215 E. 68th St. L.P. v Division of Hous. & Community Renewal
2021 NY Slip Op 31711(U)
May 20, 2021
Supreme Court, New York County
Docket Number: 159718/2020
Judge: Carol R. Edmead

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL R. EDMEAD **PART** IAS MOTION 35EFM

Justice

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215 EAST 68TH STREET L.P.

Plaintiff,

- v -

DIVISION OF HOUSING AND COMMUNITY RENEWAL,

Defendant.

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INDEX NO. 159718/2020

MOTION DATE 11/11/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 13, 14, 16, 25 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, it is

ADJUDGED that the petition for relief, pursuant to CPLR article 78, of petitioner 215 East 68th Street LP (motion sequence number 001) is denied, and this proceeding is dismissed; and it is further

ORDERED that counsel for respondent New York State Division of Housing and Community Renewal shall serve a copy of this order along with notice of entry on all parties within ten (10) days.

In this Article 78 proceeding, petitioner 215 East 68th Street LP (landlord) seeks a judgment to: 1) nullify an "explanatory addendum" that was issued by the respondent New York State Division of Housing and Community Renewal (DHCR) to clarify the terms of a previously issued rent-deregulation order; and 2) vacate another previously issued DHCR "petition for administrative review" (PAR) order (motion sequence number 001). For the following reasons, the petition is denied and this proceeding is dismissed.

FACTS

Landlord is the owner of a residential apartment building located at 215 East 68th Street in the County, City and State of New York. *See* verified petition, ¶ 1. The DHCR is the administrative agency that oversees rent-stabilized buildings located in New York City. *Id.*, ¶ 2. This proceeding concerns apartment P17 in the building, whose former tenants of record were non-parties Alvaro Hernandez and Macarena Dehesa (tenants), and which landlord had previously registered with the DHCR as a rent-stabilized unit. *Id.*, ¶¶ 6-8.

On June 15, 2018, landlord filed a DHCR "petition for high income rent deregulation" of apartment P17 that claimed that tenants' total annual income had exceeded the applicable $200,000.00 deregulation threshold during the two preceding years (i.e., 2016 and 2017). *See* verified petition, ¶ 8; exhibit C. Tenants filed an answer which admitted that their total annual income had exceeded the deregulation threshold, and a DHCR rent administrator (RA) thereafter issued an Order of Deregulation for apartment P17 on December 7, 2018 (the deregulation order). *Id.*, ¶ 9; exhibit D. The deregulation order stated, in part, as follows:

> "After consideration of the petition and the tenant's admissions in . . . [t]he Income Certification Form . . . the Rent Administrator finds that:
> "The housing accommodation is subject to the Rent Stabilization Law of 1969 and/or the Emergency Tenant Protection Act of 1974, and that the legal regulated rent was $2,700.00 or more per month on the applicable date(s). In addition, the sum of the

> annual incomes of the tenant(s) named on the lease who occupied this housing accommodation and of the other persons who occupied this housing accommodation as a primary residence on other than a temporary basis (excluding bona fide employees and bona fide subtenants) was in excess of $200,000.00 in each of the two preceding calendar years. Accordingly, and upon the grounds stated in the Rent Stabilization Code Section 2520.1 l (s) or Emergency Tenant Protection Regulations Section 2500.9 (n), it is
>
> "ORDERED, that *the subject housing accommodation is deregulated, effective upon the expiration of the existing lease*."

Id, exhibit D (emphasis added). Tenants lease for apartment P17 expired on July 31, 2019, after which they vacated the unit. *Id*., verified petition, ¶¶ 10, 12.

On June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA) became effective, and Part D thereof repealed the provisions of the Rent Stabilization Law (RSL) that had previously permitted "high rent" and "high income" deregulation of rent stabilized apartment units (NY Uncon Laws §§ 26-504.1, 26-504.2, 26-504.3). In a "cleanup bill" enacted several days after the HSTPA's effective date, the New York State Legislature amended Section (i.e., subparagraph) 8 of Part D to provide, in pertinent part, that:

> "This act shall take effect immediately; provided however, that (i) any unit that was lawfully deregulated prior to June 14, 2019 shall remain deregulated . . .."

See L 2019, ch 39 Part Q, § 8.

