

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

D19967
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_____AD3d_____

Argued - May 20, 2008

REINALDO E. RIVERA, J.P.
DAVID S. RITTER
HOWARD MILLER
MARK C. DILLON, JJ.

2006-10508

DECISION & ORDER

In the Matter of New York State Tenants & Neighbors Coalition, Inc., et al., petitioners-respondents, v Nassau County Rent Guidelines Board, respondent-appellant; Apartment House Council, intervenor-appellant.

(Index No. 06/1250)

Hoguet Newman Regal & Kenney, LLP, New York, N.Y. (Ira J. Lipton of counsel), for respondent-appellant.

Borah, Goldstein, Altschuler, Nahins & Goidel, P.C., New York, N.Y. (Jeffrey R. Metz of counsel), for intervenor-appellant.

Stefan H. Krieger, Hempstead, N.Y. (Danielle Staley and Michael Goodman on the brief), for petitioners-respondents.

In a proceeding pursuant to CPLR article 78 to review a determination of the Nassau County Rent Guidelines Board dated September 21, 2005, which adopted rent adjustment Guideline 40 pursuant to the Emergency Tenant Protection Act of 1974, § 4(b), as added by L 1974, ch 576 (McKinney's Unconsolidated Laws of NY § 8624[b]), and a determination of the Chairperson of the Nassau County Rent Guidelines Board dated October 5, 2005, certifying Guideline 40, as adopted on September 21, 2005, the intervenor Apartment House Council appeals, and the Nassau County Rent Guidelines Board separately appeals, from a judgment of the Supreme Court, Nassau County

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(Feinman, J.), dated October 16, 2006, which granted the petition and annulled the determinations.

ORDERED that the judgment is affirmed, with one bill of costs, and the matter is remitted to the Nassau County Rent Guidelines Board for further proceedings consistent herewith.

The Nassau County Rent Guidelines Board (hereinafter the Board), responsible pursuant to the Emergency Tenant Protection Act of 1974, § 4(b) (McKinney's Unconsolidated Laws of NY § 8624[b] [hereinafter ETPA]) for establishing allowable increases in regulated rent each year, promulgated Guideline 40 in 2005. Guideline 40 provides that, for leases commencing between October 1, 2005, and September 30, 2006, the allowable rent increases applicable to tenants whose gross aggregate family income is greater than \$24,000 per year, are 5.25% for one-year lease renewals and 7.25% for two-year lease renewals. For tenants whose gross aggregate family income is below \$24,000 per year, the allowable increases are 1% for one-year lease renewals and 2% for two-year lease renewals.

The Supreme Court properly annulled Guideline 40 on the ground that the Board does not have the authority to create a separate rent adjustment guideline based on tenant income. ETPA § 4(b) provides:

“A county rent guidelines board shall establish annually guidelines for rent adjustments which, at its sole discretion may be varied and different for and within the several zones and jurisdictions of the board . . . [and] . . . shall file with the state division of housing and community renewal its findings for the preceding calendar year, and shall accompany such findings with a statement of the maximum rate or rates of rent adjustment, if any, for one or more classes of accommodation subject to this act, authorized for leases or other rental agreements commencing during the next succeeding twelve months. The standards for rent adjustments may be applicable for the entire county or may be varied according to such zones or jurisdictions within such county as the board finds necessary to achieve the purposes of this subdivision.”

The “classes of accommodation” for which the Board may establish rent adjustments are created, in the first instance, by the legislative body of the relevant city, town, or village, which is empowered to declare (or declare at an end) a residential housing emergency for such classes (*see* ETPA § 3). Therefore, the Board exceeded its statutory authority in establishing a separate class of accommodation based on tenant income (*see generally Weiss v City of New York*, 95 NY2d 1, 4-5; *Boreali v Axelrod*, 71 NY2d 1, 11; *Kerwick v New York State Bd. of Equalization & Assessment*, 117 AD2d 65, 68).

In light of our determination, we need not reach the appellants' remaining contentions.

RIVERA, J.P., RITTER, MILLER and DILLON, JJ., concur.

ENTER:


James Edward Selzer
Clerk of the Court