Horing Welikson Rosen & Digrugilliers PC
ATTORNEYS AT LAW

Legal Alert: *Regina Metropolitan*: Significant Update

June 7, 2023

On June 6, 2023, our firm obtained yet another favorable decision pertaining to the litigation on behalf of the Owner in *Matter of Regina Metropolitan Co. LLC v New York State Div. of Hous. & Cmty. Renewal,* previously decided by the New York Court of Appeals at 35 N.Y.3d 332 (2020). As you may recall, that determination held the Housing Stability and Tenant Protection Act of 2019 ("HSTPA") could not be applied to overcharge claims made before the statute's effective date. In addition, it held that where, as in that matter, fraud is absent, the rent in an overcharge proceeding must be calculated beginning with the rent charged on the base date four years prior to the commencement of the proceeding and adding all lawful increases to that rental amount.

On remand, DHCR found an overcharge of $9,200.84 plus interest and awarded the Tenants legal fees in the sum of $2,667.25, which the Agency found was sufficient for the period of processing before the Rent Administrator. Since the Tenants had been paying the reduced rent during the period covered by the litigation (which was required by law), DHCR found they owed the Owner $183,833.74, less the overcharge and legal fees. The Tenants brought an Article 78 proceeding challenging DHCR's order on remand and that was denied. They then appealed to the Appellate Division, First Judicial Department. Jillian N. Bittner, partner of this firm, appeared on behalf of the Owner before both Supreme Court and the Appellate Division.

The Supreme Court "agree[d] with DHCR and the Owner on all points" and correctly recognized that Tenants' Article 78 was an improper attempt to renew and/or reargue the Court of Appeals' decision, in which the landlord was the prevailing party. The Supreme Court denied the petition and dismissed the proceeding, which also happened to seek legal fees in an amount more than 100 times that awarded by the Agency.

In its June 6, 2023 ruling, the Appellate Division denied Tenants' appeal, finding DHCR's rent calculation complied with the Court of Appeals holding; DHCR rationally found HSTPA Part E, which required lease renewals after June 14, 2019 to maintain preferential rents was inapplicable, as the Owner did not waive its right to collect a higher rent by complying with the Rent Administrator's erroneous calculations; DHCR providently limited the recovery of attorneys' fees to the amount Tenants' expended while their overcharge was pending before the Rent Administrator. The First Department held, "Here, DHCR rationally concluded that it could only consider evidence presented to the rent administrator, it lacked jurisdiction to award fees expended in article 78 proceedings, in which DHCR itself was a party, and petitioners [tenants] were not a prevailing party either in their PAR or before the courts. (citations omitted)."

The decision is significant for several reasons, including the fact that although the Tenants argued that under the HSTPA (which mandates an award of reasonable legal fees if an

overcharge is found), they were entitled to hundreds of thousands of dollars in legal fees, the court ruled DHCR did not act arbitrarily or capriciously in limiting the award to the fees incurred during the initial Rent Administrator proceeding and that additional fees were not warranted since the tenants *were not the prevailing party*. In addition, it confirmed that a tenants payment of a reduced rent pursuant to a DHCR order does not waive the owner's right to the balance due once the overcharge award was held to be erroneous.

The decision *Matter of Leslie E. Carr et al. v New York State Div. of Hous. & Cmty. Renewal et al.*, 2023 NY Slip Op 02967 is available **here**.

Should you have any questions about this matter please do not hesitate to contact us.