

Veksler v New York State Div. of Hous. & Community Renewal
2026 NY Slip Op 30415(U)
January 28, 2026
Supreme Court, New York County
Docket Number: Index No. 156667/2025
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
INDEX NO. 156667/2025
ELVIRA VEKSLER, Petitioner, MOTION SEQ. NO. 001; 002; 003

- v -

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, Respondent.
DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 28, 29, 30, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 48
were read on this motion to/for ARTICLE 78

The following e-filed documents, listed by NYSCEF document number (Motion 002) 42
were read on this motion to/for DEFAULT JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 003) 44, 45, 46, 47
were read on this motion to/for FEE WAIVER

Petitioner is a tenant in a unit within a building located at 535 East 87th Street, New York, NY 10128 since January 2021. On September 24, 2024, petitioner filed a rent overcharge complaint with respondent New York State Division of Housing and Community Renewal ("DHCR"), alleging that an overcharge occurred due to Major Capital Improvements (MCI). By order dated January 21, 2025, respondent denied the application, finding that, pursuant to an order issued on March 9, 2021 under docket number FQ410007UC, it was determined that the subject apartment was exempt from regulation pursuant to Section 2520.11(e) of the Rent Stabilization Code and, thus, that the agency no longer had jurisdiction over the subject matter (NYSCEF Doc. No. 35, Order).

Petitioner, proceeding pro se, commenced this Article 78 proceeding, seeking to challenge DHCR's determination as to her rent overcharge complaint (Mot. Seq. 001). Petitioner also moves, among other things, for an order granting a default judgment under CPLR 7804(f) and 3215, based on respondent's alleged failure to timely file opposition papers, as well as, reimbursement of all filing fees and litigation costs (Mot. Seq. 002). She also moves separately for an order waiving costs, fees, and expenses (Mot. Seq. 003).

The motions are consolidated for disposition.

In support of her Article 78 petition, petitioner contends that she moved into the subject apartment in January 2021, well after the Housing Stability and Tenant Protection Act of 2019 (HSTPA) went into effect. According to petitioner, under HSTPA, landlords can no longer deregulate apartments on the basis of substantial rehabilitation without first obtaining a formal exemption from DHCR. At the time of petitioner's occupancy, no such exemption had been granted; thus, petitioner contends that her rights as a rent-stabilized tenant vested upon taking occupancy. She further argues that "DHCR's subsequent issuance of a substantial rehabilitation exemption and retroactive application of that exemption to defeat [p]etitioner's rights violates the core legal framework of HSTPA and principles of due process." Lastly, petitioner contends that DHCH's own Operational Bulletin 95-2 requires strict documentation and does not authorize retroactive deregulation (NYSCEF Doc. No. 9, *petitioner's memo of law*).

Respondent opposes the Article 78 petition and cross-moves for dismissal of same, arguing that the petitioner has failed to exhaust her administrative remedies. Respondent also argues that the instant application fails on the merits because "[t]he Rent Stabilization Law, as amended by the Emergency Tenant Protection Act of 1974, provides that the subject building became deregulated at the time of the completion of the rehabilitation work, and no order from DHCR was required to deregulate the building." Moreover, the fact that petitioner moved into the subject apartment before DHCR's order in March 2021 is of no moment. As such, respondent contends that dismissal is warranted under CPLR 3211(a)(2) and (a)(7) (NYSCEF Doc. No. 37).

In her reply, petitioner submits, among other things, a document titled "Response To Notice of Cross-Motion" and an affidavit, whereby she challenges the cross-motion and opposition papers as procedurally defective; however, no substantive arguments are raised in response to the grounds for dismissal raised by respondent (NYSCEF Doc. Nos. 39-40, *reply papers*).

A judicial review of an administrative determination is limited to whether said determination was arbitrary and capricious or made without a rational basis in the administrative record (*see Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]). It is well-settled that, in reviewing an agency determination, the court may not substitute its own view of the evidence for that of the agency, even if the court would have reached a different result (*see Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]). However, it is well-settled that, to commence an Article 78 proceeding, petitioner must first exhaust their administrative remedies (*see Watergate II Apts. v Buffalo Sewer Auth.*, 46 NY2d 52, 57 [1978]; *Mulgrew v Board of Educ. of the City School Dist. of the City of N.Y.*, 88 AD3d 72, 80-81 [1st Dept 2011]).