On August 12, 2019, landlord executed a two-year, rent stabilized lease for apartment P17 with new non-party tenants Zachary Sirota and Alexandra Cohen (new tenants). *See* verified petition, ¶ 12; exhibit G. On September 6, 2019, the DHCR sent landlord an "explanatory addenda to order" that was intended to explain the impact of the HSTPA on previously issued deregulation orders (the explanatory addendum). *Id*., ¶ 11; exhibit F. The relevant portion of the explanatory addendum stated as follows:

> "On December 07, 2018 , the RA issued an order to above parties with respect to the owner's application for high rent/high income deregulation. It stated:
>
> "ORDERED that the subject housing accommodation is deregulated effective:
>
> **"Upon the expiration of the existing lease**, as the subject housing accommodation is subject to the Rent Stabilization Law of 1969 and/or the Emergency Tenant Protection Act of 1974.

> "The language, which makes the deregulation contingent upon the expiration of the lease in effect on the day the Rent Administrator's deregulation order was issued, was taken from the applicable ETPA and RSL provisions authorizing such orders. Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019 (HSTPA) and its subsequent amendments were enacted. HSTPA repealed the high rent/high income deregulation provisions under which the above order was issued and stated that the law is to 'take effect immediately.' Additionally, HSTPA provides that "any unit that was lawfully deregulated prior to June 14, 2019 shall remain deregulated."
>
> "If the lease in effect on the day the Rent Administrator's deregulation order was issued expired before June 14, 2019 the housing accommodation is deregulated.
>
> "*If the rent stabilized lease in effect on the day the Rent Administrator's deregulation order was issued expires on or after June 14, 2019, the housing accommodation remains regulated to the Rent Stabilization Law or ETPA and pursuant to HSTPA is not deregulated.*
>
> "If a rent stabilized lease should have been in effect on the day the Rent Administrator's deregulation order was issued, the housing accommodation remains subject to the Rent Stabilization Law or ETPA and pursuant to HSTPA is not deregulated."

Id.; exhibit F (emphasis added).

On October 10, 2019, landlord filed a petition for administrative review (PAR) with the DHCR that claimed that the explanatory addendum sought to improperly change the terms of the deregulation order. *See* verified petition, ¶ 13; exhibit H. On September 17, 2020, the DHCR's Deputy Commissioner issued an order that denied landlord's PAR (the PAR order). *Id.*, ¶ 15; exhibit A. Because the PAR order is lengthy, this decision will not reproduce it in full, but will rather discuss the Deputy Commissioner's findings individually, as appropriate. It is sufficient to observe that the PAR order rejected all of landlord's legal challenges to the explanatory addendum. *Id.*; exhibit A.

Aggrieved, landlord thereafter commenced this Article 78 proceeding on November 16, 2020. *See* verified petition. The DHCR filed an answer on January 19, 2021. *See* verified answer. The matter is now fully submitted (motion sequence number 001).

DISCUSSION

In most cases, the court's role in an Article 78 proceeding is to determine, upon the facts before an administrative agency, whether a challenged agency determination had a rational basis in the record or was arbitrary and capricious. *See Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 230-231 (1974); *Matter of E.G.A. Assoc. v New York State Div. of Hous. & Community Renewal*, 232 AD2d 302, 302 (1st Dept 1996). This proceeding purports to challenge the September 17, 2020 PAR order as an arbitrary and capricious ruling; however, landlord's PAR only challenged the analysis set forth in the DHCR's September 6, 2019 explanatory addendum, rather than the RA's findings in the February 9, 2018 deregulation order. *See* verified petition, exhibits A, D, H. This is anomalous, since the explanatory addendum is not a final agency determination, but is instead an "advisory opinion/operational bulletin," which 9 NYCRR § 2527.11 authorizes the DHCR to issue at its discretion. Since landlord's objections to the explanatory addendum flow from its concerns about its rights as the lessor of apartment P17, it might have been more appropriate for landlord to have proceeded via an action for declaratory judgment. Declaratory judgment is traditionally the vehicle that the courts use to determine the respective rights of all affected parties under a lease. *See e.g.*, *Chekowsky v Windemere Owners, LLC*, 114 AD3d 541 (1st Dept 2014); *Riccio v Windermere Owners LLC*, 58 Misc 3d 1223(A), 2018 NY Slip Op 50230(U), * 4 (Sup Ct NY County 2018), citing *Leibowitz v Bickford's Lunch Sys.*, 241 NY 489 (1926). However, CPLR 7803 (3) also provides that courts may consider Article 78 petitions which question "whether a[n agency] determination was made in violation of lawful procedure, [or] was affected by an error of law. . . (emphasis added)." *See also*, *Matter of Classic Realty v New York State Div. of Hous. & Community Renewal*, 2 NY3d 142, 146 (2004) ("Our review of an administrative agency's action is limited to 'whether a determination was made in violation of

lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion.'" [citation omitted]); *Matter of 107-10 Shorefront Realty, LLC v Division of Hous. & Community Renewal*, 140 AD3d 1071 (2d Dept 2016). Here, to the extent that landlord's petition argues that the explanatory addendum contained errors of law that adversely affected the deregulation order, the court believes that CPLR 7803 (3) encompasses review the explanatory addendum under the "error of law" standard. *See e.g.*, *Terence Cardinal Cooke Health Ctr. v Commissioner of Health of the State of N.Y.*, 175 AD3d 435, 436 (1st Dept 2019) ("[W]here a quasi-legislative act by an administrative agency . . . is challenged on the ground that it was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion . . ., a proceeding in the form prescribed by article 78 can be maintained." [internal citations and quotation marks omitted]). To the extent that landlord's petition seeks to overturn the September 17, 2020 PAR order, CPLR 7803 (3) mandates judicial review under the "arbitrary and capricious" standard. This decision will apply each standard where appropriate, first addressing the explanatory addendum, and then the PAR order.

A judicial inquiry into whether an agency determination was "affected by an error of law," pursuant to CPLR 7803 (3), "is 'limited to the grounds invoked by the agency' in its determination." *Matter of Barry v O'Neill*, 185 AD3d 503, 505 (1st Dept 2020), citing *Matter of Madeiros v New York State Educ. Dept.*, 30 NY3d 67, 74 (2017). Appellate courts have recognized "errors of law'' to exist in agency determinations that relied on inapplicable case law (*see e.g.*, *Solnick v Whalen*, 49 NY2d 224 [1980]), or misapplied governing statutes. *See e.g.*, *Matter of Rossi v New York City Dept. of Parks & Recreation*, 127 AD3d 463 (1st Dept 2015); *Matter of Nestle Waters N. Am., Inc. v City of New York*, 121 AD3d 124 (1st Dept 2014). On the

latter point, the Appellate Division, First Department, recently reiterated the Court of Appeals' long-standing directive that:

> "[w]here the interpretation of a statute or its application involves knowledge and understanding of underlying operational practices or entails an evaluation of factual data and inferences to be drawn therefrom, the courts regularly defer to the governmental agency charged with the responsibility for administration of the statute. If its interpretation is not irrational or unreasonable, it will be upheld. Where, however, the question is one of pure statutory reading and analysis, dependent only on accurate apprehension of legislative intent, there is little basis to rely on any special competence or expertise of the administrative agency and its interpretive regulations are therefore to be accorded much less weight. . . . [I]f the regulation runs counter to the clear wording of a statutory provision, it should not be accorded any weight."

Matter of West 58th St. Coalition, Inc. v City of New York, 188 AD3d 1, 8 (1st Dept 2020), quoting *Kurcsics v Merchants Mut. Ins. Co.*, 49 NY2d 451, 459 (1980). Here, the statutes that the DHCR identified in the explanatory addendum were "the applicable ETPA and RSL provisions authorizing [deregulation] orders . . . [and] the [HSTPA]." *See* verified petition, exhibit F. The two RSL provisions mentioned in the order (§§ 26-504.1 and 26-504.3) were both repealed by Part D of the HSTPA. The first governed "high income rent deregulation," and provided, in pertinent part, as follows:

> "Upon the issuance of an order by the [DHCR], 'housing accommodations' shall not include housing accommodations which: (1) are occupied by persons who have a total annual income, as defined in and subject to the limitations and process set forth in section 26-504.3 of this chapter, in excess of the deregulation income threshold, as defined in section 26-504.3 of this chapter, for each of the two preceding calendar years; and (2) have a legal regulated monthly rent that equals or exceeds the deregulation rent threshold, as defined in section 26-504.3 of this chapter."

RSL § 26-504.1. The second defined the "deregulation thresholds" referenced above, and provided, in pertinent part, as follows:

> "2. Deregulation income threshold means total annual income equal to one hundred seventy-five thousand dollars in each of the two preceding calendar years for proceedings commenced before July first, two thousand eleven. For proceedings commenced on or after July first, two thousand eleven, the deregulation income threshold means the total annual income equal to two hundred thousand dollars in each of the two preceding calendar years.

