2021-05-27

# Stuyvesant Town-Peter Cooper Vil. Tenants Assn. v. New York State Div. of Hous. & Community Renewal

| **Stuyvesant Town-Peter Cooper Vil. Tenants Assn. v New York State Div. of Hous. & Community Renewal** |
| --- |
| 2023 NY Slip Op 31393(U) |
| April 27, 2023 |
| Supreme Court, New York County |
| Docket Number: Index No. 155184/2021 |
| Judge: Lisa S. Headley |
| Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service. |
| This opinion is uncorrected and not selected for official publication. |

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

**PRESENT:** **HON. LISA S. HEADLEY** **PART** **28M**

***Justice***

----------X

STUYVESANT TOWN-PETER COOPER VILLAGE TENANTS ASSOCIATION, SUSAN STEINBERG

Plaintiff,

- v -

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL,

Defendant.

----------X

**INDEX NO.** 155184/2021

**MOTION DATE** 05/27/2021

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 18, 20, 22, 23, 24, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90

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

Petitioners, Stuyvesant Town-Peter Cooper Village Tenants Association and Susan Steinberg ("Petitioners") filed a motion pursuant to *CPLR Article 78*, seeking to annul the newly promulgated *Rent Stabilization Code §2524.11* and Operational Bulletins 2020-1 and 2021-1. Petitioners argue that they are contrary to statute, as well as arbitrary and capricious. Therefore, petitioners are seeking an award for legal fees pursuant to *CPLR § 8601.*

Respondent, New York State Division of Housing and Community Renewal, ("DHCR" or "Respondent"), filed opposition to the instant motion and a cross-motion for objections in point of law pursuant to *CPLR § 7804(f)*; for damages pursuant to *CPLR § 7806*; and for attorneys' fees pursuant to *CPLR § 8601*. Petitioners filed opposition to the cross motion. Respondents filed a reply.

This Court received Petitioners' request to submit a post submission case regarding *res judicata* and Respondent's request to reply to Petitioners' unauthorized sur-reply. "The Court will not consider petitioners' Sur-Reply as it is not provided for in the CPLR and the Court did not give petitioners permission to submit same." See, *Deleon-Velasquez v. Dovale,* 2011 WL 289939 (N.Y. Sup. Ct. Jan. 13, 2011). Here, the court will not consider the Petitioners' sur-reply.

**Petitioner's Article 78 Petition**

Petitioners commenced this action seeking to annul based upon respondent's newly promulgated reasonable cost schedule or major capital improvements, which would apply to the Rent Stabilization Code *§2522.11*, Operational Bulletins 2020-1 and 2021-1, and Update Number

1 to Operational Bulletin 2021-1 and would increase the rental rates. Petitioners allege DHCR's new regulation would permit rent increases based on the cost for items that do not necessarily appear on any reasonable cost schedule, based on costs that are above the amounts on the schedule, and based on costs that do not ultimately fit the definition of "reasonable costs." Petitioner argues that this violates the provisions of the Housing Stability and Tenant Protection Act of 2019 ("*HSTPA*"). Petitioners also argue that since the *HSTPA* bans rent increases for work not appearing on DHCR's reasonable cost schedule, the waiver provision of the reasonable cost schedule is illegal and should be prohibited.

In support of the motion, the petitioners submit the expert report of Lewis Finkel, F.C.P.E. ("Mr. Finkel"), a Fellow Certified Professional Estimator. *(See, NYSCEF Doc. #78)*. Mr. Finkel stated that the reasonable cost schedule is based on work performed on rent regulated housing by non-union tradespeople, and therefore his analysis is predicated on the use of non-union tradespeople for the various line items. Mr. Finkel opined, in his report, that there can be wide fluctuations in the reasonable cost schedule numbers depending on the quantities involved. More specifically, there are various items that have not been analyzed such as replumbing a unit. Mr. Finkel opined that the reasonable cost schedule fails to provide the amount of money needed to reinstall plumbing in a studio apartment as opposed to a five-bedroom apartment. The reasonable cost schedule only provides one number for the replumbing of a unit without consideration for the size of the apartment. Mr. Finkel opined that when evaluating the various items, the dollar amount for the equipment and material were about the same dollars with a union project, however the labor costs would be less expensive.

