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

PRESENT: MANUEL J. MENDEZ
Justice

PART 13

In the Matter of the Application of
SCOTT MONDROW

Petitioner,

INDEX NO. 100374/2016
MOTION DATE 10/19/2016
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

For an Order Pursuant to Article 78 of the
Civil Practice Law and Rules,

-against-

**NEW YORK CITY DEPARTMENT OF HOUSING
PRESERVATION and DEVELOPMENT (“HPD”);
VICKI BEEN, COMMISSIONER OF HPD; DEBORAH
RAND, ASSISTANT COMMISSIONER OF HPD;
JANIECE BROWN SPITZMUELLER, ATTORNEY
AT HPD; BEVERLEY HOTEL ASSOCIATES, LLC;
RJMD ASSOCIATES, LP; DREAM HOTEL GROUP,
LLC A/K/A HAMPSHIRE HOTELS MANAGEMENT
LLC A/K/A HAMPSHIRE HOTELS & RESORTS, LLC;
SAM DOMB; SANT SINGH CHATWAL; RABINDER
PAL SINGH and GLENN ISAACS,**
Respondents.

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The following papers, numbered 1 to 11 were read on this Article 78 Petition.

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1 - 3</u>
Answering Affidavits — Exhibits _____	<u>4 - 6; 7 - 9</u>
Replying Affidavits _____	<u>10 - 11</u>

Cross-Motion: Yes No

Upon a reading of the foregoing cited papers, it is Ordered and Adjudged that
this Article 78 Petition is denied, the proceeding is dismissed.

The Days Hotel Broadway, located at 2520 Broadway a/k/a 215 West 94th Street,
New York, New York (herein “the Hotel”), is a residential Single Room Occupancy
Multiple Dwelling (herein “SRO”) consisting of 434 hotel rooms, and a commercial
space on the ground floor. Respondent RJMD Associates, L.P. (herein “RJMD”) owns
the hotel, and leases it to Respondent Beverley Hotel Associates, LLC (herein
“Beverely”).

Prior to any construction documents being approved by the Department of Buildings for construction at an SRO, an application for a CONH must be approved by HPD pursuant to Administrative Code §28-107.4. On February 4, 2014, Respondent Rabinder Pal Singh (herein "Singh"), an officer of Beverley, submitted a CONH application to HPD. (Mot. Exh. D & HPD Ans. Exh. 1). This application was approved by HPD on August 19, 2014. (HPD Ans. Exh. 9).

Petitioner registered for a one night stay at the Hotel on February 15, 2013, and was given room 202 (herein "the Room"). On that same day Petitioner went to the front desk and demanded a six-month lease as a permanent tenant. This request was denied by the Hotel, and Petitioner was removed from the Hotel by the New York City Police Department on February 16, 2013 after he refused to leave once his hotel stay was over. Petitioner brought an illegal lockout proceeding in New York City Housing Court on February 21, 2013, which the Housing Court dismissed on August 1, 2013, finding that Petitioner was not a permanent tenant entitled to a rent-stabilized lease, and denied restoring Petitioner to the Room. (Non-Municipal Respondents' Ans. Exh. B). Petitioner appealed to the Appellate Term, and was restored to Room 202 by a Housing Court decision dated October 5, 2015 (Mot. Exh. A).

Petitioner contends that during the pendency of his appeal, Beverley applied for a CONH, and that although he was entitled to notice of the application as a permanent tenant, the Respondents failed to notify him so that he could voice his objections to the application during the HPD open inquiry period. That Petitioner made a FOIL request to HPD for the CONH application after becoming aware in December 2014 that the application had been approved, and that as a result of this request he received only the application without any of its exhibits. (Mot. Exh. D).

On October 24, 2015, Petitioner sent a letter to HPD, questioning the validity of certain information contained in the CONH application. (Mot. Exh. E). Petitioner stated that application question 19 misrepresented the status of his Housing Court case as dismissed, that he was refused by the Hotel to be restored to his Room after the Housing Court's October 5, 2015 decision, that the current permanent tenants listed in question 17 may have been misrepresented, and that he was entitled to receive the inquiry materials sent to other Hotel tenants seeking their input during HPD's inquiry period.

By letter dated December 4, 2015, HPD notified Petitioner that it had carefully reviewed and considered all his documents, and the CONH applicants responsive documents, that no basis for suspending the CONH had been found, and that HPD was closing its investigation. (Mot. Exh. F).

Petitioner brings this Article 78 proceeding for an Order and Judgment (1) revoking a Certificate of No Harassment (herein "CONH) granted by the New York City Department of Housing Preservation and Development (herein "HPD") on August 19, 2014, and (2) setting aside HPD's December 4, 2015 determination denying revocation of the CONH, as the determination was not supported by substantial evidence, was

contrary to law, and was arbitrary and capricious.

Respondents oppose the motion.

Petitioner argues that HPD refused to suspend the CONH although his unlawful eviction in February 2013 constitutes harassment under the Code, that the CONH application was submitted during the pendency of his appeal, and that he was entitled to notice and the opportunity to submit comments during the inquiry period but was not given any such notice.

