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Governor

Homes and Community Renewal

RUTHANNE VISNAUSKAS
Commissioner/CEO

February 18, 2021

Ms. Aida Solomon
Audit Manager, Division of State Government Accountability
Office of the State Comptroller
110 State Street
Albany, NY 12236

Re: Administration of Mitchell-Lama Waiting Lists (Report 2020-F-19)

Dear Ms. Solomon:

This letter is in response to the Office of the State Comptroller's ("OSC") follow-up review of its prior audit of New York State Homes and Community Renewal ("HCR") *Administration of Mitchell-Lama Waiting Lists* (2020-F-19) dated January 19, 2021¹.

HCR effectively administers the Mitchell-Lama program's Automated Waiting List ("AWL") across the portfolio of participating housing companies' apartments, and its proper use helps ensure the integrity of the program and efficient management of internal transfers and external applications for residence within this important source of affordable housing in New York.

HCR's efficient administration of the Mitchell-Lama program's AWL is supported by the reported results of the follow-up review. OSC has contended that certain initial audit recommendations have been "partially implemented", which is misleading and in several instances, it is an outright misstatement of the facts. In several instances, it is based largely on ancillary requests for archived documents to provide additional support to document implementation. These supporting documents were maintained under HCR's and the housing companies' legacy record and retention policies. Consequently, copies of prior hard-copy supporting documentation maintained by the housing companies were difficult, if not impossible, to obtain in the limited time afforded us during pandemic-related work restrictions. For these reasons and those explained below, HCR respectfully asserts that each of the prior audit recommendations have been fully implemented.

¹ OSC's initial audit report was issued on August 17, 2017. The follow-up review assessed HCR's implementation of the report's recommendations as of December 30, 2020.

State Comptroller's Comment: We stand by our assessment that six of the seven recommendations were partially implemented. We cannot conclude that recommendations were fully implemented without HCR officials providing appropriate documentation.

Recommendation 1 – *Identify changes in tenancy on a routine basis and confirm that new occupants (including successions and transfers) were approved by DHCR.*

OSC Status Determination – Implemented

HCR Response – None

Recommendation 2 – *Take appropriate action regarding tenants who were awarded apartments without DHCR approval and/or not selected from the AWL.*

OSC Status Determination – Partially Implemented

HCR Response – This status should be modified to “implemented” to accurately reflect the actions taken by HCR. HCR provided, as requested, sufficient documentation to demonstrate its approval of the 11 applicant residents through HCR’s HM-14s. The requested additional documentation was not within HCR’s possession due to the Mitchell-Lama program’s historical record retention requirements for AWL.

As OSC notes, the twelfth sampled resident is an employee of the sampled housing company. In accordance with 9 NYCRR 1727-3.7, Knickerbocker informed HCR’s Tenant Selection Unit of its desire to place its staff member in an apartment, via email. Staff member residents are not required to be placed on the AWL.

Contrary to OSC’s suggestions, HCR has fully implemented OSC’s original recommendation.

Recommendation 3 – *Ensure that occupancy changes are supported by documentation showing the order in which applicants are selected.*

OSC Status Determination – Partially Implemented

HCR Response – This status should be modified to “implemented” to accurately reflect the actions taken by HCR, and HCR strongly disagrees with OSC’s characterization. OSC found that 22 out of the 24 applicants were selected in the order in which they appeared. The remaining two sample items OSC questioned were also selected in proper order as explained below:

Knickerbocker

OHM Directive 2017-001 directs Knickerbocker Village to comply with HCR's rules and regulations regarding proper use of the AWL for applicants and successions. The directive further directs Knickerbocker to submit all successions to HCR for approval.

The subject applicant was a resident at Knickerbocker and put in a request to transfer to another apartment. In compliance with OHM Directive 2017-001, the housing company placed this request on the AWL and then ultimately sent the request to HCR for approval. HCR notes that the transfer section of the AWL is separate from the new admission section of the AWL.

HCR also provided a copy of the two-bedroom transfer waiting list associated with the subject applicant's transfer application. It shows that at the time of submission, there were only 4 applicants ahead of the applicant on the AWL (1155, 1159, 1161 and 1162). As explained previously, housing companies may make multiple simultaneous offers in order to expedite filling of vacancies.

At the time of the applicant's request, one of the applicants had an offer (1162), and the other three received offers by the housing company but did not respond within the required time period. The subject applicant responded within the outlined waiting period, was found to be eligible to transfer and therefore was transferred to the vacant apartment. HCR approved this transfer. For these reasons, the transfer application was appropriately processed and submitted to HCR for approval.

