

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

**Matter of Siegel v. New York State Div. of Hous. & Community
Renewal**

2019 NY Slip Op 4326 (App. Div. 2019) · No. 9517 · Decided June 4, 2019

SUMMARY

The Appellate Division, First Department affirmed an order annulling a New York State Division of Housing and Community Renewal determination assessing rent-overcharge damages against a petitioner who had not received proper notice of the complaint. The court remanded the matter to DHCR for de novo review with adequate notice and an opportunity for the petitioner to respond.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Acosta, P.J.; Richter, J.; Kapnick, J.; Kahn, J.; Kern, J.
JURISDICTION	New York
DECIDED	June 4, 2019
DOCKET	9517
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed from an order and judgment of Supreme Court, New York County, granting a CPLR article 78 petition in part, annulling a DHCR rent-overcharge determination, remanding the matter to DHCR for de novo review, and directing that petitioner receive proper notice and an opportunity to respond.
PRECEDENTIAL VALUE	published appellate opinion
PARTIES	Paul Siegel v. New York State Division of Housing and Community Renewal, Elizabeth Siracuse

TOPICS

judicial review of agency action

agency adjudication

administrative law

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PRACTICE AREAS

administrative law

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QUESTIONS PRESENTED

1. Whether DHCR could assess rent-overcharge damages against petitioner without proper notice of the complaint and an opportunity to respond.
2. Whether the proceeding should be dismissed or instead remanded to DHCR for de novo review after proper service.

HOLDINGS

1. DHCR improperly assessed damages against petitioner because he had not received proper notice of the rent-overcharge complaint; petitioner was entitled to adequate notice and an opportunity to be heard.
2. The rent-overcharge proceeding should not be dismissed; it should be remanded to DHCR for de novo review upon proper service of notice.

KEY QUOTATIONS

“Under these circumstances, the court properly declined to dismiss the DHCR proceeding, and instead remanded the rent overcharge matter to DHCR for de novo review and ordered DHCR to provide petitioner with adequate notice and an opportunity to be heard”

FACTUAL BACKGROUND

Elizabeth Siracuse subleased an apartment from petitioner Paul Siegel and filed a rent-overcharge complaint with DHCR on March 20, 2011. DHCR issued a November 4, 2013 determination assessing damages against Siegel, but Siegel had not received proper notice of the complaint. The agency determination included treble damages and interest.

PROCEDURAL HISTORY

DHCR determined that Elizabeth Siracuse had overpaid rent and directed petitioner to refund or credit the overcharge, including treble damages and interest. Supreme Court annulled the determination because petitioner had not received proper notice, remanded the matter to DHCR for de novo review, and ordered that petitioner be given an opportunity to answer. The Appellate Division unanimously affirmed without costs.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

DHCR must conduct a de novo review of the rent-overcharge matter after properly serving petitioner with notice of the complaint and allowing petitioner 60 days after service to answer and otherwise respond.

CASES CITED

- Matter of Weinreb Mgt. v. New York State Div. of Hous. & Community Renewal, 297 A.D.2d 221 (1st Dep't 2002)

OPINION

PER CURIAM.

Matter of Siegel v New York State Div. of Hous. & Community Renewal (2019 NY Slip Op 04326) Matter of Siegel v New York State Div. of Hous. & Community Renewal 2019 NY Slip Op 04326 Decided on June 4, 2019 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on June 4, 2019 Acosta, P.J., Richter, Kapnick, Kahn, Kern, JJ. 9517 156193/18 [*1]In re Paul Siegel, Petitioner-Appellant, vNew York State Division of Housing & Community Renewal, et al., Respondents-Respondents. Zingman & Associates PLLC, New York (Cheryl R. Ginsburg of counsel), for appellant. Mark F. Palomino, New York (Aida P. Reyes of counsel), for New York State Division of Housing & Community Renewal, respondent.

Himmelstein, McConnell, Gribben, Donoghue & Joseph LLP, New York (David Hershey-Webb of counsel), for Elizabeth Siracuse, respondent. Order and judgment (one paper), Supreme Court, New York County (Debra A. James, J.), entered on or about August 30, 2018, which granted the petition brought pursuant to CPLR article 78 to the extent of annulling a determination of respondent New York State Division of Housing and Community Renewal (DHCR), dated November 4, 2013, finding that respondent Elizabeth Siracuse overpaid rent in a certain amount, and directing petitioner to refund or credit that amount to Siracuse, with treble damages plus interest, remanded the matter to DHCR for de novo review upon proper service of notice, and directed that petitioner be afforded the opportunity to answer and otherwise respond to the overcharge complaint dated March 20, 2011 within 60 days of such service, unanimously affirmed, without costs.

DHCR issued the November 2013 determination improperly assessing damages against petitioner, who had not received proper notice of a rent overcharge complaint filed in March 2011 by Siracuse, who subleased an apartment from petitioner.

Under these circumstances, the court properly declined to dismiss the DHCR proceeding, and instead remanded the rent overcharge matter to DHCR for de novo review and ordered DHCR to provide petitioner with adequate notice and an opportunity to be heard (see Matter of Weinreb Mgt. v New York State Div. of Hous. & Community Renewal, 297 AD2d 221 [1st Dept 2002]).

We have considered petitioner's remaining arguments and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE

DIVISION, FIRST DEPARTMENT. ENTERED: JUNE 4, 2019 CLERK

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