Petitioner also argues that the CONH application failed to accurately describe his Housing Court case as an "illegal lockout" and failed to note the pending appeal. That the result of the October 5, 2015 Housing Court decision now renders the answers to 20 and 22 in the application incorrect, and that the Hotel should not have, and cannot now, rely on the initial dismissal of the Housing Court proceeding in its application answers. That three of the Hotel's current permanent tenants listed in the application had been deceased long before the 2014 application according to the Social Security Death Index (Mot. Exh. G), that the Hotel deliberately misspells its name in order to confuse the public and the Courts, and that these CONH applications submitted by the Respondent Dream Hotel Group are part of a plan to be acquired by a larger hotel chain. That six warrants of eviction for non-payment granted to the Hotel appear to be bogus (Mot. Exhs. H & I), that there are similar bogus cases related to another Hotel (that is not a party to this action) (Mot. Exh. J), and that question 19 in the application included cases that are outside the scope of the inquiry period, cases that had occurred during the inquiry period were not included. (Mot. Exh. K).

HPD opposes the motion arguing that it properly issued public notice on March 11, 2014 to solicit comments in response to submission of the COHN application, that the public notice was published in the City record on March 12, 2014, and that Petitioner was free to submit his comments but failed to. HPD also contends that prior to granting the CONH application an extensive investigation was done for an inquiry period dating back three years prior to submission of the application (HPD Ans. Exh. 3), that this investigation included a review of the statements and documents submitted by various interested parties, interviews of current and former tenants, review of any building violations, and solicitation of comments from sources such as the New York County District Attorney's Office, and the New York State Division of Housing and Community Renewal. That Respondent Beverly correctly disclosed Petitioner's Housing Court proceeding in its application that Petitioner was found not to be an SRO tenant and only a hotel guest. In addition, HPD approved the CONH application because during its investigation and inquiry period it was found that no complaints of harassment were filed. (HPD Ans. Exhs. 8 & 9).

HPD contends that upon Petitioner's request to participate in the CONH application review process, it notified Respondent Singh that HPD had been made aware of the reversal of Petitioner's Housing Court proceeding, that it requested information as to how Beverly was taking action to restore Petitioner to possession of the Room, and notified Singh that the CONH was at risk of being rescinded. (HPD

Ans. Exh. 11). That Respondent Beverley responded to HPD's inquiry stating that the Petitioner had only appeared once at the Hotel to be restored, but at that time another guest was staying in the Room and that Petitioner had been advised that the guest would have to be notified first. (HPD Ans. Exh. 12) That since that one time Petitioner had not returned, and that the room had since remained vacant and ready for Petitioner to take possession. (Id.). HPD states that it reviewed all of Petitioner's and Respondent Beverley's evidence prior to issuing a determination. (HPD Ans. Exhs. 10-15).

HPD argues that a decision to suspend a CONH is discretionary, that after thorough review HPD found no basis to suspend the CONH, that Respondent Beverley's actions did not constitute harassment to Petitioner under the Code, that Petitioner has since taken possession of the Room, and therefore HPD's decision not to suspend the COHN was supported by the weight of the evidence, and was rationally and reasonably based. HPD further argues that for the first time Petitioner raises issues in the Petition such as Petitioner's alleged review of "bogus cases", that the whole application was part of a bigger plan by Respondent Dream Hotel to be sold to a larger hotel chain, that these issues are irrelevant and were not alleged in Petitioner's initial request for review to HPD, and therefore cannot be considered here because these issues go outside the administrative record.

Respondents Beverley, Singh, RJMD, Dream Hotel Group, LLC A/K/A Hampshire Hotels Management LLC A/K/A Hampshire Hotels and Resorts, LLC (herein "Dream Hotel"); Sam Domb (herein "Domb"); Sant Singh Chatwal (herein "Chatwal"), and Glenn Isaacs (herein "Isaacs") (herein collectively "Non-Municipal Respondents) also oppose the Petition arguing that the Petition is untimely as more than four months have elapsed since HPD approved the CONH, that the conduct complained of does not constitute harassment under the Code, that the Petitioner lacks standing because he was not a permanent tenant in occupancy when the COHN was issued or during its inquiry period, and that HPD's decision was rationally based. That the Petition raises new arguments and includes new documents outside the administrative record, and that these new arguments and documents are irrelevant to the issue of whether any harassment occurred.

Administrative Code §27-2093 provides, in relevant part, the following: that a CONH application defines "harassment" as conduct that includes "the use or threatened use of force which causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit in such multiple dwelling to vacate such unit or to surrender or waive any rights in relation to such occupancy"; that the commissioner of HPD must "...certify whether there has been no harassment of the lawful occupants of a single room occupancy multiple dwelling...during the thirty-six month period prior to the date of the submission of an application for a [CONH]...; that upon the receipt of an application...the commissioner shall publish notice in such publication as the commissioner deems appropriate for a period of seven consecutive days, shall mail notice to the owner of record, to such occupants as the department shall identify, to such other interested persons as the department shall identify...[and] that any occupants or former occupants...are invited to submit their comments within

thirty days of the date of such notice..."