In addition, petitioners argue DHCR's newly promulgated reasonable cost schedule and major capital improvements violate the provisions of the *HSTPA* because the system allows landlords to increase rent based on their actual cost, rather than limiting rent increases based upon the type of work that would qualify as an improvement pursuant to the reasonable cost schedule. Petitioners highlight how *HSTPA* plainly set a ceiling on major capital improvement increases by limiting them to the increases appearing on a finite schedule. *(See NYSCEF Doc. # 42)*. Petitioner asserts "any item not on that reasonable cost schedule cannot be counted toward the cost of major capital improvements, and any cost above the ceiling cannot be permitted to be the basis of a rent increase."

Furthermore, petitioners argue that the laws are conflicting. The current regulations Operational Bulletins 2020-1 and 2021-1 allow for items not identified in the reasonable cost schedule, while *Rent Stabilization Code §2522.11* requires eligible items to be listed on the reasonable cost schedule. Petitioners argue the *Rent Stabilization Code §2522.11* forbids waivers of reasonable cost schedules, while the new regulation permits waivers. Here, Petitioners argue spending that is not specifically on the schedule of reasonable cost is outside of the legislature's limits because the intent was not to permit other spending. Petitioners contend the cost of DHCR's schedule exceeds the reasonable cost amount. Additionally, the petitioners are seeking recovery of their attorneys' fees under *CPLR §8601*.

Respondent filed opposition, and a cross-motion for objections to point of law, for damages and also for recovery of their attorneys' fees.

**Respondent's Opposition to Motion**

In opposition to the motion, respondent argues that petitioners lack standing to bring this proceeding. Respondent contends that petitioner, Susan Steinberg, has not alleged she sustained an injury due to major capital improvements or waiver approved under the reasonable cost schedule and its regulations, or that such major capital improvements were sought for her building or residence. Respondent also argues that petitioner, Stuyvesant Town-Peter Cooper Village Tenants Association ("Tenants Association"), has not alleged an injury in fact that would establish direct standing nor has the Tenants Association established standing to pursue this action on behalf of its members.

In support, Respondent submits the affirmation of Sheldon Melnitsky, who is the Deputy Counsel of DHCR. Mr. Melnitsky, in his affirmation, explains the adoption of major capital improvement cost limits and contends that the major capital improvement cost limits are rational, evidence-based, and not arbitrary.

Respondent argues there is no basis to prohibit or compel any agency action since the Legislature has vested in DHCR the express statutory authority to issue the reasonable cost schedule and associated regulations. Respondent also argues that although petitioners disagree with DHCR's exercise of the legislative mandate to establish a reasonable cost schedule, petitioners have failed to provide support as to how DHCR lacks authority or jurisdiction to authorize the reasonable cost schedule. In addition, respondent contends that petitioners cannot challenge the original schedule as being unreasonable because the 2022 schedule superseded the original schedule as of January 4, 2022. Therefore, the original schedule's cost limits are no longer in effect, except for the major capital improvements commenced prior to January 4, 2022.

Respondent argues the *HSTPA* does not forbid waiver applications and incidental cost, because the challenged regulations permit DHCR to waive the cost limits in the reasonable cost schedule upon a sufficient showing that the amount approved is not unreasonable. Moreover, DHCR does not violate the *HSTPA*'s directive to create and apply a schedule setting forth major capital improvement cost limits but permits its reasonable implementation while allowing flexibility in appropriate cases.

Respondent further argues the reasonable cost schedule and regulations are not arbitrary and capricious because DHCR followed a reasonable process and set reasonable cost. DHCR adopted the original schedule in 2020, after an extensive review of available data from landlords, tenants, and public officials and then cross checked against DHCR's database of historic major capital improvement applications.

**Respondent's Cross Motion**

The respondents filed a cross-motion seeking objections in point of law pursuant to *CPLR §7804(f)*; damages pursuant to *CPLR §7806*; and for attorneys' fees pursuant to *CPLR §8601*. In

support of the cross-motion, respondent submits the affirmation of Ryan Hughes ("Mr. Hughes"), associate attorney in the office of Rent Administration for respondent DHCR and the affirmation of Sheldon Melnitsky ("Mr. Melnitsky"), the Deputy Counsel of DHCR.

