

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,  
FIRST DEPARTMENT

1234 Broadway, LLC v. New York State Division of Housing &  
Community Renewal

102 A.D.3d 628 (N.Y. App. Div. 1st Dep't 2013) · Decided January 31, 2013

SUMMARY

The New York Supreme Court, Appellate Division, First Department affirmed an order upholding DHCR determinations of rent overcharges involving two apartment units. The court held that DHCR acted within its discretion in requiring proof of renovation payments and concluded that the evidence was insufficient to support individual apartment rent increases; treble damages were also upheld.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                 |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, First Department                                                                                                                                                                                                                    |
| WRITING FOR THE COURT | Tom, J.P.; Andrias, J.; Acosta, J.; Manzanet-Daniels, J.; Román, J.                                                                                                                                                                                                                             |
| JURISDICTION          | New York                                                                                                                                                                                                                                                                                        |
| DECIDED               | January 31, 2013                                                                                                                                                                                                                                                                                |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                        |
| PROCEDURAL POSTURE    | Petitioner appealed from an order of Supreme Court, New York County, which, upon reargument, adhered to an order denying and dismissing a CPLR article 78 petition challenging DHCR's denial of administrative review of rent-overcharge determinations.                                        |
| STANDARD OF REVIEW    | In a CPLR article 78 proceeding, the court determines whether the agency determination violated lawful procedure, resulted from an error of law, or was arbitrary and capricious or an abuse of discretion. An agency's exercise of discretion must be upheld unless it lacks a rational basis. |
| PRECEDENTIAL VALUE    | published                                                                                                                                                                                                                                                                                       |
| PARTIES               | 1234 Broadway, LLC v. New York State Division of Housing and Community Renewal                                                                                                                                                                                                                  |

TOPICS

judicial review of agency action

administrative law

landlord tenant

appellate procedure

damages

## PRACTICE AREAS

administrative law

landlord-tenant law

real estate

appellate procedure

remedies

## QUESTIONS PRESENTED

1. Whether Supreme Court's order was appealable where it purported to deny reargument but considered the merits of the petitioner's arguments.
2. Whether DHCR acted arbitrarily, capriciously, or outside its discretion by requiring additional proof of payment to the renovation contractor and rejecting claimed individual apartment rent increases when that proof was not provided.
3. Whether the imposition of treble damages was appropriate.

## HOLDINGS

1. An order purporting to deny reargument is appealable when the court effectively grants reargument by considering the merits of the movant's claim that it previously made a mistake.
2. DHCR's determination was properly upheld because the agency acted within its discretion and had a rational basis for requiring proof of payment and rejecting the claimed individual apartment rent increases when adequate proof was not provided.
3. The imposition of treble damages was appropriate under the relevant circumstances.

## KEY QUOTATIONS

*“The role of a court in an article 78 proceeding is to consider whether the “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”” (629)*

*“A court must uphold an agency’s exercise of discretion unless it lacks a rational basis” (629)*

## FACTUAL BACKGROUND

DHCR found rent overcharges in two apartment units and denied the building owner's petitions for administrative review. The owner argued that Supreme Court had mistakenly attributed payroll records to it rather than to the contractor who performed renovations. DHCR requested additional proof that the owner actually paid the contractor, with whom it shared a familial identity of interest, but the requested proof was not produced. DHCR therefore found the evidence of renovation costs and payment inadequate to support individual apartment rent increases and imposed treble damages.

## PROCEDURAL HISTORY

DHCR denied petitioner's petitions for administrative review of two orders finding rent overcharges. Supreme Court denied and dismissed petitioner's CPLR article 78 petition; upon reargument, the court adhered to that

determination. The Appellate Division held that the order was appealable because Supreme Court had effectively granted reargument, but affirmed on the merits.

## DISPOSITION

affirmed

## CASES CITED

- Premier Capital v Damon Realty Corp., 299 A.D.2d 158 (1st Dep't 2002)
- Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 N.Y.2d 222, 231 (1974)
- Matter of Waverly Assoc. v New York State Div. of Hous. & Community Renewal, 12 A.D.3d 272 (1st Dep't 2004)

## OPINION

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### PER CURIAM.

Order, Supreme Court, New York County (Anil C. Singh, J.), entered October 3, 2011, which, upon reargument, adhered to a prior order denying and dismissing a CPLR article 78 petition seeking to annul an order of respondent New York State Division of Housing and Community Renewal (DHCR), issued June 16, 2010, which denied petitioner's petitions for administrative review of two orders finding rent overcharges, unanimously affirmed, without costs. \*629Although the court's order purported to deny the motion to reargue, by considering the merits of petitioner building owner's argument that the court had mistakenly attributed certain payroll records to petitioner rather than to the contractor that performed apartment renovations, the court, in effect, granted reargument. Accordingly, the order is appealable (see Premier Capital v Damon Realty Corp., 299 AD2d 158 [1st Dept 2002]). Petitioner's substantive arguments on appeal are, however, without merit. The role of a court in an article 78 proceeding is to consider whether the "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" (CPLR 7803 [3]). A court must uphold an agency's exercise of discretion unless it lacks a rational basis (Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222, 231 [1974]). DHCR acted within its discretion, and in accordance with Policy Statement 90-10, in requesting additional proof that petitioner actually paid the contractor, with whom it shared a familial identity of interest, for the renovations allegedly performed in the two apartment units at issue (see Matter of Waverly Assoc. v New York State Div. of Hous. & Community Renewal, 12 AD3d 272 [1st Dept 2004]), and, when such proof was not forthcoming, in determining that the evidence of cost and payment was inadequate to support "individual

apartment increases” in rent. Further, under all of the relevant circumstances, the imposition of treble damages was appropriate. Concur—Tom, J.P., Andrias, Acosta, Manzanet-Daniels and Román, JJ.

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