Matter of 536 E. 5th St. Equities, Inc. v State of N.Y. Div. of Hous. & Community Renewal Off. of Rent Admin.

2026 NY Slip Op 31867(U)

April 29, 2026

Supreme Court, New York County

Docket Number: Index No. 159926/2022

Judge: John J. Kelley

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JOHN J. KELLEY** **PART** **56M**

Justice

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INDEX NO. 159926/2022

MOTION DATE 03/23/2023

MOTION SEQ. NO. 001

In the Matter of

536 E. 5TH ST. EQUITIES, INC.,

Petitioner,

- v -

STATE OF NEW YORK DIVISION OF HOUSING AND COMMUNITY RENEWAL OFFICE OF RENT ADMINISTRATION and LAUREN PAIGE ISAACS,

Respondents.

DECISION, ORDER, AND JUDGMENT

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51

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

This is a proceeding pursuant to CPLR article 78, seeking judicial review of a determination of the Deputy Commissioner of the New York State Division of Housing and Community Renewal (DHCR) dated June 16, 2022, as amended November 9, 2022. The petitioner, 536 E. 5th St. Equities, Inc., owns a residential apartment building at 536 East 5th Street in Manhattan (the premises). As relevant here, the Deputy Commissioner's determination, made upon remittal from the Supreme Court, New York County,[1] denied the petitioner's Petition for Administrative Review (PAR) of so much of a May 24, 2019 decision of the Rent Administrator (RA) as had rejected its claim that it was entitled, under then-existing regulations, to high-rent vacancy deregulation in connection with Apartment 5 at the premises, which it had leased to the respondent Lauren Paige Isaacs. The DHCR opposes the petition. The petition is denied, and the proceeding is dismissed.

[1] *See Matter of 536 E. 5th St. Equities, Inc. v New York State Div. of Hous. & Community Renewal*, 2022 NY Slip Op 30912[U], 2022 NY Misc LEXIS 1431 (Sup Ct, N.Y. County, Mar. 22, 2022).

Where, as here, an administrative determination is made, and there is no statutory requirement of a full, trial-type hearing, that determination must be confirmed unless it is arbitrary and capricious, affected by an error of law, or made in violation of lawful procedure (*see* CPLR 7803[3]; *Matter of Adirondack Wild Friends of the Forest Preserve v New York State Adirondack Park Agency,* 34 NY3d 184, 191 [2019]; *Matter of Madison County Indus. Dev. Agency v State of N.Y. Auths. Budget Off*., 33 NY3d 131, 135 [2019]; *Matter of Lemma v Nassau County Police Officer Indem. Bd*., 31 NY3d 523, 528 [2018]; *Matter of McClave v Port Auth. of N.Y. & N.J*., 134 AD3d 435, 435 [1st Dept 2015]; *Matter of Batyreva v New York City Dept. of Educ*., 50 AD3d 283, 283 [1st Dept 2008]; *Matter of Rumors Disco v New York State Liquor Auth*., 232 AD2d 421, 421 [2d Dept 1996]). Since the petitioner did not argue that the Deputy Commissioner's determination was made in violation of lawful procedure or was affected by an error law, that determination must be confirmed if it was not arbitrary and capricious (*see Matter of Cheng v New York State Div. of Hous. & Community Renewal,* _____AD3d_____, 2026 NY Slip Op 01277, *1 [1st Dept, Mar. 5, 2026] [applying arbitrary and capricious standard to DHCR determination as to whether an apartment was subject to rent regulation]).

A determination is arbitrary and capricious where it is not rationally based, or has no support in the record (*see Matter of Gorelik v New York City Dept. of Bldgs.*, 128 AD3d 624, 624 [1st Dept 2015]), or where the decision-making agency fails to consider all of the factors it is required by statute to consider and weigh (*see Matter of Kaufman v Incorporated Vil. of Kings Point*, 52 AD3d 604, 608 [2d Dept 2008]). Stated another way, a determination is arbitrary and capricious when it is made "without sound basis in reason and is generally taken without regard to the facts" (*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]). Consequently, an agency determination is arbitrary and capricious where the agency provides only a "perfunctory recitation" of relevant statutory factors or other required considerations as a basis for its conclusions (*Matter of BarFreeBedford v New York State Liq. Auth.,* 130 AD3d 71, 78 [1st Dept

2015]; *see Matter of Wallman v Travis*, 18 AD3d 304, 308 [1st Dept 2005] ["perfunctory discussion"]), provides no reason whatsoever for its determination (*see Matter of Rhino Assets, LLC v New York City Dept. for the Aging, SCRIE Programs*, 31 AD3d 292, 294 [1st Dept 2006]; *Matter of Jones v New York State Dept. of Corrections & Community Supervision*, 2016 NY Misc LEXIS 15778, *1-2 [Sup Ct, Erie County, Jul. 28, 2016]), or provides only a post hoc rationalization therefor (*see Matter of New York State Chapter, Inc., Associated Gen. Contrrs. of Am. v New York State Thruway Auth*., 88 NY2d 56, 756 [1996]; *Matter of L&M Bus Corp. v New York City Dept. of Educ*., 71 AD3d 127, 135 [1st Dept 2009]).