The Code further provides in relevant part that upon the expiration of such thirty day comment period, the commissioner may "determine that no harassment has occurred within the stated period of time and forthwith grant such certification"; and that "the commissioner may rescind a [CONH]...if the commissioner finds that harassment has occurred...with respect to which such [CONH]...was issued after the period of time covered by such [CONH] but prior to the commencement of substantial work..." Further, the Rules of the City of New York (herein "RCNY") provide in relevant part that a COHN may be rescinded "...at any time if HPD determines that the application for such certification...contained a material misstatement of fact" or if it is determined that "there is reasonable cause to believe that harassment has occurred after the date that HPD issued the [CONH]." (28 RCNY §10-10(a) and (b)).

"... A proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner...."[C.P.L.R. § 217(1)]. This abbreviated time frame is said to serve public policy by freeing government operations from the "cloud" of potential litigation [*Best Payphones, Inc., v. Department of Information, Technology and Communications of City of New York*, 5 N.Y. 3d 30, 832 N. E. 2d 38, 799 N.Y.S. 2d 182 (2005)]. An administrative determination becomes "final and binding" triggering the four month statute of limitations for commencing an Article 78 proceeding, when the petitioner seeking review has been aggrieved by it. (*Rocco v. Kelly*, 20 A.D. 3d 364, 799 N.Y.S. 2d 469 [App. Div. 1st. 2005]; *Yarbough v. Franco*, 95 N.Y. 2d 342, 740 N.E. 2d 224, 717 N.Y.S. 2d 79 [2000]). The four month limitations period for Article 78 review runs from petitioner's receipt of the adverse determination (*Yarbough v. Franco*, 95 N.Y. 2d 342, 740 N.E. 2d 224, 717 N.Y.S. 2d 79 [supra]).

Here, HPD's decision declining to suspend the CONH was prompted by Petitioner's inquiry in October 2015 as to alleged harassment after being awarded possession of the Room. According to the Administrative Code, a CONH may be rescinded, even after it was approved, if harassment occurred after the inquiry period but before the construction work has commenced. HPD's determination was made on December 4, 2015, and Petitioner brought this Petition on March 11, 2016, therefore the Petition is timely.

An administrative decision will withstand judicial scrutiny if it is supported by substantial evidence, has a rational basis and is not arbitrary and capricious. (*See Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 356 N.Y.S.2d 833, 313 N.E.2d 321 (1974); *Ansonia Residents Ass'n v. New York State Div. of Housing and Community Renewal*, 75 N.Y.2d 206, 551 N.E.2d 72, 551 N.Y.S.2d 871 (1989)).

HPD provides proof of its investigation conducted prior to the approval of the CONH. Further, upon Petitioner's inquiry, HPD conducted even further review of any possible instances of harassment that would warrant rescision of the CONH. HPD's decisions to initially approve the CONH in 2014, and to refuse to suspend the CONH

in December 2015 after Petitioner's inquiry, were supported by substantial evidence, and were rationally based. Petitioner has failed to provide any instances of harassment. Petitioner's 2013 removal was initially determined by the Housing Court to be proper in that Petitioner was found to be a Hotel guest and not a permanent tenant, and HPD did not find this to be harassment. Further, HPD, after review of the evidence submitted, determined that no harassment occurred between the time of the Housing Court's October 5, 2015 Decision restoring Petitioner to the Room, and when Petitioner actually took possession. Petitioner provides no proof of harassment to the contrary.

Furthermore, at the time the initial inquiry period was in effect Petitioner was not a current or former permanent tenant at the Hotel. At the time of the application, Respondent Beverley correctly stated in its answer to question 19 that the Petitioner had been found by the Housing Court to be a Hotel Guest, and not a tenant. Therefore, according to the Code, Petitioner was not entitled to submit comments during the inquiry period, and was thereby not lacking any notice. Even taking into consideration Petitioner's argument that the Housing Court determination was pending appeal, and that he should have been given an opportunity to comment anyway, Petitioner states that he sent an email to counsel for the Hotel offering to settle the matter on April 13, 2014. (Pet. Exh. C). In this email Petitioner states that an adverse decision to the Hotel on his appeal would affect a CONH application. If Petitioner was aware of any pending CONH application, then Petitioner was free to submit his comments and evidence to HPD for consideration, but he did not.

The Court has considered Petitioner's remaining arguments and finds them to be without merit.

Accordingly, for the foregoing stated reasons, it is ORDERED and ADJUDGED that the Petition is denied and the proceeding is dismissed.

FILED

DEC 15 2016

COUNTY CLERK'S OFFICE
NEW YORK

Dated: December 8, 2016

ENTER:

MANUEL J. MENDEZ
J.S.C.


MANUEL J. MENDEZ
J.S.C.

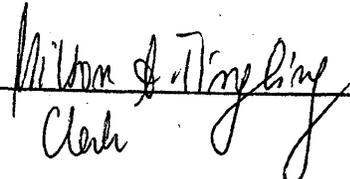
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DEC 15 2016

COUNTY CLERK
NEW YORK


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Incl # 100374/16

Judgment

FILED
AT DEC 15 2016
11:19 AM
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