

**Matter of Watson v New York State Div. of Hous. & Community Renewal**

2011 NY Slip Op 33610(U)

December 21, 2011

Sup Ct, Queens County

Docket Number: 13582/11

Judge: Timothy J. Dufficy

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Order and Judgment

**SUPREME COURT - QUEENS COUNTY**  
**Part 35**

Present: HONORABLE TIMOTHY J. DUFFICY

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In the Matter of the Application of  
RANDY WATSON,

Petitioner,

Index No.: 13582/11

For a Judgment Under Article 78 of  
the Civil Practice Law and Rules,

December 21, 2011

- against -

NEW YORK STATE DIVISION OF  
HOUSING AND COMMUNITY RENEWAL  
(N.Y.S.D.H.C.R.)and  
IRK ASSOCIATES, LLC Respondents.

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**STATEMENT OF FACTS**

In the present case, the tenant filed a complaint of rent overcharge alleging that the rent of \$1236 charged and collected by the owner on July 17, 2009 constituted

an overcharge. The base date for this proceeding is July 17, 2005 which is the date four (4) years prior to the filing date of this complaint. The Rent Administrator's order found that subsequent to July 17, 2005 a rent overcharge occurred as shown on the Rent Calculation chart. As explained in the Rent Calculation Chart, The RA found that the owner was responsible for :

Treble damages on the overcharge beginning two years before the filing of the complaint because the owner had not established that the overcharge was not willful. The RA's order directed the owner to roll back the rent to the legal regulated rent, to recompute the current rent based thereon, and to make full refund or credit to the tenant of any rent paid in excess of the legal regulated rent and any security in excess of such rent, as shown by the Rent Calculation Chart. The RA further directed the owner to refund any excess rent paid by a current occupant if the complainant was no longer in occupancy. The RA's order then allowed the owner a thirty-five day (35) deadline to Petition for Administrative Review of the order to run from the date of the issuance of the RA's order. The RA further ordered that if the owner failed to refund the tenant the excess rent and/or security deposit as directed by the order, that the tenant may either:

a. Credit 20% of the overcharge (or in the event that 20% of the overcharge exceeds one month's rent, the tenant shall credit the established rent) each month

until the overcharge is fully credited; or

B. File and enforce this order as a judgement.

The order finding Rent Overcharge was issued on September 3, 2010.

On October 8 2010 the Tenant's Petition for Administrative review was received. On October 18, 2010 the Notice of Filing of Petition for Administrative review and Opportunity to respond was mailed to the owner. On April 8, 2011 the Deputy Commissioner issued an order and opinion Denying the Petition for Administrative Review and affirmed The RA's order which determined that rental that rental events occurring more than four(4) years before the filing of the overcharge complaint were not subject to challenge.

### **PETITIONER'S CONTENTIONS**

In this case the tenant alleges that the DHCR failed to determine whether the initial rent and the subsequent adjustments to the rent that occurred before the base date were in accordance with the Rent Stabilization Law and Code. The Petitioner seeks to vacate the decision rendered by the DHCR and argues that the order and opinion denying the Petition for administrative review by the Deputy Commissioner was arbitrary, capricious, against stare decisis, and contrary to

precedents.

### **RESPONDENT'S CONTENTIONS**

The Court finds that the Rent Stabilization law (“RSL”) imposes a four-statute of limitations on the filing of an overcharge complaint, and prohibits the examination of evidence in an overcharge complaint, and prohibits the examination of evidence in an overcharge proceeding which predates the complaint by more than four years. RSL Section 26-516. Moreover, the legal rent is the rent charged and paid on the base date, four years prior to the complaint or application. See, Payne v. DHCR, 287 A.D. 2d 415 (1<sup>st</sup> Dept. 2001). In fact, the four year statute of limitations on the review of rent history has been repeatedly endorsed by the courts. See, Grimm v. N.Y. State Div. Of Housing & Community Renewal , 15 N.Y. 3d 358 (2010); Gomez v N.Y. State Division of Housing and Community Renewal , 79 A.D.3d 878 (2d Dept 2010).

In this case the tenant filed an overcharge complaint on July 17, 2009 and pursuant to RSC Section 2526.1(a)(3)(I), the base date is July 17, 2005. Since the four year limitation provides that the rental history before the base date cannot be examined, the tenant is time barred from challenging the amount of rent charged

prior to the base date of July 17, 2005.

The tenant argues that the base date rent was fraudulently fixed by the landlord and therefore should not have been relied upon as a guide for the statutory four year limit in determining the overcharge complaint. However, the tenant failed to submit any evidence in support of his contentions. see, Thornton v. Baron, 5 N.Y.3d 175 (2005). A mere allegation of fraud alone, as we have here, without any evidence of an owner's fraud, is insufficient to require the DHCR to inquire further. See, Grimm v. State of N.Y. Division of Housing & Community Renewal, supra .

Furthermore, RSC Section 2521.1(g) provides in pertinent part:

“The initial legal registered rent for a housing accommodation constructed pursuant to Section 421-a of the Real Property Tax Law shall be the initial adjusted monthly rent charged and paid but no higher than the rent approved by HPD pursuant to such section for the housing accommodation.....”

Here the owner submitted a Certificate of Occupancy for the subject building which was dated July 11, 2000 which stated that the building was completed on March 18, 1999. The owner applied for and received a 421-a partial tax exemption for new construction on July 28, 2009. If the tenant believed he was aggrieved by the rent, then the tenant should have challenged the initial rent set by

HPD by filing an Article 78 proceeding against the Hpd at the time the initial rent was set. *Ahmed v. N.Y. State Div. Of Housing & Comm Renewal*, 15 A.D. 3d 216 (1<sup>st</sup> Dept 2005). Therefore, this court finds that it was neither arbitrary or capricious for the DHCR to refuse to examine the rental history of the subject apartment prior to the four year period preceding the filing of the rent overcharge complaint because the tenant's allegation that there was fraud is without merit.

Lastly this court finds that the decision of the DHCR's order was in accordance with the law and the evidence and was not at all arbitrary nor was it capricious. Here, this Court finds that the DHCR's order was in accordance with the Rent Stabilization Law and Code, and that the Deputy Commissioner properly affirmed the RA's order. Furthermore, the tenant failed to show that the record before the DHCR had any indicia of fraud to require to require the DHCR to make further inquiry beyond the base date.. This Court finds that there is a rational basis for the administrative order, and where the decision is rationally based, this court may not substitute it's judgement for that of the DHCR. see, Howard-Carol Tenant's Association v. New York City Conciliation and Appeals Bd., 64 A.D.2d 546 (1<sup>st</sup> Dept. 1978).

Accordingly, the DHCR's order should be affirmed in its entirety and the petition is dismissed. The foregoing constitutes the judgment, order, and decision of the court.

Dated: December 21, 2011

TIMOTHY J. DUFFICY, JSC