Respondent argues, *inter alia*, that petitioners' witness, Mr. Finkel, miscalculates and misinterprets the reasonable cost schedule. Specifically, respondent contends that Mr. Finkel claims the price for water proofing material is "$650 per gallon," when the 2022 reasonable cost schedule accurately reflected the cost of the material as "$650 for five gallons or less." Respondent also contends that Mr. Finkel claims the reasonable cost schedule for the installation of asbestos abatement roof contains calculations errors and is excessive, however, the calculation was not for the installation of roofing but was specifically for the removal of asbestos roofing.

Mr. Hughes, in his affirmation, states that DHCR's cost analysis experts retained NASCO Construction Services, Inc. ("NASCO"), a nationally recognized expert in the field of construction cost consulting, to assist in creating the reasonable cost schedule for major capital improvements that took effect on January 2022. Mr. Hughes is the primary contact between NASCO and DHCR. Mr. Hughes, in his affirmation, states that petitioners' witness, Mr. Finkel's affidavit identified a single computational flaw that slightly affected the cost of these three discrete items: (1) building entry door; (2) waterproofing a balcony; and (3) new gas piping. Mr. Hughes contends that NASCO is working with DHCR to correct the error, which should be rectified in the next reasonable cost schedule due in early 2023. Mr. Hughes opines that Mr. Finkel's affidavit contains unfounded calculations, including that 80 ground fault interrupter outlets are installed per day of work, although NASCO's own in-house data, known as "SMeans data," confirmed that the work crew necessary for this rewiring, can remove and install 12 outlets per day of work. Additionally, respondent contends that NASCO estimates that a work crew can remove about 500 square feet of roof containing asbestos per day, therefore, they can reasonably complete the task for 9,000 square feet within 18 days. Mr. Hughes further states the errors found in the reasonable cost schedule did not result in significant impacts on the reasonable costs published in the 2022 schedule.

Mr. Melnitsky, in his affirmation, states that DHCR adopted a reasonable cost schedule and regulations governing major capital improvements, pursuant to *HSTPA* and in compliance with the *State Administrative Procedure Act §§ 100-501* ("*SAPA*"). Mr. Melnitsky states that DHCR has rule-making authority under the *Rent Stabilization Law* ("*RSL*") and is required by law to adopt a reasonable cost schedule for major capital improvements. On January 4, 2022, DHCR published a new and superseding reasonable cost schedule for major capital improvements which permits owners of rent-stabilized apartments to lawfully increase rents beyond the percentage set by the local authorities. Mr. Melnitsky states that the major capital improvement rent increases, when authorized by DHCR, are also authorized by the local rent guidelines board.

In addition, Mr. Melnitsky explains that the waiver process allows an individualized review of specific project costs that were not adequately captured by the reasonable cost schedule. Mr. Melnitsky opines that the DHCR is within its power to implement the waiver process, which allows a property owner who has cost limits and who is unable to undertake major capital improvements.

Additionally, Mr. Melnitsky contends that the rent stabilization law permits an individualized review of specific project costs that were not adequately captured by the reasonable cost schedule.

Mr. Melnitsky also contends that the owners of the subject apartment complex submitted four major capital improvement applications that are subject to the original schedule, and have not filed any major capital improvement applications that were subject to the 2022 schedule. The first major capital improvement application involves the exterior restoration of a building in the petitioners' Apartment complex, which set forth in the order approving the restoration at a monthly rent increase of $1.25 per room. There were also three separate major capital improvement applications for the replacement of gas pipelines at three buildings in the Apartment complex for which none of the applications sought waivers of the reasonable cost schedule and such applications remain pending. Lastly, Mr. Melnitsky submits that the petitioners have not applied for any waivers from the original schedule or the 2022 schedule, and to date the owners have not filed any major capital improvement applications that are subject to the 2022 schedule. Furthermore, DHCR considered cost from 2020 to 2022 when creating the 2022 schedule to account for cost which have increased more than 10% over an 18-month period.

**Petitioners' Affirmation in Opposition to Cross-Motion**

In opposition to the cross-motion and in further support of the Petition, petitioners argue they have standing because they are within the zone of interests sought to be protected by the Housing Stability and Tenant Protection Act of 2019 ("*HSTPA*"). Petitioners acknowledge that they have at least four pending cases, which they claim the landlord is seeking rent increases for items that do not qualify as major capital improvements. Additionally, petitioners contend that they have been faced with actual rent increases for items that are listed on the schedule at an arbitrary, unexplained, and excessively high ceiling cost that DHCR has set.

