1st Dept 2021]).

> "[T]he terms of the lease itself, may affect the owner's right to terminate a preferential rent. If the lease agreement contains a clause that the preferential rent shall continue for the term of the tenancy, not just the specific lease term, then the preferential rent cannot be terminated for that tenancy . . . . The preferential rent continues to be the basis for future rent increases. However, if the lease is silent and did not contain a clause that clarified whether the preferential rent was for the "term of the lease" or "the entire term of the tenancy", then the owner may terminate the preferential rent at the time of the lease renewal." (NYSCEF Doc No. 10).

Concerning overcharge claims, "[i]n an overcharge claim, the tenant seeks monetary damages for excessive rent paid during the recovery period" (*Matter of Regina Metro. Co., LLC*, 35 NY3d at 351). Before the passage of the HSTPA,

> "the RSL mandated that, absent fraud, an overcharge was to be calculated by using . . . the 'base date rent,' adding any legal increases applicable during the four-year lookback period [the four years prior to the filing of the overcharge complaint] and computing the difference between that legal regulated rent and the rent actually charged to determine if the tenant was overcharged during the recovery period" (*id.* at 348).

B. Article 78 standard

In a challenge to an administrative determination pursuant to CPLR 7803 (3), judicial review of an administrative determination is limited to whether the challenged determination was arbitrary and capricious or without a rational basis (CPLR 7803 [3]; *Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]; *Matter of Partnership 92 LP v State Div. of Hous. and Community Renewal*, 46 AD3d 425, 428 [1st Dept 2007], *affd* 11 NY3d 859 [2008]; *Matter of Gilman v New York State Div. of Hous. and Community Renewal*, 99 NY2d 144, 149 [2002]). An agency determination is "arbitrary and capricious when it is taken without sound basis in reason or regard to the facts" (*Peckham*, 12 NY3d at 431; *Matter of Heintz v Brown*, 80 NY2d 998, 1001 [1992]). Sound, or rational, basis exists where there is evidence in the record to support an administrative agency's determination (*see Nelson v Roberts*, 304 AD2d 20, 23 [1st Dept 2003]; *Pell v Bd. of Ed. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]). "Where substantial evidence exists to support

the administrative agency's determination, a court may not substitute its judgment for that of the agency, even if there is evidence supporting a contrary conclusion" (*Bohlen v DiNapoli*, 34 NY3d 434, 445 [2020] [citations omitted]). Further, courts have consistently held that "the construction given statutes and regulations by the agency responsible for their administration, if not irrational or unreasonable, should be upheld'" (*Matter of City of New York v New York State Nurses Assn.*, 130 AD3d 28, 34 [1st Dept 2015] [citation omitted], *affd* 29 NY3d 546 [2017]; *Bandil Farms Inc. v New York State Div. of Hous. and Community Renewal*, 190 AD3d 403, 406 [1st Dept 2021] ["[W]here the interpretation of a statute involves specialized knowledge and understanding of underlying operational practices or entails an evaluation of factual data and inferences to be drawn therefrom, the courts should defer to the administrative agency's interpretation unless irrational or unreasonable" (internal quotation marks and citations omitted)]).

C. Service on DHCR and Quinan

At the outset, this court addresses the procedural issue of belated service Quinan raises in his opposition. Quinan argues that the instant proceeding is barred and must be dismissed because petitioner failed to timely serve him and the DHCR with the commencing papers pursuant to Rent Stabilization Code (9 NYCRR) § 2530.1 and CPLR 306-b.

Under 9 NYCRR § 2530.1, as relevant here

"[s]ervice of the petition upon DHCR shall be made by either:

(a) personal delivery of the notice of petition and petition to Counsel's Office at the DHCR's office . . . and delivering a copy thereof to an Assistant Attorney General at an office of the New York State Attorney General within the State; or

(b) by such other method as is authorized by the Civil Practice Law and Rules."

CPLR 306-b, which applies to Article 78 proceedings, requires a petition with a notice of

petition to be served within 120 days after the commencement of a proceeding, provided that the petitioner serves it no later than 15 days after the expiry of the applicable statute of limitations. If the petitioner fails to serve the respondent within the time provided by CPLR 306-b, "the court, upon motion, shall dismiss the action without prejudice as to that defendant, or upon good cause shown, or in the interest of justice, extend time for service." Pursuant to 9 NYCRR § 2530.1, the statute of limitations for actions challenging the final determination of a DHCR commissioner is 60 days.