> 3. Deregulation rent threshold means two thousand dollars for proceedings commenced before July first, two thousand eleven. For proceedings commenced on or after July first, two thousand eleven, the deregulation rent threshold means two thousand five hundred dollars. For proceedings commenced on or after July first, two thousand fifteen, the deregulation rent threshold means two thousand seven hundred dollars, provided, however, that on January first, two thousand sixteen, and annually thereafter, such deregulation rent threshold shall be adjusted by the same percentage as the most recent one year renewal adjustment adopted by the relevant guidelines board."

RSL § 26-504.3. The corresponding Rent Stabilization Code (RSC) provision that governed "high income rent deregulation"[1] applications provided, in pertinent part, as follows:

> "This Code shall apply to all or any class or classes of housing accommodations made subject to regulation pursuant to the RSL . . ., except the following housing accommodations for so long as they maintain the status indicated below:
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> * * *
>
> "(s) Upon the issuance of an order by the DHCR pursuant to the procedures set forth in Part 2531 of this Title, including orders resulting from default, housing accommodations which:
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> > "(1) have a legal regulated rent of $2,000 or more per month as of October 1, 1993, or as of any date on or after April 1, 1994, and which are occupied by persons who had a total annual income in excess of $250,000 per annum for each of the two preceding calendar years, where the first of such two preceding calendar years is 1992 through 1995 inclusive, and in excess of $175,000, where the first of such two preceding calendar years is 1996 through 2009 inclusive, with total annual income being defined in and subject to the limitations and process set forth in Part 2531 of this Title;
> >
> > "(2) have a legal regulated rent of $2,500 or more per month as of July 1, 2011 or after, and which are occupied by persons who had a total annual income in excess of $200,000 per annum for each of the two preceding calendar years, where the first of such two preceding calendar years is 2010 or later, with total annual income being defined in and subject to the limitations and process set forth in Part 2531 of this Title; . . ."

RSC § 2520.11. The relevant portion of RSC § 2531 that is referenced in RSC § 2520.11 (s) provides, in pertinent part, as follows:

> "In the event that the total annual income as certified is in excess of $250,000, $175,000, or $200,000 in each such year, whichever applies, as provided in section 2531.2 of this Part, the owner may file an owner's petition for deregulation (OPD), accompanied by the ICF, with the DHCR on or before June 30th of such year. The DHCR shall issue within 30 days after the filing of such OPD, an order providing that such housing

[1] The PAR order noted that the RA specifically relied on RSC § 2520.11 (s) in the December 7, 2018 deregulation order. *See* verified petition, exhibit A.

> accommodation shall not be subject to the provisions of the RSL upon the expiration of the existing lease."

RSC § 2531.3 As previously mentioned, Part D, Section 8 of the HSTPA, which codified the repeal of "high income rent deregulation," provides that:

> "This act shall take effect immediately; provided however, that (i) any unit that was lawfully deregulated prior to June 14, 2019 shall remain deregulated . . .."

See L 2019, ch 39 Part Q, § 8.

After carefully analyzing all the above statutes and regulations, the court concludes that the rationale which the DHCR followed in the explanatory addendum did not "run counter to the clear wording of a statutory provision." As of June 15, 2018, when landlord filed its deregulation petition, RSL §§ 26-504.1 and 26-504.3 authorized the "high income rent deregulation" of apartments where: 1) the tenant of record had reported a total income of $200,000.00 or more per year to the New York State taxing authorities for two consecutive years; and 2) the unit's legal regulated rent was $2,000.00 per month or more.[2] Landlord's deregulation petition alleged that tenants' total income exceeded the $200,000.00 "deregulation income threshold" in 2016 and 2017. *See* verified petition, exhibit C. It is clear that landlord's deregulation petition facially comported with the requirements of RSL §§ 26-504.1 and 26-504.3. Therefore, it was no "error of law" for the DHCR to process landlord's deregulation petition pursuant to those statutes (or any petition that properly pled the statutory requirements for "high income rent deregulation").

