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

PRESENT: HON. MICHAEL D. STALLMAN PART 7

Justice

Index Number : 104539/2008

SUTTON HOUSE ASSOCIATED

vs

NEW YORK STATE D.H.C.R.

Sequence Number : 001

ARTICLE 78

INDEX NO.

MOTION DATE 12/11/08

MOTION SEQ. NO. 001

MOTION CAL. NO. 102

~~The following papers, numbered ... to ... were read on ...~~ Is motion to/for Article 78 petition

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits A-J	1-2
Answering Affidavits — Exhibits A-G	3-4
Replying Affidavits + Return (copy sealed)	5

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ~~ordered that this motion~~ adjudged that the Article 78 petition is decided in accordance with the annexed memorandum decision and judgment.

HON. MICHAEL D. STALLMAN

Dated: 2/9/09

J.S.C.

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

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 7

----------X

In the Matter of the Application of SUTTON HOUSE ASSOCIATED,

Petitioner,

- against -

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL,

Respondent.

----------X

Index No.: 104539/08

DECISION AND JUDGMENT

HON. MICHAEL D. STALLMAN, J.:

In this CPLR Article 78 proceeding, petitioner seeks annulment of an order of respondent New York State Division of Housing and Community Renewal (DHCR) that denied petitioner's request to modify its building services in consideration of a reduction in the legal regulated rent.

BACKGROUND

In December, 1993, several rent-regulated tenants in the subject building filed with DHCR for a rent reduction based on reduced building-wide services. After several administrative reviews and remands, the matter was finally resolved in 2002, whereby the tenants received a rent reduction because of reduced doorman services at one of the building's entrances.

On July 14, 2003, landlord filed a modification application, pursuant to 9 NYCRR § 2522.4 (d), seeking to have DHCR authorize it to maintain the then current level of door attendance, the level at which DHCR had already determined constituted reduced services, in

consideration of a rent rollback and unfreezing of the rent. The DHCR Rent Administrator denied the application, and landlord filed a Petition for Administrative Review (PAR).

On January 30, 2008, the DHCR Deputy Commissioner denied landlord's PAR on two grounds: (1) landlord raised new issues in the PAR which were not part of its application and therefore could not be considered; and (2) the reduced level of services was contrary to the Rent Stabilization Code.

Landlord now seeks judicial review of DHCR's determination.

DISCUSSION

"It is well settled that a court may not substitute its judgment for that of the board or body it reviews *unless* the decision under review is arbitrary and unreasonable and constitutes an abuse of discretion [internal quotation marks and citation omitted] [emphasis in original]." *Matter of Pell v Board of Education of Union Free School District No. 1 of Towns of Scarsdale & Mamaronack, Westchester County*, 34 NY2d 222, 232 (1974). The test is whether the action taken is justified or without foundation in fact. *Id.* at 231. "Arbitrary action is without sound basis in reason and is generally taken without regard to the facts." *Id.*

A court's

> "review of DHCR's interpretation of the statutes it administers is limited. 'Where the interpretation of a statute or its application involves knowledge and understanding of underlying operational practices or entails an evaluation of factual data and inferences

> to be drawn therefrom, the courts regularly defer to the governmental agency charged with the responsibility for administration of the statute. If its interpretation is not irrational or unreasonable, it will be upheld' [internal citation omitted]."

Matter of Ansonia Residents Association v New York State Division of Housing and Community Renewal, 75 NY2d 206, 213 (1989).

Landlord maintains that DHCR's action is arbitrary and capricious, because landlord is only seeking to have the status quo authorized, for which it is willing to allow a reduction in the lawful rent. The result of this application, if granted, would be to have the rents unfrozen at this lower level, thereby allowing for future rent increases.

It has already been judicially determined, in the review of the earlier rent reduction application by the tenants, that the reduction in doorman service in this building "is not de minimus, which was based on the finding that there had been no doormen at the lower lobby 60 to 70% of the time, resulting in inconvenience and lack of security ... ." *Matter of Sutton House Associates v New York State Div. of Housing and Community Renewal*, 294 AD2d 125, 125 (1st Dept 2002). It is for DHCR to determine what constitutes a required service (*Matter of 230 East 52nd Street Assocs. v New York State Div. of Housing and Community Renewal*, 131 AD2d 349 [1st Dept 1987]), and it has broad discretion in evaluating and

interpreting the facts presented to it. *Matter of 333 East 49th Assocs., LP v New York State Div. of Housing and Community Renewal*, 40 AD3d 516 (1st Dept), *affd* 9 NY3d 982 (2007).

In DHCR's denial of landlord's instant PAR, the Deputy Commissioner stated that, in its application for rent modification, landlord failed to submit any evidence of implementing security measures to replace the lower lobby doorman coverage. Landlord submitted evidence of such security measures only in its PAR, which, upon administrative review, could not be considered. Further, landlord's position that the modification would only recognize the reduced services with which the tenants have been living for numerous years, the Deputy Commissioner found contrary to the Rent Stabilization Code § 2522.4 (d) and (e).

Landlord cites *Matter of Grenadier Realty Corp. v State of New York Division of Housing and Community Renewal* (225 AD2d 425 [1st Dept 1996]) for the proposition that the service reductions do not infringe, in any meaningful way, on the tenants' enjoyment of the premises. However, in *Grenadier*, the alleged service reductions involved reduced laundry room and swimming pool hours, and increased security that curtailed messengers from freely roaming the building. In the instant matter, the reduced services decrease building security, and such services have already been judicially determined to be substantial. *Matter of Sutton House Associated*, 294 AD2d 125, *supra*.

Consequently, the Court finds that DHCR had a rational basis to have denied landlord's application.

CONCLUSION

Based on the foregoing, it is

ADJUDGED that the petition is denied and the proceeding is dismissed.

Dated: February 10, 2009
New York, New York

ENTER:

Michael D. Stallman, J.S.C.