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

PRESENT: HON. LEWIS BART STONE Justice PART 50S

Index Number : 109366/2007
KATZ, SOL
VS.
VAN AMERONGEN, DEBORAH
SEQUENCE NUMBER : # 001
ARTICLE 78

INDEX NO. 109366-07
MOTION DATE
MOTION SEQ. NO. #001
MOTION CAL. NO.

e read on this motion to/for

	PAPERS NUMBERED
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 is granted in accordance with the annexed Decision and Order

FILED
JAN 30 2008
COUNTY CLERK'S OFFICE
NEW YORK

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

Dated: Jan 7, 2008

HON. LEWIS BART STONE 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 50

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SOL KATZ :

Petitioner, : DECISION AND ORDER

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules, : INDEX NUMBER 109366/07

-against-

:

DEBORAH VAN AMERONGEN, as Commissioner of the New York State Division of Housing and Community Renewal, the NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, 8100 BAY PARKWAY OWNERS CORP., and 8100 BAY PARKWAY MANAGEMENT A/K/A 8100 PARKWAY MANAGEMENT, L.P., :

Respondent. :

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Hon. Lewis Bart Stone:

Petitioner, Sol Katz, ("Katz") commenced this proceeding by Notice of Motion, dated August 1, 2007, against Respondents Deborah Van Amerongen, as New York State Commissioner of Housing and Community Renewal ("DHCR"), and 8100 Bay Parkway Owners Corp. (The "Coop Corp") and 8100 Parkway Management a/k/a 8100 Parkway Management, L.P. ("Managing Agent"), pursuant to Civil Practice Law and Rules ("CPLR"), Article 78, to review a decision of DHCR dated May 10,

2007 (the "Decision"), denying Katz' Petition for Administrative Review ("PAR") which sought a modification of an Order dated, September 8, 2006 (the "Order"), of the Rent Administrator ("RA") of DHCR.

Katz is a rent controlled tenant of apartment 6C (the "Apartment") at the building located at 8100 Bay Parkway, Brooklyn, New York (the "Building"), which had been converted to cooperative ownership by a Plan of Cooperative Conversion (the "Plan") which had been accepted for filing by the Attorney General of the State of New York in 1988. The Building is now owned by Coop Corp, but the record is unclear who owns the Apartment.[1] The building is managed by the Managing Agent which, pursuant to General Business Law ("GBL") §352-eeee (3), is responsible to see that the Apartment owner's obligations under rent control to Katz to continue services and maintain the Apartment are carried out. Under GBL §352-eeee(3), the Sponsor under the Plan is a guarantor of such obligations, until the Sponsor surrenders control of the Board of Directors, at which time the cooperative corporation assumes the responsibility. The record does not show whether the Sponsor is still the guarantor, but in any event the Managing Agent has the responsibility to provide the services.

[1] The sponsor of the cooperative conversion or its successor in interest may still own the Apartment as it is difficult to sell an apartment occupied by a rent-control tenant.

In 1990, DHCR issued an order reducing the maximum rent on the Apartment to $401.07 per month because proper hot water service to the Apartment had not been maintained, fixing the rent of the Apartment at such amount until the condition was remedied. The problem seem to have been that the hot and cold water randomly spurted so that a person taking a shower regularly ran the risk of being scalded. In 2005, fifteen years later, the Managing Agent applied to restore the rent. Katz opposed such application contending that the water problem continued. DHCR conducted an inspection and, agreed with Katz, concluding that the condition had not been remedied, and denied the application by Order of February 16, 2006. Katz' assertion that the condition remains unchanged to this day is not challenged by Respondents.

Finding itself blocked from raising rent under such application, a new application was made to increase Katz' rent for "equitable reasons" on the basis of Rent and Eviction Regulations ("Regulations") §2202.22(b)(b). Such section merely states "where the maximum rent must be fixed by the administrator, he may issue an order fixing or establishing the maximum rent for comparable housing accommodations or other factors bearing on the equities involved consistent with the purpose of the Rent Laws." In reaching its finding, DHCR's decision recited that its actions were based on the "equities involved." This application was granted by the

Rent Administrator. Katz filed a PAR, and DHCR rejected Katz' PAR, finding

> "Under the specific facts of this case, in which the MCR has often been increased by order that were not challenged by the tenant, in which the tenant has not filed any noncompliance proceeding attempting to remedy the allegedly continuing hot water situation for more than 15 years, and in which the tenant has enjoyed, and continued to enjoy, a 7.5% reduction in the MCR based upon EE220054HW issued in 1990, the rent administrator properly did not continue the rent freeze set forth in order EE220054HW issued in 1990."

Katz now seeks to set aside DHCR's decision on the grounds that it was arbitrary and capricious. This Court concurs.

Katz was entitled to certain services under rent control and as he is still under rent control he is still entitled to those services. Here, DHCR found in 1990 that the plumbing in his apartment was faulty, and penalized the owner until the condition was fixed. DHCR itself found, by inspection, that as recent as February 15, 2006, the condition has continued. The condition remains uncured.

While the Regulations cited do permit an equitable resetting of rent under extraordinary circumstances, equity requires the person seeking equity to have clean hands and do equity. Here, the Managing Agent failed to cure the water problem for seventeen years. Any "inequitable rent" is therefore of its own doing and as the 1990 rent reduction order may, by its term, be removed as soon as the Managing Agent

fixes the water pipes in Katz' Apartment, the Managing Agent cannot invoke Regulations §2202.22(b)(g) to avoid its continuing obligation to maintain services under GBL §352-eeee(3) and Rent Control. DHCR froze the rent on the Apartment as a method of enforcing such obligation.

DHCR's finding that Katz should have continued to complain is without merit. The 1990 order made it clear that the condition had to be cured and that when it was cured, the rent would be restored. The order imposed no obligation for Katz to continue to complain. That Katz has continued to live with a plumbing condition which may require him to take baths instead of taking showers to avoid being scalded is no excuse for the Managing Agent's failure to provide Katz with the services to which he is entitled by rent control and by the Plan.

The Decision of DHCR denying the PAR is therefore vacated and remanded to DHCR for further proceedings.

This is the Decision and Order of the Court.

DATED: JANUARY 7, 2008
NEW YORK, NEW YORK

Hon. Lewis Bart Stone
Justice of the Supreme Court