Also as of June 15, 2010, RSC §§ 2520.11 and 2531.3 authorized the DHCR to grant petitions for "high income rent deregulation" when a tenant's total annual income was certified as in excess of the applicable deregulation threshold amount. Here, the RA's deregulation order

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[2] Landlord's petition and reply papers do not discuss either of these criteria. Instead, landlord takes the incorrect position that the deregulation of apartment P17 became effective on the day that the DHCR issued the deregulation order. *See* verified petition; ¶¶ 16-34.

specifically noted that, pursuant to DTF tax information, "the sum of the annual incomes of the tenant(s) named on the lease . . . was $200,000.00 or more in each of the two preceding calendar years." *See* verified petition, exhibit D. Therefore, it was no "error of law" for the RA to have entered a deregulation order against apartment P17, pursuant to RSC §§ 2520.11 and 2531.3 (nor would it have been an "error of law" for the DHCR to enter a deregulation order where any tenant of record's certified annual income exceeded the applicable deregulation threshold amount for two years).

Further, the courts of this state have long and consistently acknowledged that the plain language of RSC § 2531.3 authorizes the DHCR to enter orders terminating an apartment's rent stabilized status "upon the expiration of the current lease," which is usually a different date that falls after the one on which the agency enters a deregulation order. *See e.g.*, *Matter of Classic Realty v New York State Div. of Hous. & Community Renewal,* 2 NY3d 142 (2004); *Rose Assoc. v Johnson*, 247 AD2d 222 (1st Dept 1998); *Matter of London Terrace Gardens v New York State Div. of Hous. & Community Renewal,* 6 Misc 3d 1020(A), 2005 NY Slip Op 50132(U) (Sup Ct, NY County, 2005); *see also*, *Matter of Lacher v New York State Div. of Hous. & Community Renewal*, 25 AD3d 415, 417 (1st Dept 2006) ("the language of the rent stabilization system with respect to deregulation is prospective in nature"). Therefore, it was no "error of law" for the RA to have abided by the "lease expiration" instruction set forth in RSC § 2531.3 when he issued the December 7, 2018 deregulation order. *See* verified answer, exhibit D.

Finally, as was previously observed, the "clean up" Section 8 of Part D of the HSTPA provides that "any unit that was lawfully deregulated prior to June 14, 2019 (the HSTPA's effective date) shall remain deregulated," but that as to all other apartments, "this act shall take effect immediately," with the result that "high income rent deregulation" will no longer be

available because the statutes that authorized it (i.e., RSL §§ 26-504.1 and 26-504.3) were repealed effective as of that date. *See* L 2019, ch 39 Part Q, § 8; *see also*, *Widsam Realty Corp. v Joyner*, 66 Misc 3d 132(A), 2019 NY Slip Op 52097(U), *2 (App Term, 1st Dept 2019) ("'the so-called "clean up" bill clarified, at Section 8 thereof, that HSTPA did not re-regulate any units lawfully deregulated before HSTPA's June 14, 2019 effective date'" [internal citation omitted). The statute's plain language makes it clear that it was no "error of law" for the DHCR to have concluded that it could not authorize the deregulation of any rent stabilized apartments after the HSTPA's June 14, 2019 effective date.

The court also finds that it is reasonable for the DHCR to read the plain language of HSTPA, Part D, Section 8, in conjunction with RSC § 2531.3 (and the case law that interprets those provisions), and to conclude that it could not authorize the deregulation of rent stabilized apartments after June 14, 2019, even pursuant to previously issued deregulation orders, if such orders provided for the subject apartments to remain subject to stabilization until their pending lease terms expired, and the expiration dates fell after June 14, 2019. The court makes this finding fully cognizant of the Court of Appeals' directive that it, and not the DHCR, is the proper tribunal to resolve "question[s] . . . of pure statutory reading and analysis . . .." *Matter of West 58th St. Coalition, Inc. v City of New York*, 188 AD3d at 8, quoting *Kurcsics v Merchants Mut. Ins. Co.*, 49 NY2d at 459. In this instance, however, the court finds that the DHCR's interpretation of the statutes (i.e., that the applicable RSL and RSC provisions did not authorize apartment P17's deregulation, despite the agency's previous approval of landlord's deregulation petition) did not "run counter to the clear wording of a statutory provision." Instead, the court finds that it was reasonable for the DHCR to read the plain language of the RSL and RSC provisions in conjunction with the HSTPA, and the court adopts that reading. As a result, the

court concludes that the DHCR's explanatory addendum did not contain an "error of law" that would adversely affect the February 9, 2018 deregulation order, in violation of CPLR 7803 (3). Consequently, the court finds that, to the extent that this Article 78 petition challenges the explanatory addendum, it lacks merit and should be denied. However, as was previously observed, landlord's petition also purports to challenge the September 17, 2020 PAR order.