Petitioners rely on Part K of the *HSTPA*, *Rent Stabilization Code §26-511.1*, and *Rent Stabilization Code §26-511(c)(6)*. Specifically, Part K of the *HPSTA* seeks to amend the Emergency Tenant Protection Act of Nineteen Seventy-Four, the Emergency Housing Rent Control Law, and the Administrative Code of the City of New York, in relation to a temporary increase in rent in certain cases. *Rent Stabilization Code §26-511.1* relates to major capital improvements and individual apartment improvements in rent regulated units. Petitioner states that effective June 14, 2019, Part K of the *HSTPA* is now codified as *Rent Stabilization Law §§26-511(c)(6)* and *26-511.1*. Part K of the *HPSTA* states, in pertinent part:

> "Part K: Major Capital Improvement & Individual Apartment Improvement Reforms. Limits approvals to work for essential building functions and other improvements (e.g., heat, plumbing, windows, roofing); exclude maintenance. Limits spending to HCR schedule of reasonable costs for improvements. Prohibits approval where owner has hazardous violations on building. Adjust the annual cap for major capital improvement rent increases approved within the seven years for continuing tenant. Associated rent increases may only be prospective. Requires HCR to audit and inspect work on a minimum of 25% of approved MCIs annually. Reduces rent increases paid by tenants and makes increases temporary: Amortize: 12 years for buildings of 35 units or less; 12.5

> years for other buildings; Cap Rent Increases at 2% annually; Rent surcharges would expire in 30 years. Reforms Individual Apartment Improvements (IAIs) to limit rent increases to substantial modifications: Up to 3 times in any 15 years, for up to $15,000; Amortize: 14 years for smaller buildings of 35 units or less; 15 years for all other larger buildings; and Surcharges expire in 30 years."

*Rent Stabilization Code §26-511.1* states in pertinent part:

> "Notwithstanding any other provision of law to the contrary, the division of housing and community renewal, the 'division', shall promulgate rules and regulations applicable to all rent regulated units that shall: (1) establish a schedule of reasonable costs for major capital improvements, which shall set a ceiling for what can be recovered through a temporary major capital improvement increase, based on the type of improvement and its rate of depreciation; (2) establish the criteria for eligibility of a temporary major capital improvement increase including the type of improvement, which shall be essential for the preservation, energy efficiency, functionality or infrastructure of the entire building, including heating, windows, plumbing and roofing, but shall not be for operational costs or unnecessary cosmetic improvements. Allowable improvements must additionally be depreciable pursuant to the Internal Revenue Service, other than for ordinary repairs, that directly or indirectly benefit all tenants; and no increase shall be approved for group work done in individual apartments that is otherwise not an improvement to an entire building. Only such costs that are actual, reasonable, and verifiable may be approved as a temporary major capital improvement increase."

*See*, *Rent Stabilization Code §26-511.1*.

*Rent Stabilization Code §26-511(c)(6)* states, in pertinent part:

> "A code shall not be adopted hereunder unless it appears to the division of housing and community renewal that such code: (6) provides criteria whereby the commissioner may act upon applications by owners for increases in excess of the level of fair rent increase established under this law provided[.]"

*See*, *Rent Stabilization Code §26-511(c)(6)*.

Here, petitioners argue that the DHCR cannot justify the disparity between the language of the *HSTPA* and the contents of the reasonable cost schedule because since pursuant to *Rent Stabilization Code §26-511,* any rent increase for an item not on the reasonable cost schedule are forbidden. Petitioners also argue the DHCR's interpretation of the word "reasonable" in the reasonable cost schedule by statute forbids any increase for costs that are not "actual, reasonable, and verifiable." Also, pursuant to *Rent Stabilization Law §26-511*.1, the reasonable cost schedule establishes a ceiling for what can be recovered and anything not on the schedule would raise the cost of an improvement beyond the ceiling represented by the schedule. Petitioners argue that DHCR's failure to state forthright "the agency's interpretation of the legislative objectives" of the

reasonable cost schedule within the meaning of *SAPA §202-a(3)(a)*, makes the resulting schedules arbitrary and capricious.

