

Affidavit of Rodriguez v New York State Div. of Housing & Community Renewal

2007 NY Slip Op 30268(U)

March 12, 2007

Supreme Court, New York County

Docket Number: 0114160

Judge: Lewis Bart Stone

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: STONE
HON. LEWIS BART STONE Justice

PART 50s

RODRIGUEZ, BRUNNINA

INDEX NO. 114160/06

N.Y. STATE DIVISION OF HOUSING AND COMMUNITY REFORM, ET AL.

MOTION DATE _____

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

is denied, in accordance with the annexed Decision and Order

FILED

MAR 22 2007

NEW YORK COUNTY CLERK'S OFFICE

Dated: 12 March '07

Lewis Bart Stone

HON. LEWIS BART STONE J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

-----X
In the Matter of the Application of :
BIENVENIDA RODRIGUEZ, :
 : DECISION AND
 Petitioner, : ORDER
 :
 For a Judgment Pursuant to Article 78 of the :
 Civil Practice Law and Rules, : INDEX NUMBER
 : 114160/06
 - against- :
 :

THE NEW YORK STATE DIVISION OF HOUSING
AND COMMUNITY RENEWAL and
303-307 EAST 95TH STREET, LLC,
Respondent.

FILED
MAR 22 2007
NEW YORK
COUNTY CLERK'S OFFICE

-----X
Hon. Lewis Bart Stone:

Petitioner, Bienvenida Rodriguez (“Rodriguez”) commenced this proceeding by Order to Show Cause issued on October 10, 2006, to review, pursuant to Article 78 of the Civil Practice Law and Rules (“CPLR”) a decision of Respondent New York State Division of Housing and Community Renewal (“DHCR”), dated September 19, 2005, denying Rodriguez’ petition for administrative review of the dismissal of her complaint that Respondent, 303-307 East 95th Street, LLC, (“303 LLC”), Rodriguez’ landlord, had failed to grant her a renewal lease at an appropriate rental level.

In 1979, to induce Local Community Board No. 8 (the "Board") to consent to zoning variances to enable Peter Kalikow ("Kalikow"), a developer, to increase the size of a building he wished to construct at 303 East 83rd Street, New York, N.Y., Kalikow, the owner of 303-307 East 95th Street, New York, N.Y. (The "303 Building"), entered into an agreement with the Board to make available certain apartments in the Building at below market rents. This agreement was embodied in a lease dated July 24, 1979 (the "Kalikow Lease"), pursuant to which a block of apartments at the 303 Building were leased to Yorkville Community Benefit Corporation, a not for profit corporation, established by the Board, to be made available to qualifying tenants selected by the Board. The Kalikow Lease was recorded to give notice to and bind future purchasers and mortgagees of the 303 Building.

Rodriguez alleges she was one of the tenants initially chosen for such benefit and has resided in her apartment in the 303 Building since such date. Under the Kalikow Lease, rents for these tenants were fixed for a period of years and later allowed to increase as if they were rent controlled or rent stabilized tenancies, so long as the tenant lived in its original apartment in the 303 Building. The 303 Building was eventually purchased by 303 LLC, which now asserts that it is not bound by the terms of the Kalikow Lease, and accordingly, it may charge Rodriguez as rent for her

apartment the “legal regulated rent” for such apartment as defined by the Rent Stabilization Law (which is significantly higher than what Rodriguez would be required to pay under the terms of the Kalikow Lease if applicable).

Under the Rent Stabilization Law, the legal regulated rent is the maximum a landlord may charge a rent stabilized tenant; a landlord, however, has no obligation to charge the full amount of the legal regulated rent, and may agree to charge less. When a landlord does so the lower rent is known as a preferential rent.

DHCR keeps track of legal regulated rents, not preferential rents. Here, DHCR, applying its usual rules, addressed Rodriguez’ complaint on the basis of what, under its rules, would DHCR determine the legal regulated rent to be. DHCR took the position that its duties under the Rent Stabilization Law were to do no more and not to intervene to enforce an agreement which bound a landlord to charge a tenant no more than a preferential rent. This Court concurs and therefore must dismiss Rodriguez’ petition as there is no basis for this Court to set aside DHCR’s decision.

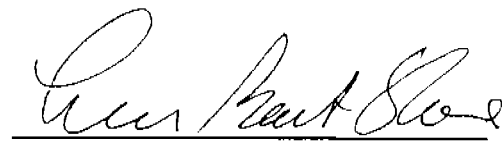
This Court notes, as the Court made clear to the parties at oral argument and as did the decision of DHCR which 303 seeks to uphold, that under general principles of contract law, to the extent the Kalikow Lease is still in force, binds 303 LLC and applies to Rodriguez’ tenancy, she would be entitled to a preferential rent and renewal lease as provided therein. The venue to determine whether the Kalikow Lease is still

in force, whether it binds 303 LLC and whether Rodriguez can assert rights thereunder, however, is in a court action or proceeding between Rodriguez and 303 LLC at which time Rodriguez may assert her claims to a preferential rent and a new lease reflecting such preferential rent and 303 LLC may oppose such claims.

The petition is dismissed.

This is the Decision and Order of the Court.

DATED: MARCH 12, 2007
NEW YORK, NEW YORK



Hon. Lewis Bart Stone
Justice of the Supreme Court

FILED
MAR 22 2007
NEW YORK
COUNTY CLERK'S OFFICE