At the beginning of this decision, the court noted that its role in an Article 78 proceeding is to determine whether, upon the facts before the DHCR, a challenged determination had a rational basis in the record or was arbitrary and capricious. *See Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 230-231; *Matter of E.G.A. Assoc. v New York State Div. of Hous. & Community Renewal*, 232 AD2d at 302. A determination will only be found "arbitrary and capricious" if it is "without sound basis in reason, and in disregard of the . . . facts . . .." *See Matter of Century Operating Corp. v Popolizio*, 60 NY2d 483, 488 (1983), citing *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231. However, if a rational basis for the agency's determination can be drawn from the administrative record, there can be no judicial interference. *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231-232. Here, landlord raises three arguments alleging that the PAR order was an arbitrary and capricious ruling. The court finds that none of them is persuasive.

First, landlord asserts that "[t]he [DHCR] ignored various and important facts: that the tenants acknowledged an income above the threshold needed for deregulation in 2018; this matter was wholly adjudicated by January 11, 2019 - thirty-five (35) days after the Order of Deregulation; these Tenants FAILED to file a [PAR] against that Order, as they already

acknowledged that the household income was above the threshold for deregulation ($200,000.00) and the legal rent was also above the then threshold for deregulation ($2,700.00); [and that] a new Lease was executed in place as of August, 2019." *See* verified petition, ¶ 16.

However, the relevant portions of the PAR order recited as follows:

> "The Commissioner has reviewed the evidence in the record and has considered that portion of the record relevant to the issues raised on PAR.
>
> "On June 15, 2018, the subject owner filed with the rent agency a petition for high income rent deregulation (OPD). In the OPD, the owner stated that the owner petitions DHCR to issue an order deregulating the housing accommodation based on the tenant's admission in the attached Income Certification Form (ICF) and requested verification. Owner alleged that the total annual household income exceeded $200,000.00 in each of the two proceeding calendar years (2016 and 2017).
>
> "On December 7, 2018, the RA issued an order of deregulation based upon the tenant's admission in the Income Certification Form (ICF) that the tenant(s) total household income was in excess of $200,000.00 for the years of (2016 and 2017).
>
> * * *
>
> "Contentions on PAR.
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> "In its PAR of the EA, the owner argues amongst other things that: the EA is improper; that DHCR erred by applying HSTPA's repeal of High Income/High Rent deregulation retroactively to this matter that was not pending; that the order of deregulation was final because the tenant failed to file a PAR; that the owner executed a free-market lease with new tenants on August 12, 2019, which was before the EA was issued."

See verified petition, exhibit A. The plain text of the PAR order makes it clear that the DHCR Deputy Commissioner did *not* "ignore" or omit from consideration any of the "various and important facts" that landlord identified in its Article 78 petition. Instead, the Deputy Commissioner did not assign those facts the dispositive significance that landlord believed they were entitled to. However, this argument is unavailing. The Appellate Division, First Department, has long followed the rule that:

> "Where the judgment of an agency involves factual evaluations in the area of that agency's expertise and is supported by the record, such judgment must be accorded great weight and judicial deference. In such circumstances, a 'reviewing court may not reevaluate the weight accorded the evidence adduced . . . since the duty of weighing the evidence, interpreting relevant statutes and making the determination rests solely in the expertise of the agency.'"

Awl Indus., Inc. v Triborough Bridge & Tunnel Auth., 41 AD3d 141, 142 (1st Dept 2007) (internal citations omitted); *see also*, *Matter of Williams v New York City Dept. of Hous. Preserv. & Dev.*, 17 Misc 3d 1129(A), 2007 NY Slip Op 52188(U) (Sup Ct, NY County 2007). Here, the DHCR Deputy Commissioner undoubtedly considered all of the facts that landlord identified, but did not accord them the weight that landlord wished. The law does not permit this court to second guess the Deputy Commissioner's factual evaluation. Therefore, the court rejects landlord's first argument.

