

(Cite as: **269 A.D.2d 169, 702 N.Y.S.2d 811**)**H**

Supreme Court, Appellate Division,
 First Department, New York.
 In re Application of Richard ACUNTO, et al.,
 Petitioners-Respondents,
 For a Judgment, etc.,
 v.
 NEW YORK STATE DIVISION OF HOUSING
 AND COMMUNITY RENEWAL,
 Respondent-Appellant,
 and
 Gumowitz Real Estate, Respondent.

Feb. 8, 2000.

Samuel J. **Himmelstein**, for
 Petitioners-Respondents.

****812** Mary Ellen Cronly, for
 Respondent-Appellant.

***169** Judgment, Supreme Court, New York County (Edward Lehner, J.), entered September 17, 1998, which granted the article 78 proceeding petition challenging a Division of Housing and Community Renewal order dated July 11, 1997 establishing a fair market rent in accordance with its own guidelines, to the extent of remanding the matter to the agency for further proceedings to fix a fair market rent in conformity with the last rent controlled rent, unanimously reversed, on the law, without costs, the agency determination confirmed and the petition dismissed.

Petitioners' reliance on *Smitten v. 56 MacDougal Street*, 167 A.D.2d 205, 561 N.Y.S.2d 585 is misplaced in the context of this article 78 proceeding (*Dattoma v. New York State Division of Housing and Community Renewal*, 262 A.D.2d 54, 689 N.Y.S.2d 634). The initial registered rent contemplated by Rent Stabilization Code § 2521.1(a)(1) is "the rent agreed to by the owner and

the tenant" (*i.e.*, the rent negotiated at the start of the tenancy), applicable in rent overcharge proceedings when the landlord fails to produce a rental history for the subject apartment. Here, we review an ***170** agency determination, rather than a judicial order resolving a rent dispute presented to a court in the first instance (*compare, Smitten, supra; cf., Matter of Bambeck v. Division of Housing and Community Renewal*, 129 A.D.2d 51, 57, 517 N.Y.S.2d 130, *lv. denied* 70 N.Y.2d 615, 524 N.Y.S.2d 676, 519 N.E.2d 622). The agency applied its own procedures and formula to determine the regulated rent for the apartment, to which we necessarily defer upon review of that agency's determination (*Bambeck, id.*, at 57, 517 N.Y.S.2d 130). Insofar as our review is limited to whether the agency's determination was rationally based (*Mark Greenberg Real Estate v. Division of Housing and Community Renewal*, 258 A.D.2d 313, 685 N.Y.S.2d 188), and petitioners have failed to demonstrate to the contrary, the agency's methodology and calculations must be upheld.

SULLIVAN, J.P., TOM, MAZZARELLI, SAXE
 and FRIEDMAN, JJ., concur.

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 Slip Op. 01170

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