

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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Submitted - October 20, 2008

PETER B. SKELOS, J.P.
DANIEL D. ANGIOLILLO
RUTH C. BALKIN
CHERYL E. CHAMBERS, JJ.

2007-06247

DECISION & ORDER

In the Matter of Audrey Rowe, appellant, v Judith Calogero, etc., respondent.

(Index No. 33158/06)

John C. Gray, Jr., Brooklyn, N.Y. (Michael L. Weisberg of counsel), for appellant.

Gary R. Connor, New York, N.Y. (Martin B. Schneider of counsel), for respondent.

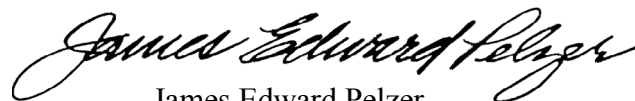
In a proceeding pursuant to CPLR article 78 to review a determination of the New York State Division of Housing and Community Renewal dated September 1, 2006, that the subject building was exempt from rent regulation, the petitioner appeals from a judgment of the Supreme Court, Kings County (Schmidt, J.), dated May 8, 2007, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

The determination of the New York State Division of Housing and Community Renewal that the subject building was exempt from rent regulation had a rational basis and was not arbitrary or capricious. Therefore, the Supreme Court properly confirmed the determination (*see* Emergency Tenant Protection Act of 1974 [McKinney's Uncons Laws of NY § 8625(a)(5); Rent Stabilization Code [9 NYCRR 2520.11(e)]; *Matter of Various Tenants of 123 Guernsey St. v New York State Div. of Hous. & Community Renewal*, 19 AD3d 503).

SKELOS, J.P., ANGIOLILLO, BALKIN and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

November 12, 2008

MATTER OF ROWE v CALOGERO