Next, landlord argues that the Court of Appeals recent decision in *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal* (35 NY3d 332 [2020]) "determined that the method of overcharge calculation and treble damages set forth in Pt. F of the newly enacted Housing Stability Tenant Protection Act of 2019 cannot be applied retroactively and that Overcharge Complaints need to be resolved in accordance with law in effect at the time when the overcharges purportedly occurred." *See* verified petition, ¶ 19. However, the Court of Appeals took great pains to limit the scope of *Regina Metropolitan* to the question of "whether certain Part F amendments [of the HSTPA] . . . must be applied retroactively." *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 35 NY3d at 363. The Court recognized that the repeal of high income deregulation was governed by the amendments set forth in *Part D* of the HSTPA. 35 NY3d at 362, 373. The Court also expressly limited its "retroactive effect" analysis to HSTPA Part F, and quite clearly stated that "we have no occasion to address the prospective application of any portion of the HSTPA," including Part D. *Id.*, at 352, 363. In light of the Court's clear explanation, there is no basis for landlord's contention that the "retroactive effect" analysis set forth in *Regina*

Metropolitan should apply to high income deregulation cases governed by HSTPA Part D. Therefore, the court rejects landlord's second argument.[3]

Finally, landlord argues that "[t]his case was wholly decided prior to the passage of the [HSTPA]," that "the time to file a PAR against the Order of Deregulation expired January 11, 2019 - six (6) months before the passage of the HSTPA," and that "[t]he Explanatory Addenda to Order from September 6, 2019 did, in fact, resurrect a time-barred argument (which tenants did not make)." *See* verified petition, ¶¶ 25-26. The relevant portion of the PAR order stated that:

> "The Commissioner rejects the owner's contentions that DHCR erred by applying HSTPA's repeal of High Income/High Rent deregulation to the December 7, 2018 'final order.' The application of HSTPA to this matter is not based upon the independent judgement of the rent agency, but, rather, it is pursuant to the plain text in HSTPA, and the rent agency is statutorily obliged to apply HSTPA to this case. HSTPA specifically stated that the law is to 'take effect immediately' and that 'if an apartment remains rent regulated on or after June 14, 2019, then that apartment is no longer subject to the statutory provisions of high rent/high income deregulation.' Here, if the apartment remained rent regulated because the qualifying event for the deregulation (i.e. a current lease expiration) had not yet taken place as of June 14, 2019, it could not be deregulated thereafter. The Commissioner notes that the legislature drew its own bright line test of deregulation as to those orders at the RA level where the order was not yet effective."

See verified petition, exhibit A. In the first part of this decision, the court found that there was no error of law in the DHCR's interpretation of the RSL to provide that high income apartment deregulation orders would become effective on the date an apartment's lease expired, rather than on the date that the order was issued. The court has also found that the *Regina Metropolitan* holding held that no high income apartment deregulations could take place after the HSTPA's June 14, 2019 effective date. Because the lease for apartment P17 did not expire until July 31, 2019, the December 7, 2018 deregulation order plainly could not go into effect, regardless of

[3] The court also notes that landlord did not assert a "retroactive effect" argument based on *Regina Metropolitan* in its PAR filing. As a result, that specific argument was not properly before the Deputy Commissioner, although landlord's papers did cite to Regina Metropolitan elsewhere. *See* verified answer, exhibit D.

what claims tenants did or didn't raise during the deregulation proceeding. Therefore, the court finds that the DHCR Deputy Commissioner was correct to find that the HSTPA prevented the instant deregulation order from taking effect upon the expiration of apartment P17's lease. Accordingly, the court now also rejects landlord's "time-barred claim" argument, since the DHCR's application of the HSTPA does not depend on a tenant's assertion of a claim.

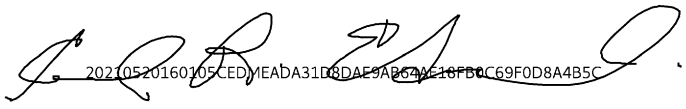
As a result of the foregoing, the court concludes that landlord has failed to establish that the PAR order was an arbitrary and capricious ruling. The court further concludes that the PAR order was rationally based upon the DHCR's statutory interpretation as set forth in the explanatory addendum. Accordingly, the court finds that so much of landlord's Article 78 petition as was directed at the PAR order lacks merit and should be denied.

DECISION

ACCORDINGLY, for the foregoing reasons it is hereby

ADJUDGED that the petition for relief, pursuant to CPLR article 78, of petitioner 215 East 68th Street LP (motion sequence number 001) is denied, and this proceeding is dismissed; and it is further

ORDERED that counsel for respondent New York State Division of Housing and Community Renewal shall serve a copy of this order along with notice of entry on all parties within ten (10) days.



5/20/2021
DATE

CAROL R. EDMEAD, 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