Pollock v NYS Div. of Hous. & Community Renewal
2026 NY Slip Op 31517(U)
April 9, 2026
Supreme Court, New York County
Docket Number: Index No. 159078/2024
Judge: Alexander M. Tisch
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ALEXANDER M. TISCH** **PART** **18**

Justice

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ROBERT POLLOCK, DOUGLAS BOOTH, YOLANDA SCANTLEBURY

Petitioner,

- v -

NYS DIVISION OF HOUSING & COMMUNITY RENEWAL,

Respondent.

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INDEX NO. 159078/2024

MOTION DATE 09/30/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 22, 23, 24, 25, 46, 47, 48, 49, 50

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

According to the petition in this proceeding, petitioner Robert M. Pollock is the owner of real property located at 520 West 153rd Street, in New York City (the Pollock Premises). Pollock lives in the Pollock Premises, a three-family house. Petitioners Yolanda Scantlebury and Douglas Booth are the owners of the building at 522 West 153rd Street, New York City (the SB Premises), in which they reside. Scantlebury and Booth purchased the SB Premises from Pollock on April 25, 2005. Each of the buildings also has been used to house rental tenants.

The underlying proceeding was brought in front of respondent NYS Division of Housing and Community Renewal (DHCR or the Agency) on September 12, 2004, by non-party Zaida Flores, a former tenant of the SB Premises, for Pollock's (the then-owner's) failure to provide a renewal lease. Nora Tireu, a tenant at the Pollock Premises, intervened in that proceeding and has since died. In the underlying proceeding, first the Deputy Commissioner and then the

Agency found for the tenant and ordered Pollock to provide a renewal lease, pursuant to the New York City Rent Stabilization Code. The buildings were deemed subject to the Rent Stabilization Law and Code because they were found to be part of a Horizontal Multiple Dwelling (HMD). Further proceedings before the Agency and this Court ensued.

In the most recent decision from this Court, the matter was remanded to the Agency to establish a base date (the date on which a housing unit becomes subject to rent regulation), articulate the factors considered, and determine if the two buildings are to be considered an HMD. The Agency reviewed the history and infrastructure of the buildings and, in a decision dated August 1, 2024, determined that the buildings were an HMD with a base date of January 1, 1974, and so subject to the Rent Stabilization Law and Code (2024 PAR Order, attached as Ex. A to Petition, NYSCEF Doc. No. 3).

In the instant petition, petitioners argue the decision of the Agency was arbitrary and capricious and lacking a sound basis in reason or regard to the facts, as the two buildings at issue do not have a long history of common ownership or common operation and the indicia of separateness between the two buildings outweigh the features noted in the inspection report which show indicia of commonality. Petitioners claim the buildings have few shared facilities or physical characteristics.

The role of a court in an Article 78 proceeding is to consider whether the "determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary, capricious or an abuse of discretion" (CPLR 7803[3]). A court must uphold an agency's exercise of discretion unless it lacks a rational basis (*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]). Rent Stabilization Law usually requires buildings to have six or more residential

units, but "adjacent buildings with common facilities, ownership, and management are treated as one integrated unit, thereby constituting a horizontal multiple dwelling for purposes of rent stabilization" *(Callen v New York City Loft Bd.*, 181 AD3d 39, 43-44 [1st Dept 2020], *revd on other grounds,* 37 NY3d 1216 [2022]; *see e.g. Matter of Ruskin v Miller,* 172 AD2d 164 [1st Dept 1991]; *Nine Hunts Lane Realty Corp. v New York State Div. of Housing & Community Renewal,* 151 AD2d 465 [2d Dept 1989]); *Matter of Krakower v State of N.Y., Div. of Hous. & Community. Renewal, Office of Rent Admin.*, 137 AD2d 688 [2nd Dept 1988], *lv denied,* 74 NY2d 613 [1989]). In the August 1, 2024, decision, the Agency affirmed its prior decision that the two buildings constituted an HMD because

> "the buildings located at 520 W. 153rd Street and 522 W. 153rd Street share a long history of common ownership as evidenced by copies of deeds in file which indicate that the buildings were sold as one parcel from Ernest W. Sheffert to Abraham Munoz on June 30, 1972, and from Abraham Munoz to Robert Pollock under separate deeds dated December 17, 2003, and further, that the buildings share a common heating system, common lighting system, common cellar separated by a party wall, common fire escape and share common roof space with adjacent/adjoining buildings, as per physical inspection of the premises conducted on May 2, 2005, and share a common tax block number"