Here, the statute of limitations for challenging the commissioner's decision granting the tenant's PAR expired on March 31, 2025. Petitioner filed the petition and notice petition on March 28, 2025 (NYSCEF Doc Nos. 1 & 2). Petitioner served the DHCR and Quinan on April 17, 2025 (NYSCEF Doc Nos. 20, affirmation of service on DHCR; 23, affirmation of service on Quinan). Quinan aptly points out that service upon him and the DHCR was two days late. However, defendants have not moved for dismissal of the proceeding, and this court declines to dismiss the petition sua sponte (*see Grant v Rattoballi*, 57 AD3d 272, 273 [1st Dept 2008] ["The power of a nisi prius court to dismiss an action sua sponte should be used sparingly and only in extraordinary circumstances" (citation omitted)]; *James B. Nutter & Co. v Estate of Middleton*, 228 AD3d 918, 920 [2d Dept 2024]).

Further, courts have consistently extended the time to serve process in the interest of justice as permitted under CPLR 306-b (*Leader v Maroney, Ponzini & Spencer,* 97 NY2d 95, 103-06 [2001]; *State of New York Mtge. Agency v Braun*, 182 AD3d 63, 67 [2d Dept 2020]; *de Vries v Metropolitan Tr. Auth*, 11 AD3d 312, 313 [1st Dept 2004]; *Brooklyn Hous. and Family Services, Inc. v Lynch*, 191 Misc 2d 341, 352 [Sup Ct, Kings Co 2002] ["[C]onsidering the totality of circumstances, petitioners are entitled to the extension under the interest of justice

prong of C.P.L.R. 306–b."]). The Court of Appeals has held that the "interest of justice standard requires a careful judicial analysis of the factual setting of the case and a balancing of the competing interests presented by the parties" (*Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 103-06 [2001]). As such,

> "a court "may consider diligence, or lack thereof, along with any other relevant factor in making its determination, including expiration of the Statute of Limitations, the meritorious nature of the cause of action, the length of delay in service, the promptness of a plaintiff's request for the extension of time, and prejudice to defendant . . . [and] [n]o single factor is determinative" (*de Vries v Metro. Tr. Auth.*, 11 AD3d 312, 313 [1st Dept 2004]).

In this proceeding, Quinan was aware of the controversy since he filed the initial overcharge complaint with the DHCR, the PAR challenging the order denying his overcharge complaint, a prior Article 78 challenging the DHCR's denial of his PAR, and appeared for a hearing pursuant to this court's order in the prior proceeding. Thus, Quinan cannot claim to have been prejudiced by a mere two-day delay in service. Further, this court finds it proper to consider the instant petition for Article 78 relief because "[p]ublic policy favors resolving disputes on the merits" (*Lauren v Hotel Pennsylvania*, 232 AD3d 473, 474 [1st Dept 2024]),.

D. The January 28, 2025 PAR order

Petitioner argues that the DHCR's decision deeming Quinan's preferential rent permanent for the duration of his tenancy and finding that petitioner overcharged Quinan is arbitrary and capricious because the commissioner misapplied the law as it existed at the relevant time. The crux of petitioner's argument is that the DHCR erred when it found the language in the original lease ambiguous and construed the alleged ambiguity against petitioner. Petitioner maintains that the original lease is silent as to the duration of Quinan's preferential rent; thus, under the law as it existed at the relevant time, petitioner was permitted to terminate the

preferential rent when it renewed Quinan's lease. Petitioner questions the DHCR's consideration of Quinan's testimony regarding low ceilings in the apartment in support of its decision that the intent of the parties was to continue the preferential rent for the duration of Quinan's tenancy. Petitioner asserts that the DHCR gave the unit's low ceilings undue weight when considering the intent of the parties. Further, according to petitioner, petitioner's election to offer a preferential rent in five consecutive lease renewals as a courtesy is not indicative of owner's intent to offer a preferential rent in perpetuity.

Quinan opposes and argues that this court has already determined that the preferential rent clause in the original lease is ambiguous. Quinan maintains that in the previous Article 78 proceeding, this court appropriately remanded this matter to the DHCR for a hearing consistent with the applicable First Department precedent (*see* NYSCEF Doc No. 33, order, in *Foxwood Realty, LLC v DHCR and John Quinan*, Sup Ct, NY County, Hagler, J., index No.156932/21 at 1, citing *Matter of Pastreich v NewYork State Div. of Hons. & Community Renewal*, 50 AD3d384, 387 [1St Dept 2008]). Quinan contends that this court's decision remanding this matter to the DHCR for a hearing on the parties' intent is law of the case and that petitioner cannot challenge this finding now. Quinan insists that after holding a hearing in accordance with this court's decision in the prior Article 78, the DHCR made extensive findings based on an assessment of witness credibility. Quinan argues that the DHCR's decision directing petitioner to offer Quinan renewal leases based on the preferential rent for the duration of his tenancy has a rational basis because the DHCR reasonably found that the low ceiling height in Quinan's apartment was a factor in the calculation that culminated in a permanent preferential rent.