Warbasse

According to the waiting list provided by the housing company at the time of application submission, there were two applicants ahead of the subject applicant.

These were applicants 2864 and 2865. Consistent with the housing company's ability to make simultaneous offers to expedite the filling of vacancies, the subject applicant was in pending status with an offer on the same day the subject applicant received its offer. In addition, Applicant 2865 was called in to be briefed on what was available ahead of 2866. This was evidenced by a notation on the waiting list page that was reviewed and confirmed by HCR personnel.

Recommendation 4 – *Ensure that housing developments comply with the requirements for awarding apartments, including (but not limited to) the 3:1 internal/external applicant ratio, the proper use of AWLs, as well as the prompt filling of vacant apartments.*

OSC Status Determination – Partially Implemented

HCR Response – HCR strongly disagrees with OSC and considers this recommendation to be implemented. As acknowledged by OSC in response to Recommendation 1 above, DHCR is properly reviewing and approving participating housing companies' changes in occupancies.

HCR diligently reviews housing company vacancies through its monthly vacancy reports. The sampled housing companies have exemplary low vacancy rates and robust marketing strategies.

With regard to the 3:1 ratio, HCR continues to pursue technological solutions with ITS to augment the corrective actions HCR has already taken and which are acknowledged in OSC's report.

Recommendation 5 – *Ensure Knickerbocker converts its paper waiting list to the AWL system.*

OSC Status Determination – Partially Implemented

HCR Response – HCR strongly disagrees with OSC; this recommendation is implemented. As noted by OSC, based on its review, 12 of the 17 sampled applicants were found on HCR’s AWL. For the remaining 5 applicants, after an eligibility review and subsequent HCR approval, Knickerbocker had placed the applicants in open units. However, the date of their occupancy predated HCR’s directive. Therefore, their inclusion in the AWL would be unnecessary and unwarranted as they were not on the waiting list.

Recommendation 6 – *Determine whether successions approved by Knickerbocker meet eligibility criteria.*

OSC Status Determination – Partially Implemented

HCR Response – HCR strongly disagrees with OSC and considers this recommendation to be implemented. OSC’s assessment that this recommendation is “partially implemented” is prematurely based on the limited availability of documents HCR has been asked to provide during OSC’s follow up review. HCR has provided sufficient documentation, and OSC’s characterization is misleading and inaccurate.

HCR provided proof of HCR’s approval of the subject housing company’s successions by providing HM-14s indicating agency approval for each of the succession applicants. Due to the remote environment, HCR was unable to locate the HM-14 for one applicant, however we provided income affidavits showing that this applicant was eligible for succession rights. HCR bases its determinations for succession on income affidavits or other supporting documentation.

Since this review, HCR has instituted a drop box portal whereby all supporting documentation is submitted electronically. This will provide HCR with the means to again review the basis of historical approvals if it ever becomes necessary. HCR could now provide the supporting documentation for similar approvals, however the approvals discussed by OSC were provided prior to HCR's adopting of its electronic drop box. Access to this historical paper-based supporting documentation is limited.

Recommendation 7 – *Ensure that management representatives conduct field visits, including office and site reviews, at least yearly, as required.*

OSC Status Determination – Partially Implemented

HCR Response – HCR strongly disagrees with OSC and considers this recommendation to be implemented. Contrary to OSC’s suggestion, site visits are being conducted properly and with appropriate frequency.

The Mitchell-Lama statute authorizes field visits but sets no standards with regard to the nature of the visits and/or the frequency thereof. The Housing Management Bureau, which administers site visits for the Mitchell-Lama program, issued a new internal policy in 2020 which prioritized site

visits based on a conducted assessment. Housing companies that score lower on the assessment are prioritized for visits more often. This assists in allocating state resources for the developments which require additional oversight. This means that some housing companies are visited yearly, some multiple times a year, while some are visited less often – all of which is determined and prioritized through the assessment.

HCR's Housing Management Unit's completed 164 site and office visits during 2019, with 125 reports issued. In addition, HCR conducted over 70 special visits for housing companies prioritized through the assessment process.

OSC should change its recommendation to "implemented".

Please contact Ron Dickens, Director of Internal Audit and Quality Control, at (518) 486 - 6367 if you have any questions or require anything further.

Sincerely,



Melina M. Stratos

Assistant Commissioner of Operations, Office of Housing Preservation

Cc: RuthAnne Visnauskas
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