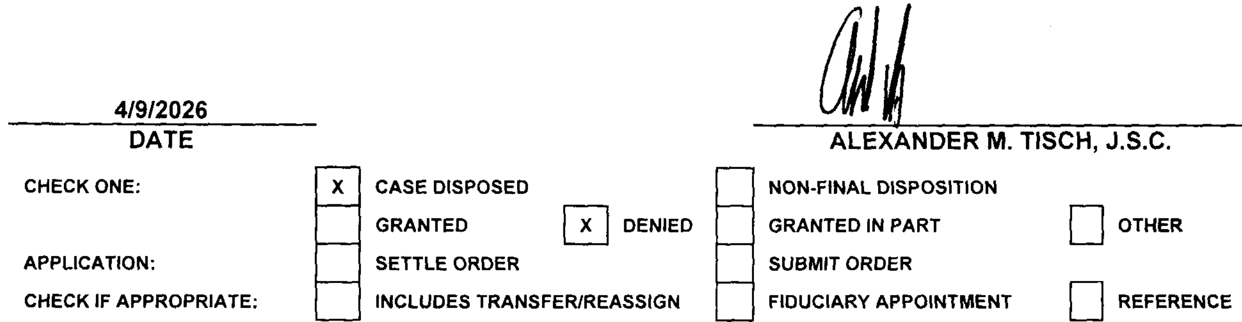
(2024 PAR Order at 2, internal quotations omitted). In evaluating the existence of an HMD, the crucial factor is whether there are sufficient indicia of common facilities, ownership, management and operation to warrant treating the housing as an integrated unit and multiple dwelling subject to regulation (*Matter of Salvati v Eimicke,* 72 NY2d 784, 792, *rearg denied* 73 NY2d 995). The Agency explained its decision, noting that

> "[e]vidence in the record indicates that the buildings share a common heating system where the heat was controlled by 522 West 153rd St., a shared chimney, . . . a common exterior lighting system, common exterior walls with an interior wall between the basements, a common fire escape at the front of the building, a common façade that was a continuous connected siding, and shared common roof space with adjacent/adjoining buildings. . . . Additionally, the evidence in the record indicates that the buildings share a long history of common ownership"

(*id.* at 4). This Court does not review the evidence *de novo* or substitute its judgment for that of the respondent, this Court only considers if the underlying decision was supported by substantial evidence (*O'Reilly v New York State Div. of Hous. and Community Renewal*, 291 AD2d 252, 254 [1st Dept 2002]). Petitioner claims the Agency erred in noting a common outdoor lighting, arguing there is no such common lighting. Petitioners argue no importance should be given to the fact that the buildings share a roof because the buildings at issue were designed to have a roof contiguous with three additional buildings. They claim the shared chimney is no longer operational or relevant and that the Agency erred in concluding the buildings had common exterior walls, when all it can see is the façade. Further, petitioners argue the Agency was wrong to conclude Pollock's predecessor, Abraham Munoz, believed the buildings to be rent stabilized because, while it is undisputed that apartments at both buildings were registered as rent stabilized, petitioners provided a letter from Munoz stating the that the buildings "were considered separate private houses" despite the registration (Petition, NYSCEF Doc. No. 001 at 10). This Court declines petitioner's invitation re-evaluate the evidence, replacing respondent's judgment with its own. It is this Court's role to determine whether the Agency's decision was irrational or unreasonable, and it was not. The Agency considered the evidence and drew a conclusion that the commonalities predominated, based on substantial evidence and with a decision consistent with the prior determinations of the Agency. Petitioners merely argue that the Agency's evaluation of the evidence was incorrect. Accordingly, the Agency decision should be upheld (*see Matter of Bambeck v State Div. of Hous. and Community Renewal, Off. of Rent Admin.*, 129 AD2d 51, 56 [1st Dept 1987]).

For the reasons discussed above, the petition to reverse the determination of the Agency is hereby DENIED.

This constitutes the decision and order of the Court.



4/9/2026
DATE

ALEXANDER M. TISCH, 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