Having already set forth the relevant statutory and regulatory framework above, this court finds that the DHCR's determination that petitioner must continue to provide Quinan with a

preferential rent for the duration of his tenancy was not arbitrary or capricious since it had a rational basis in fact and was in accord with the applicable laws and rules. This court's order in the prior Article 78 proceeding directed that "the Petition is resolved to the extent of remanding this matter to the . . . [DHCR] to hold an evidentiary hearing on the issue of the parties' intent concerning the duration of the preferential rent as stated on the record today," citing *Matter of Pastreich v State Div. of Hous. & Community Renewal*, 50 AD3d 384, 386 [1st Dept 2008]). In *Pastreich*, the Appellate Division considered a rent-stabilized lease that included a rider denominated "Rider to Preferential Lease Agreement," providing for a preferential rent on the condition that tenant accept the apartment at issue in that case in "as is" condition (*id.* at 385). Although the term of the lease was for two years, it contained a provision giving the tenant an option to renew the preferential rent (*id.*). After the tenant renewed the lease five times, the landlord revoked the preferential rent on a subsequent lease renewal (*id.*). The tenant filed a DHCR complaint, which ultimately culminated in DHCR's denial of the tenant's PAR, wherein DHCR found, without conducting a hearing, that the preferential lease could not be considered because it was entered into prior to the base date . . . more than four years prior to the filing of the rent overcharge complaint" (*id.* at 386). In its decision finding the DHCR's decision improper, the Appellate Division found that the terms of the preferential lease rider at issue were "open-ended concerning the duration of the preferential rent" (*id.*). Consequently, because "the parties' intent [could] not be unequivocally ascertained from the four corners of that agreement," the Court found that the DHCR acted irrationally in disregarding the terms of the lease and failing to hold an evidentiary hearing on the issue of the parties' intent concerning the duration of the preferential rent (*id.*).

Similarly here, when called upon to review the DHCR's determination of Quinan's PAR

in the prior Article 78 proceeding, this court found that the intent of the parties concerning the duration of the preferential rent could not be determined without an evidentiary hearing and remanded the matter to DHCR. After conducting a hearing pursuant to this court's order and in accordance with the precedent cited in this court's decision, the DHCR's administrative law judge (ALJ) reviewed the testimonial and documentary evidence and made extensive findings, including that the terms of the original 2004 lease and rider were incorporated into each renewal lease form (NYSCEF Doc No. 15 at 41, ¶ 14); that at the time Quinan and the prior owner executed the lease, they intended and expected the preferential rent rate RGB increases to last for the duration of Quinan's tenancy (*id.* at 41, ¶ 15); that Quinan testified credibly (*id.* at 41, ¶ 16); that the previous owner's testimony was unreliable (*id.* at 43, ¶¶ 29-30; at 44, ¶ 35); that there is "an absence of specific language defining or limiting the duration of the preferential rent in the vacancy lease and rider" (*id.* at 41, ¶ 19); that the language in the rider is unclear and ambiguous ((*id.* at 41, ¶ 25); that the clause "Preferential Rent For John F. Quinan Only" "appears to be open -ended concerning the duration of the preferential rent, and not clearly limited to the vacancy lease's one-year term" (*id.* at 41, ¶ 2); that the unit has low ceilings of varying heights peaking at about seven feet, but only about six feet and one inch at its lowest (*id.* at 44, ¶¶ 33-34); that the units' low ceilings were a factor in Quinan's receipt of a preferential rent (*id.* at 44, ¶ 34); that the record supports the conclusion that the parties intended the preferential rent to endure for the duration of Quinan's tenancy (*id.* at 42, ¶ 22); and that the conduct of the parties in renewing the leases at the preferential rate, plus the RGB increases, over the course of seven years, is indicative of their understanding of their respective obligations (*id.* at 45, ¶ 36).

