

**Eighth City Realty Corp v New York State Div. of
House. & Community Renewal**

2021 NY Slip Op 31594(U)

May 11, 2021

Supreme Court, New York County

Docket Number: 150597/2021

Judge: Frank P. Nervo

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK, PART IV

-----X
 EIGHTH CITY REALTY CORP,

Petitioner,

-against-

NEW YORK STATE DIVISION OF HOUSING AND
 COMMUNITY RENEWAL,

Respondent.
 -----X

NERVO, J.:

DECISION AND ORDER

Index Number

150597/2021

Jonathan Pollack seeks leave to intervene in this Article 78 proceeding on the grounds that he is an interested party, under CPLR § 7802(d).

Alternatively, movant seeks to intervene as a person whose interest may be inadequately represented by the parties in this proceeding, under CPLR § 1012(a)(2). The motion is unopposed.

As an initial matter, the parties and movant entered into a stipulation consenting to the instant relief and sought to have same so-ordered by the Court. The Court declined to so-order the stipulation for want of sufficient information regarding the proposed intervenor, without prejudice to motion practice seeking identical relief. Movant thereafter filed the instant motion.

CPLR § 7802(d) provides that the Court “may allow other interested persons to intervene.” CPLR § 1013 provides, in pertinent part, “ any person may be permitted to intervene in any action when a statute of the state confers a right to intervene in the discretion of the court, or when the person’s claim or defense and the main action have a common question of law or fact.”

Intervention in an Article 78 proceeding pursuant to § 7802(d) is therefore broader than that provided by CPLR § 1013 (*Greater NY Health Care Facilities Ass’n v. DeBuono*, 91 NY2d 716 [1998]).

Here, the proposed-intervenor-movant brought an overcharge action in the Division of Housing and Community Renewal (“DCHR”). That action resulted in a finding that movant was overcharged. Petitioner-landlord now challenges that determination. Under these circumstances, leave to intervene is proper to ensure the movant’s interests will be adequately represented. That DHCR is a party in this matter does not result in a contrary finding (*see Matter of Tenants’ Union of W. Side v. Beame*, 47 AD2d 731 [1st Dept 1975]).

Accordingly, it is

ORDERED that motion is granted; and it is further

ORDERED that movant shall serve notice of entry of this decision and order within 14 days; and it is further

ORDERED that within ten days of its entry by the Clerk, movant shall serve a copy of this order with notice of entry on the County Clerk and the Clerk of the Trial Support Office, and it is further

ORDERED that upon service on the County Clerk and Clerk of the Trial Support Office, the County Clerk and the Clerk of the Trial Support Office shall amend their records to reflect the new caption, which shall read:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
-----X
EIGHTH CITY REALTY CORP,

Petitioner,

Index No. 150597/2021

-against-

NEW YORK STATE DIVISION OF HOUSING AND
COMMUNITY RENEWAL, and JONATHAN POLLACK

Respondents.
-----X

; and it is further


ORDERED that motion sequence 001, seeking, inter alia, to reverse the DHCR's determination is adjourned to June 28, 2021; and it is further

ORDERED that movant-intervenor shall file papers related to motion sequence 001, if any, in accordance with CPLR § 7804 and petitioner shall file a supplemental reply, if any, related only to those issues raised in movant-intervenor's opposition, if any, pursuant to CPLR § 7804.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: May 11, 2021

ENTER:



Hon. Frank P. Nervo, J.S.C.