

Matter of Brookford, LLC v New York State Div. of Hous. & Community Renewal
2007 NY Slip Op 32564(U)
August 14, 2007
Supreme Court, New York County
Docket Number: 0108440/2007
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY **Part 5**

PRESENT: EILEEN A. RAKOWER
Justice
J.S.C.

PART _____

Index Number : 108440/2007
BROOKFORD, LLC
vs.
HOUSING & COMMUNITY RENEWAL
SEQUENCE NUMBER : # 001
ARTICLE 78

INDEX NO. 108440-07
MOTION DATE _____
MOTION SEQ. NO. #001
MOTION CAL. NO. _____

re read on this motion to/for _____

PAPERS NUMBERED	
1	
23	
4	
5	

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

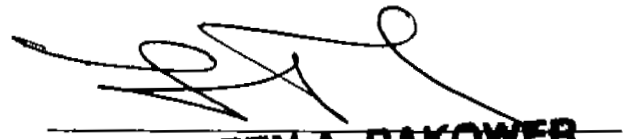
Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

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

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**
FILED
AUG 20 2007
NEW YORK COUNTY CLERK'S OFFICE

Dated: 8/14/07


EILEEN A. RAKOWER
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 5

-----X
In the Matter of the Application of
BROOKFORD, LLC

Petitioner,

Index No.
108440/07

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules,

- against -

Decision and
Order

NEW YORK STATE DIVISION OF
HOUSING AND COMMUNITY
RENEWAL,

Respondent.

HON. EILEEN A. RAKOWER

FILED
AUG 20 2007
NEW YORK
COUNTY CLERK'S OFFICE

Petitioner, Brookford, LLC brings this article 78 petition for an order annulling a final order issued by the New York State Division of Housing and Community Renewal ("DHCR"). DHCR opposes the petition. Petitioner is the owner of a building located at 315 Central Park West New York, New York ("the building"). Margot Calogeras Sanchez is the tenant of apartment 11W in the subject building. Ms. Sanchez has lived in the building since 1964. The mailing address for the owner of the subject premises is Mr. Jacob Haberman ("landlord"), 315 Central Park W, Apr. #12S, New York, NY 10025.

Ms. Sanchez wrote a letter to DHCR on August 31, 2006, stating in relevant part:

My goal here is simply to be properly listed as the tenant of record and

in my proper status-rent controlled. . .

Ms. Sanchez was prompted to write the letter because she was allegedly not receiving important notices from DHCR. Upon further investigation, Ms. Sanchez discovered that the apartment was listed as "vacancy decontrolled" and registered under the landlords' daughter-in-law's name, "Sharon Brickman." Following receipt of Ms. Sanchez' letter, DHCR issued a Notice of Commencement of Administrative Proceeding.

The landlord responded by a letter dated September 27, 2006 stating that Sharon Brickman was never listed as the tenant of 11W and that the apartment was never decontrolled. He acknowledged that the apartment is subject to rent control and denied filing an application to decontrol it. DHCR issued a determination on October 19, 2006 which found that the subject apartment was subject to rent control and that the Maximum Collectible Rent ("MCR") is \$1,949.89 per month effective January 1, 2005.

Petitioner argues that Ms. Sanchez only requested in her letter that her rent control status be confirmed and that DHCR exceeded the scope of the tenant's application by determining the MCR. Petitioner claims that the MCR should be \$2015.75 rather than \$1,949.89. He submits an affidavit by Ms. Sanchez' prior counsel which shows that she agreed to pay an additional \$40.00 a month for certain improvements. Petitioner argues that DHCR did not factor this into its' determination or serve the requisite notice to submit evidence upon which it made its final determination of the rental amount.

DHCR argues that the tenants' application raised the issue of the apartment's rent-regulatory status and, as such, it did not exceed the scope of the application by determining the MCR. DHCR provides the Notice of Commencement of Administrative Proceeding it sent to the landlord. The notice states that proceedings were initiated "on the subject address and/or apartment(s) to determine the status and *rent for the subject apartment*"(emphasis added). It directed that the owner:

Submit information or evidence to support the claim that the apartment is not rent controlled. Also submit evidence or information as the current rental status of the subject apartment and copies of the documents or evidence which support your registration of the apartments.

DHCR also submits an apartment registration record that it received January 14, 2002 which states that the status of Apartment 11W is exempt from rent control and the reason given is "high rent vacancy" The tenant listed on the notice is "Sharon Brickman" and the legal rent amount is listed as \$4429.66 per month with a lease term which expired on July 31, 1998.

A court may only interfere with the determination of an administrative agency if there is no rational basis, or foundation in fact for the action complained of, and the exercise of discretion is arbitrary and capricious. Where a reviewing court finds that the administrative body has not acted arbitrarily, but within its lawful authority, the court has no alternative, but must confirm the determination. (*Matter of Pell v. Board of Educ.*, 34 NY2d 222. (1974)). The determination must be supported by substantial evidence, based on the record on a whole. (*Purdy v. Kreisberg*, 47 NY2d 354, (1979)). Substantial evidence is "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact." (*300 Gramatan Ave. Assoc. v. State Div. Of Human Rights*, 45 NY2d 176, (1978)).

§2202.22(a) of the Rent and Eviction Regulations states, in relevant part:

Where the maximum rent or any fact necessary to the determination of the maximum rent, or the dwelling space. . . is in dispute between the landlord and tenant, or is in doubt, or is not known, or is required by section 2201.1(d) or (e) of this title to be fixed or established, the administrator at any time upon written request of either party or on his own initiative, may issue an order determining the facts, including the amount of the maximum rent. . . Where the administrator determines that the accommodations are subject to control, he shall also fix or establish the maximum rent therefore. . .

The letter sent to the landlord provided notice that DHCR was initiating a determination of the rent controlled status of the apartment as well as notice that the Rent Administrator would be determining the MCR. Upon receipt of the notice, the landlord was afforded an opportunity to submit documentation which would aide DHCR in its determination. The landlord failed to submit such documentation, including the affidavit stating that Ms. Sanchez had agreed to pay an additional

[* 5]
\$40.00 a month for certain improvements. Rather, he simply denied that he had ever registered the apartment as decontrolled and acknowledged that the apartment was subject to rent control status. It is within DHCR's power to determine the amount of maximum collectible rent for a rent controlled apartment either upon request or on its own initiative.

Wherefore it is hereby

ORDERED that Brookford, LLC's petition for an order annulling the New York State Division of Housing and Community Renewal's final determination is denied.

This constitutes the decision and order of the court.

All other relief requested is denied.

DATED: AUGUST 14, 2007



EILEEN A. RAKOWER, J.S.C.

FILED
AUG 20 2007
NEW YORK
COUNTY CLERK'S OFFICE