This court declines to disturb the DHCR's findings. It is well-settled that "[w]here the interpretation of a statute involves specialized knowledge and understanding of underlying

operational practices or entails an evaluation of factual data and inferences to be drawn therefrom, the courts should defer to the administrative agency's interpretation unless irrational or unreasonable" (*Bandil Farms Inc. v New York State Div. of Hous. and Community Renewal*, 190 AD3d 403, 406 [1st Dept 2021] [internal quotation marks and citations omitted]; *8 Ave. Holdings LLC v New York State Div. of Hous. and Community Renewal*, 234 AD3d 568 [1st Dept 2025] ["The administrative agency charged with enforcing a statutory mandate has broad discretion in evaluating the pertinent factual data and the inferences to be drawn from that data" (citations omitted)]; *see Marisol Realty Corp. v New York State Div. of Hous. and Community Renewal*, 154 AD3d 463, 464 [1st Dept 2017]). Here, the court defers to the DHCR's interpretation of its provisions regarding preferential rent and its evaluation of both the factual data and the credibility of the witnesses (*see id.*). As such, this court is not persuaded that the DHCR's determination lacked a rational basis. The DHCR reviewed the initial lease and the preferential rent rider and determined that the preferential rent clause was ambiguous. It further determined that the ambiguous language in the preferential rent clause must be construed against the drafter (*see Kohman v Rochambeau Realty & Dev. Corp.*, 17 AD3d 151, 152 [1st Dept 2005]; *165 Ludlow Owner LLC. v Washburn*, 45 Misc 3d 133(A) [App Term, 1st and 2nd Dists 2014]; *Valenti v Tepper Fields Corp.*, 282 AD 212, 214 [1st Dept 1953]). After a hearing, the DHCR found that the parties intended to enter into a lease with a preferential rent due to the unit's low ceilings. Further, the DHCR found that, as evinced by the numerous renewals of the preferential rent prior to the sale of the building, the conduct of the parties signaled their intent to continue the preferential rent for the duration of Quinan's tenancy. Here, there is sufficient basis to support the DHCR's determination. Accordingly, this court declines to substitute its judgment for that of the agency, where the DHCR's determination had a rational basis in law and in fact.

E. The overcharge calculation

Petitioner additionally challenges the DHCR's method for calculating the overcharge amounts due to Quinan. Petitioner argues that prior to the enactment of the HSTPA, it was permitted to increase the preferential rent upon renewal of a lease to any amount, as long as that amount did not exceed the legal regulated rent for the apartment at the time of the renewal. Petitioner insists that because it was permitted to increase the preferential rent to any amount not exceeding the legal regulated rent, this court should use the last preferential rent as the base date rent. Specifically, petitioner urges the court to use the base date rent of $1,900, add applicable RGB increases, and determine that there was no overcharge, since Quinan allegedly never paid more than the amounts reached by using this formula. Petitioner argues that by setting the base date to four years prior to Quinan's DHCR complaint and limiting the permissible increases to those permitted by the RGB, the DHCR misapplied the provisions of the HSTPA to this pre-HSTPA case.

Prior to the passage of the HSTPA, "overcharge claims were subject to a four-year statute of limitations that precluded the recovery of overcharges incurred more than four years preceding the imposition of a claim (*Matter of Regina Metro. Co., LLC*, 35 NY3d at 352). Thus, as already discussed, the base date in overcharge proceedings was a date four years prior to the filing of a complaint. Further, Fact Sheet # 40 provided that where the preferential rent was to remain for the duration of the tenancy, "[t]he preferential rent continue[d] to be the basis for future rent increases" (NYSCEF Doc No. 10 at 1).

Thus, the DHCR properly set the base date to a date four years prior to Quinan's imposition of his claim with the DHCR and lawfully calculated the rent overcharges using the preferential rent in effect on the base date, adding the RGB increases applicable at the time of

each lease renewal. Petitioner's arguments are directed to instances where the preferential rents were limited to the duration of the lease instead of the tenancy, as the DHCR has determined is the case here.

Further, as discussed above, this court declines to set aside the DHCR's findings, including its finding that Quinan was entitled to lease renewals based on the preferential rent four years prior to his overcharge complaint, plus the applicable RGB increases (*see* NYSCEF Doc Nos. 15 at 46, ¶ 38 & 16 at 4). For the foregoing reasons, this court declines to set aside the DHCR's overcharge calculations as they had a rational basis in law and in fact.

CONCLUSION

Accordingly it is hereby

ADJUDGED that the petition is denied and this proceeding is dismissed, with costs and disbursements to respondents.

12/30/2025
DATE

Denis Reo
DENIS REO, A.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