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**1795 Riverside Dr. Tenants Assn. v New York State
Div. of Hous. & Community Renewal**

2022 NY Slip Op 33182(U)

September 21, 2022

Supreme Court, New York County

Docket Number: Index No. 150618/2021

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
NEW YORK COUNTY**

PRESENT: HON. FRANK NERVO PART 04

Justice

-----X

1795 RIVERSIDE DRIVE TENANTS ASSOCIATION,

Plaintiff,

- v -

NEW YORK STATE DIVISION OF HOUSING AND
COMMUNITY RENEWAL, RIVERSIDE 1795 ASSOCIATES
LLC

Defendant.

-----X

INDEX NO. 150618/2021

MOTION DATE 01/19/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 8, 9, 10, 11, 12, 13, 14, 15, 16, 20, 21, 22, 23, 24, 25, 26

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

Upon the foregoing papers and oral argument held on the record, and for the reasons set forth on the record of September 21, 2022, the Court finds respondent Department of Housing and Community Renewal’s (DHCR) order dated November 18, 2020 arbitrary and capricious as inconsistent with respondent’s own precedent.

Administrative agencies are bound by their own precedent (*Matter of Terrace Ct. LLC v. New York State Div. of Hous. & Community Renewal*, 18 NY32d 446, 453 [2012]). Deviations from an agency’s established precedent must provide sufficient explanation so a reviewing court may “determine whether the agency has changed its prior interpretation of the law for valid reasons, or

has simply overlooked or ignored its prior decision” (*Matter of Charles A, Field Delivery Serv. [Roberts]*, 66 NY2d 516, 520 [1985]). Where such explanation is lacking, the court is required to reverse the agency determination on the law notwithstanding that substantial evidence supports the agency’s determination (*id.*).

Reversal is clearly required here. The building owner filed an application with respondent DHCR for a Major Capital Improvement (MCI) rent increase predicated upon repairs to the building’s parapet. The work comprised replacement of one parapet wall and repairs to several of the parapet’s other walls. Following these improvements, tenants continued to complain of water infiltration. Thereafter, DHCR inspected the building and the inspector confirmed the complaints of water damage, as well as confirming that only one wall of the parapet’s ten exposures was completely replaced, with other walls being repaired or partially replaced. Finally, the inspector’s report confirmed that the roof was not replaced.

DHCR’s agency precedent requires all parapet walls be replaced when granting an MCI rent increase for same: “the partial replacement of a parapet does not satisfy the requirement of a MCI unless performed as a necessary and

integral part of a qualify MCI, such as a roof or exterior restoration” (*Xikis*, DHCR Adm. Rev. Docket No. AS110043RO [May 10, 2017]; *9037 Realty LLC*, DHCR Adm. Rev. Docket No. DQ130032RO [April 20, 2018]); “partial replacement of parapet walls does not satisfy the requirements of an MCI as the work is not performed building-wide for the benefit of all tenants” (*Monaco I LLC*, DHCR Adm. Rev. Docket No. EW710038RO [November 20, 2019]); “work of a piecemeal nature or ordinary repair and maintenance does not qualify as a major capital improvement” (*9037 Realty LLC*, DHCR Adm. Rev. Docket No. DQ130032RO [April 20, 2018])¹. Notwithstanding that only one parapet wall was completely replaced here with several other parapet walls being repaired, respondent DHCR nevertheless granted the MCI rent increase. DHCR’s order does not explain its failure to adhere to its own prior precedent and, therefore, must be reversed. Furthermore, and assuming, arguendo, that the order explained the agency’s deviation from precedent, the record does not support DHCR’s determination, as water infiltration was confirmed to have continued subsequent to the completion of repairs underlying the MCI application. Simply put, the repairs were insufficient to address the water infiltration and an MCI cannot be granted for one part of a parapet or one

¹ DHCR orders found at NYSCEF Doc. No. 16.

parapet wall where the work was defective or insufficient (see 9 NYCRR [Rent Stabilization Code] § 2522.4; NYC Administrative Code § 26-511[c][6][b]; *Cenpark Realty Co. v. New York State Div. of Hous. & Community Renewal*, 257 AD2d 543 [1st Dept 1999]).


Given the Court's determination that the record here does not support granting the MCI rent increase application – as respondent's own inspector confirmed continued water infiltration into tenants' apartments from the parapet following completion of repairs to the parapet and that the MCI application is predicated upon such defective or insufficient repairs – remand to DHCR for further proceedings on the MCI rent increase application is an academic exercise.

Accordingly, it is **ORDERED AND ADJUDGED** that motion sequence 001 is **granted**. The respondent's order of November 18, 2020 is reversed and vacated as arbitrary and capricious, and the MCI rent increase application is denied; and it is further

[continued on following page]

ORDERED that DHCR's cross-motion for remand is denied as academic.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

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|---------------------------|-------------------------------------|----------------------------|--------------------------|--------------------------|--|-----------------|--------------------------|-----------|
| <u>09/21/2022</u> DATE | | | | |  HON. FRANK P. NERVO | | | |
| CHECK ONE: | <input checked="" type="checkbox"/> | CASE DISPOSED | | <input type="checkbox"/> | NON-FINAL DISPOSITION | | | |
| | <input type="checkbox"/> | GRANTED | <input type="checkbox"/> | DENIED | <input checked="" type="checkbox"/> | GRANTED IN PART | <input type="checkbox"/> | OTHER |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | | <input type="checkbox"/> | SUBMIT ORDER | | <input type="checkbox"/> | REFERENCE |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | | <input type="checkbox"/> | FIDUCIARY APPOINTMENT | | <input type="checkbox"/> | REFERENCE |