Furthermore, petitioners submit the affidavit of New York State Assemblyman Harvey Epstein ("Assemblyman Epstein"), who represented the 74th Assembly District since April 2018. Assemblyman Epstein supports the petitioner's position, and contends that the terms, "reasonable and actual," were intended to eliminate the incentive for landlords to inflate costs by creating a reasonable cost that an average "cost-conscious" owner would pay for improvements. Assemblyman Epstein contends that DHCR designed its version of the Rent Stabilization Code in a way that would allow excessive increases, however the legislature intended to limit excessive increases. Assemblyman Epstein contends that the owners should absorb the cost of any additional expenses paid in the course of making improvements, and that any rule that allows owners to recover the same level of reimbursement after the enactment of the *HSTPA* was not the intention of the legislature. Therefore, petitioner argues that the relevant partis of the Rent Stabilization Code is null and void in its entirety.

**Respondent's Reply Memorandum of Law**

In reply, Respondent contends that the reasonable cost schedule and regulations are not arbitrary and capricious since the burden rests on petitioners, who have failed to satisfy such burden. Respondent argues that the petitioners have also failed to prove that the scheduled costs are excessive, and the waiver provision does not violate the *HSTPA* since DHCR demonstrated that the *HSTPA* does not prohibit it from granting waivers or approving ancillary costs as part of a major capital improvement application. In addition, respondent argues, *inter alia*, petitioners' reply submission is improper and must be disregarded, the reasonable cost schedule and regulations are not arbitrary and capricious, and that the regulations and the reasonable cost schedule were adopted through lawful procedure.

In addition, respondent argues that since petitioners failed to respond to DHCR's arguments, petitioners have waived their claims for prohibition and mandamus to compel. Respondent asserts the challenge to the Original Schedule is moot, in part, because petitioners have identified several pending major capital improvement applications that may be subject to the Original Schedule. Petitioners have not provided support to establish that DHCR has approved or will ever approve a major capital improvement application for any building in the Apartment complex based on the Original Schedule.

Respondents argue the reasonable cost schedules were adopted through a lawful purpose since DHCR complied with the *State Administrative Procedure Act* and provided a summary of studies used to determine the proper methodology for the reasonable cost schedules. Respondent further argues that DHCR provided a public review process as to both the Original and the 2022 Schedules, and the petitioners even participated through testimony and the written submission of petitioners' consultant.

Furthermore, respondent argues the Assemblyman Epstein's affidavit is inadmissible because individual legislators cannot establish legislative intent. Respondent argues that the

affidavit of Mr. Finkel is inadmissible because Mr. Finkel provides only his opinion regarding the 2022 Schedule and mathematical errors. Respondent further argues there is no statutory provision for putative expert opinion testimony in summary Article 78 proceedings.

**DISCUSSION**

In Article 78 proceedings, the Court must decide whether an administrative agency's decision was rational, or whether it was arbitrary and capricious. *Matter of Gilman v. New York State Div. of Housing & Community Renewal*, 99 N.Y. 2d 144, 149 (2002). "The arbitrary and capricious test chiefly relates to whether a particular action should have been taken or is justified... and whether the administrative action is without foundation in fact. Arbitrary action is without sound basis in reason and is generally taken without regard to the facts." *Matter of Pell v. Bd. of Ed. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County,* 34 N.Y.2d 222, 230 (1974). Courts must give deference to an administrative agency's rational determinations in its area of expertise. *Matter of Peckham v. Calogero*, 12 N.Y. 3d 424, 431 (2009). "When the interpretation of a statute involves specialized knowledge and understanding of underlying operational practices…the courts should defer to the administrative agency's interpretation." *Matter of Leggio v. Devine*, 34 N.Y. 3d 448, 460 (2020).

Here, this Court finds Mr. Melnitsky's affirmation supporting the respondent's position to be credible. Specifically, this Court finds that the DHCR's reasonable cost schedule was not arbitrary or capricious because DHCR demonstrated that the agency utilized NASCO, a nationally recognized expert in the field of construction cost consulting, to assist in determining the reasonable cost schedule for major capital improvement calculations. The respondents demonstrated, based upon Mr. Melnitsky's affirmation, that DHCR obtained data from landlords, tenants, and public officials and then cross-checked against DHCR's database of historic major capital improvement applications.

Generally, administrative agencies are required to follow their own precedent. *See e.g.*, *Matter of Lantry v. State of New York*, 6 N.Y.3d 49, 58, (2005). The DHCR's determination must be upheld unless it lacked a rational basis and was arbitrary and capricious. *Matter of Gilman v. New York State Div. of Hous. and Community Renewal*, 99 N.Y.2d 144, 149 (2002); *Matter of Velasquez v. New York State Div. of Hous. & Community Renewal*, 130 A.D.3d 1045, 1046 (2d Dep't 2015). The DCHR's interpretation of the statutes and regulations it administers must be upheld if they are reasonable. (*See, Matter of Riverside Tenants Assn. v. New York State Div. of Hous. & Community Renewal*, 133 A.D.3d 764, 766 (2d Dep't 2015).