In determining a motion to dismiss pursuant to CPLR 3211, "the pleading is to be afforded a liberal construction. [The court must] accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994] [internal citations omitted].) A pleading may be dismissed, pursuant to CPLR 3211(a)(7) if plaintiff fails to identify a claim cognizable at law or where the plaintiff has identified a cognizable cause of action but has nevertheless failed to plead a material allegation

necessary to establish it (see CPLR 3211[a][7]; *Basis Yield Alpha Fund [Master] v Goldman Sachs Group, Inc.*, 115 AD3d 128, 134 [1st Dept 2014].)

As an initial matter, this court denies as moot that branch of the motion seeking a default judgment against respondent based on the filing of late opposition papers. On June 24, 2025, counsel for respondent contacted the court via e-mail with petitioner copied and requested an opportunity to oppose the application. Counsel stated that upon being assigned to the case on June 20, 2025, he contacted petitioner to obtain a stipulation on a new briefing schedule. According to respondent, petitioner refused and indicated that any scheduling of the matter should be addressed before the court. The court extended respondent's time to oppose the application to July 25, 2025. Respondent filed its cross-motion and opposition on September 10, 2025. While this court notes respondent's failure to abide by the briefing schedule set forth by this court, in light of the strong policy in this state of resolving matters on the merits; petitioner's failure to articulate any prejudice occasioned by the late filing of the opposition and cross-motion; and petitioner's opportunity to address the arguments raised therein (see *Epstein Becker & Green, P.C. v Samson Mgt. LLC*, 188 AD3d 454 [1st Dept 2020]; *Chevalier v 368 E. 148th St. Assoc., LLC*, 80 AD3d 411, 413 [1st Dept 2011]), the application for a default judgment is denied (Mot. Seq. 002) and the court shall consider the cross-motion and opposition papers filed.

Now addressing the Article 78 petition (Mot. Seq. 001), although petitioner furnishes a copy of DHCH's Order denying her application for rent overcharge, petitioner's fails to establish that she sought review of said determination by filing a petition for administrative review (PAR) (NYSCEF Doc. No. 8, *supplemental aff and exhibits*). It is well-settled that "petitioner's failure to timely file a PAR within 35 days after 'the issuance of the overcharge order constitute[s] a failure to exhaust administrative remedies justifying dismissal of petitioner's subsequent [A]rticle 78 proceeding'" (*Matter of Ross v DHCR*, 125 AD3d 434, 434 [1st Dept 2015], quoting *Matter of Nelson Mgt. Group v New York State Div. of Hous. & Community Renewal*, 259 AD2d 411, 412 [1st Dept 1999], *lv denied* 93 NY2d 814 [1999]). Therefore, the instant petition is denied.

Turning to Mot. Seq. 003, which seeks to waive court fees and costs, CPLR 1101(d) provides, in pertinent part:

"[A] plaintiff may seek to commence his or her action without payment of the fee required by filing the form affidavit, attesting that such plaintiff is unable to pay the costs, fees and expenses necessary to prosecute or defend the action, which shall be available in the clerk's office along with the summons and complaint or summons with notice or third-party summons and complaint. The case will be given an index number, or, in courts other than the supreme or county courts, any necessary filing number and the application will be submitted to a judge of the court. If the court approves the application, the plaintiff will by written order be given notice that all fees and costs relating to the filing and service shall be waived. If the court denies the application the plaintiff will by written order be given notice that the case will be dismissed if the fee is not paid within one hundred twenty days of the date of the order."

Here, although petitioner submits some indicia that she received government assistance, at least as of October 25, 2025, petitioner has failed to follow the proper procedure set forth in CPLR 1101(d), paid the filing and associated court fees, and commenced the proceeding prior to any court determination of any fee waiver request. Petitioner has failed to establish an inability to pay the costs, fees and expenses necessary to prosecute this case. Furthermore, the matter is hereby moot given the court's decision and order herein as the court has declined to annul the DHCR determination and dismissed the petition. Thus, here the motion seeking relief to proceed as a poor person in this proceeding is denied (Mot. Seq. 003). Accordingly, it is hereby

ORDERED that petitioner's application (Mot. Seq. 001), pursuant to CPLR Article 78, is denied and dismissed; and it is further

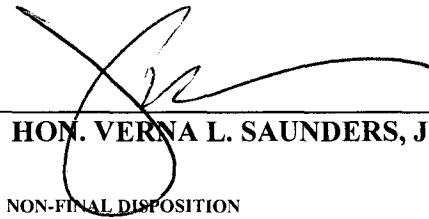
ORDERED that petitioner's application, pursuant to CPLR 3215, seeking a default judgment against respondent (Mot. Seq. 002), is denied; and it is further

ORDERED that petitioner's application, pursuant to CPLR 1101(d) (Mot. Seq. 003), 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.

January 28, 2026



HON. VERNA L. SAUNDERS, JSC

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE