

**Matter of 41st W. 72nd LLC v New York State Div. of
Hous. & Community Renewal**

2004 NY Slip Op 30355(U)

July 6, 2004

Supreme Court, New York County

Docket Number: 114392/03

Judge: Herman Cahn

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SUPREME COURT OF THE STATE OF NEW YORK -- NEW YORK COUNTY

PRESENT: HELMAN CAHN
Justice

PART 49

0114392/2003

41 WEST 72ND LLC.
VS
N.Y.S.D.H.C.R.

INDEX NO. _____
MOTION DATE 11/17/03
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

SEQ I
ARTICLE 78

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause - Affidavits - Exhibits ...	_____
Answering Affidavits - Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED
NOV - 9 2004
CLERK OF COURT

**MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM
DECISION IN MOTION SEQUENCE**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: 11/16/04 [Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 49

-----X
In the Matter of the Application of the 41 WEST 72ND
LLC,

Petitioner,

Index No.
114392/03

-against-

DECISION

NEW YORK STATE DIVISION OF HOUSING AND
COMMUNITY RENEWAL,

Respondent.

-----X
CAHN, J.:

Petitioner brings this Article 78 proceeding to challenge an order of the respondent New York State Division of Housing and Community Renewal (hereafter, DHCR) dated July 3, 2003. Petitioner (Landlord) is the owner of an apartment building at 41 West 72nd Street, in Manhattan. DHCR's order denied the landlord's Petition for **Administrative Review** which sought to overturn a finding of the Local Rent Administrator (hereafter, administrator) that there had been a rent overcharge of the tenant by the landlord in the sum of \$14,921.19

In or before February 2001, the landlord had commenced a non-payment proceeding against Prela Paljusevic, tenant of apartment 17 at 41 West 72nd Street. In an Answer and Affirmative Defense dated February 6, 2001, the tenant first asserted his claim of a rent overcharge. On August 31, 2001, DHCR received the tenant's overcharge complaint, signed and dated August 22, 2001, repeating the allegations of overcharge first raised in the tenant's affirmative defense to the non-payment proceeding. During the pendency of the DHCR overcharge proceeding, the landlord requested that the non-payment proceeding in the Housing

Court be discontinued, to which tenant consented as demonstrated by a letter received by respondent on May 7, 2003 (Return: D-1, Ex. "A").

In the administrative proceeding before the respondent submitted to the District Rent Administrator, neither tenant nor landlord informed the administrator that an overcharge issue had been raised by tenant in the Housing Court proceedings. Therefore, the administrator, in disposing of the tenant's application, used the DHCR filing date, August 31, 2001, as the date from which the Statute of Limitations was tolled.

On August 31, 1997, the apartment was vacant. Pursuant to RSC Section 2526.1 (a)(3) (iii), the first rent charged to the complainant tenant within the four years must be established as the legal regulated rent. Inasmuch as the legal regulated rent was fixed at \$2050.00 per month --- as concluded by the administrator by order dated April 26, 2002 (Petition, Ex. "TI") - the apartment was exempt from rent regulation. Therefore, the tenant's application for overcharge was denied.

On June 4, 2002, the tenant filed a Petition for Administrative Review (hereafter, PAR), wherein the tenant first claimed that the overcharge issue had been set forth in his counterclaim in the Housing Court proceeding. Based on this information, the Deputy Commissioner granted the PAR by order dated August 30, 2002, and reinstated the tenant's overcharge complaint. He used a rent base date of February 6, 1997 (Petition, Ex. "B"). On this date, the apartment was occupied by a prior tenant, and the legal rent for DHCR purposes must be computed based upon the apartment remaining regulated rather than deregulated as of August 31, 1997. By order dated April 3, 2003, the administrator computed the rent overcharge, based on the \$1,400.00 per month, actually paid by the tenant, pursuant to a rebate agreement with the landlord, to

which the \$2,050 monthly rent set forth in the lease was subject. The legal regulated rent was computed based upon the rent in effect for the tenant occupying the apartment on February 0, 1997 in the sum of \$647.18, plus increments based on rent guidelines, vacancy and longevity increases adding up to a total legal regulated rent of \$903.47. The overcharge ordered to be repaid is the sum of the monthly overcharges based on \$903.47, plus interest, less landlord's refund which presumably is based on the tenant's failure to pay any rent for a period of time. The final figure is \$14,921.14.

Landlord subsequently filed a PAR contesting the order of April 3, 2003, on May 6, 2003 (Return: D-1, Ex. "A"). The administrator's order of April 3, 2003 was affirmed, and the landlord's PAR denied, pursuant to a July 3, 2003 order and opinion of the Deputy Commissioner, which affirmance is the subject of the instant petition.

Landlord seeks relief based on the asserted violation of RSL Section 2526.1 (a)(2)(ii), which sets forth a statute of limitations of four years on past rent overcharges. Landlord maintains that the tenant may not be afforded relief prior to August 31, 1997, four years prior to the date of the commencement of the DHCR overcharge complaint. The respondent, however, noting that the landlord attached a copy of his February 2001 Housing Court landlord-tenant complaint, asserts that — with reference to tenant's affirmative defense of rent overcharge served on the landlord at that time — the latter had sufficient notice of the overcharge claim. Therefore, the respondent concludes that the statute of limitations on rent overcharges was tolled by the landlord's receipt of the counterclaim notice in February 2001.

RSL § 2526.1 (a)(2) quite clearly states that claims must be filed within four years of the claimed overcharge. Further, subdivision (ii) of the said section directs that "the rental history of

the housing accommodation prior to the four year period preceding the filing of a complaint pursuant to this section . . . shall not be examined." The section is clear that the statute of limitations is measured from the time of the filing of the complaint with the respondent. It mentions nothing about actual knowledge of the claim tolling the statute. Thus, the respondent's determination to extend the period of limitation back to four years from the date of notice to the landlord, i.e. the counterclaim, is incorrect. Therefore, the matter is remanded to the respondent, to reconsider based on the foregoing.

Accordingly, the petition is granted to the extent that the matter is remanded to the respondent, to reconsider based on the foregoing.

The clerk is directed to enter judgment accordingly.

DATED: July 6, 2004

ENTER:



 J. S. C.

2004
 J. S. C.