Here, the DHCR did not stray from their own precedent because DHCR reviewed their database of historic MCI applications before setting forth a reasonable cost schedule for major capital improvements. DHCR demonstrated that they hired NASCO to independently assess and aid in creating a new reasonable cost schedule, and to update the schedule for the next two years. DHCR also demonstrated that NASCO performed its own analysis independent of the Original Schedule in establishing reasonable cost for the 2022 Schedule. DHCR further scrutinized the costs increases independently set by NASCO, by which NASCO advised DHCR that construction cost

had increased more than 10% over an 18-month period. Therefore, DHCR's determination regarding the Reasonable Cost Scheduled was reasonable and within DHCR's power.

In addition, DHCR had the authority to create and maintain reasonable cost schedules pursuant to *HSTPA* and in compliance with the *State Administrative Procedure Act §§ 100- 501* ("*SAPA*"). "The cornerstone of administrative law is derived from the principle that the Legislature may declare its will, and after fixing a primary standard, endow administrative agencies with the power to fill in the interstices in the legislative product by prescribing rules and regulations consistent with the enabling legislation." *Agencies for Children's Therapy Servs., Inc. v. New York State Dept. of Health*, 136 A.D.3d 122, 128 (2d Dep't 2015); see *Greater N.Y. Taxi Assn. v. New York City Taxi & Limousine Commn.*, 25 N.Y.3d 600, 608 (2015). "In so doing, an agency can adopt regulations that go beyond the text of that legislation, provided they are not inconsistent with the statutory language or its underlying purposes." *Matter of General Elec. Capital Corp. v. New York State Div. of Tax Appeals, Tax Appeals Trib.*, 2 N.Y.3d 249, 254 (2004); *see*, *Boreali v. Axelrod*, 71 N.Y.2d 1, 9–14 (1987). Furthermore, DHCR is permitted to go beyond the text of the legislation in determining what items fit the definition of reasonable cost on the schedule. Here, petitioners fail to prove that DHCR is not authorized to implement a reasonable cost schedule for major capital improvements, and has failed to demonstrate that DHCR acted beyond its power. Therefore, the Court finds that DHCR's implementation of a reasonable cost schedule was within its power and such implementation was neither arbitrary nor capricious.

As to the respondent's cross-motion, *CPLR §7804(f)* allows a respondent in a proceeding under CPLR Article 78 to raise an objection in point of law by setting it forth in a motion to dismiss the petition. *See*, *In re Metro. Movers Ass'n, Inc. v Liu*, 2012 N.Y. Slip Op. 33414[U] (N.Y. Sup Ct, New York County 2012). Here, this Court finds that respondent's cross-motion to dismiss the petition is granted as the petition has been denied as explained hereinabove. The court has considered petitioners' remaining contentions and finds them to be without merit.

Lastly, the applications by petitioners and respondents for an award of attorney fees, pursuant to *CPLR §8601*, and damages, pursuant to *CPLR §7806*, are denied in the exercise of the court's discretion. The Court has considered all the parties' contentions.

Accordingly, it is hereby

**ORDERED** that the *Article 78* petition seeking to annul the newly promulgated *Rent Stabilization Code §2524.11* and Operational Bulletins 2020-1 and 2021-1 is DENIED and the petition is hereby DISMISSED; and it is further

**ORDERED** that Respondent DHCR's cross-motion pursuant to *CPLR §7804(f)* for objection in point of law is GRANTED; and its further

**ORDERED** that the Respondent's cross-motion for damages pursuant to *CPLR §7806* and for attorneys' fees pursuant to *CPLR §8601* is DENIED

**ORDERED** that Petitioners' motion for attorney fees is also DENIED; and it is further

**ORDERED** that any requested relief sought not expressly addressed herein has nonetheless been considered; and it is further

**ORDERED** that within 30 days of entry, petitioners shall serve a copy of this decision/order upon the respondent with notice of entry.

This constitutes the Decision and Order of the Court.

4/27/2023
DATE

LISA S. HEADLEY, 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 |