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## Three Possible Arguments to Counter a 'Late' PAR Dismissal

Filing a petition for administrative review (PAR) with the Division of Housing and Community Renewal (DHCR) can be one of the most important dollars-and-cents steps you take. That's especially true if you're using the PAR to appeal a rent-cut order, a rent-overcharge decision, or the denial of a rent hike application. So nothing could be worse than having your PAR dismissed without even being heard, simply because the DHCR says it wasn't filed on time. In some instances, the PAR may actually have been filed on time. Or the owner may have been forced to file the PAR late because of some DHCR error.

In this situation, you don't have to just accept a costly and unfair dismissal of your PAR. We've come across three arguments that have been used to successfully appeal an unfair dismissal. By making these arguments in your PAR, you may convince the

DHCR to accept a PAR that you're filing late. If the DHCR dismisses your PAR as late, you can use these arguments when you request reconsideration of the order or file a court appeal.

### File PAR Within 35 Days

A PAR is the form (DHCR Form RAR-2) you file with the DHCR when you want to appeal an unfavorable order handed down by a District Rent Administrator (DRA). DRAs are the first level at the DHCR in deciding tenant complaints as well as owner applications.

The form is available at Rent Offices, by mail upon telephone request to the Rent Information Line, and at [www.nyshcr.org/rent](http://www.nyshcr.org/rent). A copy of the order being appealed must be included. The petition must specify the alleged errors and list the issues upon which the order should be reviewed. The scope of review in the PAR proceeding is generally limited to the facts or evidence presented to the Rent Administrator, which must also be raised in the PAR.

A PAR must be filed within 35 days after the Rent Administrator's order is issued and not the date you receive the order. If you hand-deliver the PAR, it must get to the DHCR on or before the 35th day after the order was issued. If you mail the PAR, it must be postmarked on or before the 35th day. If the 35-day filing period ends on a Saturday, Sunday, or legal holiday, the deadline is extended to the next business day.

If you try to file a PAR after this 35-day period has passed, the DHCR will generally dismiss it for being late—unless you can make a convincing argument against dismissal in your PAR. If the DHCR dismisses a PAR, you can either accept defeat and abide by the DHCR's order or fight the dismissal.

When the DHCR receives a completed PAR, the Office of Rent Administration will send a copy to all other affected parties with a form allowing each party to respond to the DHCR within 20 days from the date of mailing of a copy of the PAR by the DHCR. A

copy of such response to the PAR will be served by the DHCR upon the adverse party. The DHCR will also send other submissions, with an opportunity to comment, to adversely affected parties, as warranted. The DHCR will then review the PAR and the submissions, request additional information as necessary, and make a determination. Then the DHCR will inform all parties to the PAR of the legal and factual basis for the determination.

### THREE WINNING ARGUMENTS

Check to see if any of these arguments apply to your situation. If one does, you may be able to use it to explain why you're filing late, and get the DHCR to accept your PAR as filed on time instead of dismissing it. If your PAR has already been dismissed, you may be able to use one of the arguments to get the dismissal overturned and your PAR reinstated.

#### Argument #1: PAR Filed on Time

You may have filed the PAR within the 35-day period, but for

some reason (for instance, the DHCR misplaced the PAR) the DHCR rules that it wasn't filed on time and dismisses it. If you can prove that you filed the PAR on time, you should be able to get it reinstated. Here's the best proof to have, listed in order of preference, if you need to show you filed the PAR on time, says attorney **Peter Schwartz**:

- A copy of the PAR, date-stamped by the DHCR;
- A certified mail return receipt, signed by a DHCR official; or
- An official Post Office receipt for certified mail.

In one case, when the DRA ruled for a tenant in a fair market rent appeal, the owner appealed the DRA's decision. The tenant claimed that owner's PAR wasn't filed on time. And the DHCR ruled against the tenant. The owner proved that the PAR was mailed within 35 days of the date of the DRA's order by submitting a U.S. Post Office certificate of mailing [Hufnagel/IG Second Generation Partnership, July 2000].

In another case, an owner wasn't able to show that the PAR was mailed in time. A rent-stabilized tenant complained of a reduction in services. And when the DRA ruled for the tenant, the owner appealed. He filed the PAR by mail, and Rent Stabilization Code Section 2529.2 requires the envelope to be postmarked no more than 35 days after the date of the DRA's order. If the prepaid postage on the envelope is by private postage meter, and the envelope doesn't have an official U.S. Postal Service postmark, the PAR won't be considered filed in a timely manner unless received within the 35 days or unless the owner submits other adequate proof of mailing within 35 days, such as an official Postal Service receipt or certificate of mailing. In this case, the DRA's order was issued on Jan. 29, 2009. The PAR was sent in a Federal Express standard overnight envelope, dated March 10, 2009, and received on March 11, 2009. Because the PAR was sent more than 35 days after the DRA's order was issued, the petition was deemed as untimely [Cammarano, September 2009].

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