An owner has the burden of establishing its entitlement to a rental increase on the ground that it incurred reasonable and legitimate expenses in undertaking an individual apartment improvement (IAI) (*see Matter of 985 Fifth Avenue, Inc. v New York State Div. of Hous. & Community Renewal*, 171 AD2d 572, 574-575 [1st Dept 1991]; *see also Nadler v Carmine, Ltd*., 231 AD3d 485, 486 [1st Dept 2024]). The court concludes that the Deputy Commissioner's determination had a rational basis, had support in the record, and was fully articulated. More specifically, he rationally determined that, inasmuch as the petitioner failed to demonstrate, with sufficient evidence, that it had incurred $70,362.50 in connection with IAIs to the subject unit in 2001 and, thus, that the petitioner failed to satisfy its burden of substantiating its claim that the subject apartment was thereupon deregulated. The DCHR is entitled to deference in its interpretation of its own regulations, guidelines, and policy statements (*see Matter of Zelig v New York State Div. of Hous. & Community Renewal*, 189 AD3d 657, 659 [1st Dept 2020]). In this respect, the Deputy Commissioner rationally determined that DHCR's Policy Statement 90-10 gives the RA wide latitude in determining what documentation, in addition to contemporaneous cancelled checks, invoice receipts, signed contracts, and a contractor's affidavit, is necessary to substantiate the amount of expenses incurred in undertaking the IAIs. The Policy Statement provides that, "[w]henever it is found that a claimed cost warrants further inquiry, the processor may request that the owner provide additional

documentation," which the DHCR's processor properly requested here. The court concludes that the petitioner did not provide the RA with all of the requested documentation necessary to substantiate its claim. The court further concludes that the Deputy Commissioner properly rejected, as insufficient, the statement of the petitioner's principal as to the amount allegedly expended and a purported invoice that only provided a lump-sum figure as to the total costs that the petitioner claimed to have incurred for various tasks that allegedly had been performed and several pieces of equipment that purportedly had been installed. The court notes that these documents were accompanied only by two short statements from the same individual asserting, in general terms, that the work identified in the invoice had been completed and that payment was received by the contractor or contractors at the time when the job was completed.

Contrary to the petitioner's contention, the DHCR was permitted to look back more than four years prior to the tenant's administrative rent overcharge complaint to determine whether the subject unit was rent stabilized. The Court of Appeals' determination in *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal* (35 NY3d 332 [2020]) held only that the DHCR is limited to such a look-back period in determining the amount of a rental overcharge, except where necessary to determine whether an owner had been engaged in a fraudulent scheme to deregulate a unit (*see, e.g., id.* at 352 n 4 ["(c)ritically, there is a distinction between an overcharge claim and a challenge to the deregulated status of an apartment"]). As the Appellate Division, First Department, expressly ruled,

> "DHCR's consideration of events beyond the four-year period is permissible if done not for the purpose of calculating an overcharge but rather to determine whether an apartment is regulated (*cf. Matter of Hargrove v Division of Hous. & Community Renewal*, 244 AD2d 241 [1997]; *Matter of Condo Units v New York State Div. of Hous. & Community Renewal*, 4 AD3d 424 [2003])

(*Matter of East West Renovating Co. v New York State Div. of Hous. & Community Renewal*, 16 AD3d 166, 167 [1st Dept 2005]; *see Matter of AEJ 534 E. 88th v New York State Div. of Hous. & Community Renewal,* 194 AD3d 464, 465 [1st Dept 2021]). Hence, it was not irrational or, for that matter, an error law, for the DHCR to have looked back more than four years in the instant

matter, despite the DHCR's related determination that the tenant was not entitled to a refund of a portion of the rent that she actually paid.

The petitioner's remaining contentions are without merit.

Accordingly, it is,

ORDERED that the petition denied; and it is,

ADJUDGED that the proceeding is dismissed.

This constitutes the Decision, Order, and Judgment of the court.

4/29/2026
DATE

JOHN J. KELLEY, 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