

PWV Acquisition, LLC v Towns
2014 NY Slip Op 31554(U)
June 17, 2014
Supreme Court, New York County
Docket Number: 101344/13
Judge: Alice Schlesinger
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

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

Index Number : 101344/2013

PWV ACQUISITION, LLC.

vs

TOWNS, DARRYL C.

Sequence Number : 001

ARTICLE 78

PART A PART 16

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is *Article 78 petition*
is denied and the proceeding is
dismissed in accordance with the
accompanying memorandum decision.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

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

Dated: JUN 17 2014

Alice Schlesinger, J.S.C.
ALICE SCHLESINGER

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 16

-----X
In the Matter of the Application of

PWV ACQUISITION, LLC,
Petitioner,

Index No. 101344/13
Motion Seq. No. 001

-against-

DARRYL C. TOWNS, as Commissioner of the
New York State Division of Housing and
Community Renewal and NEW YORK STATE
DIVISION OF HOUSING AND COMMUNITY
RENEWAL,
Respondents,

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

-----X
SCHLESINGER, J:

Petitioner PWV Acquisition, LLC, is the owner and landlord of the 1100 unit residential housing complex on the Upper West Side of Manhattan known as Park West Village. PWV is seeking here to annul the August 2, 2013 decision rendered by respondent New York State Division of Housing and Community Renewal (DHCR), which reduced the rents of forty-seven tenants at the complex based on a finding that certain services were not being maintained. DHCR has opposed the Article 78 petition, asserting that the agency's decision is rationally based on the administrative record. Although the tenants did not submit papers in this proceeding, they actively participated in the proceedings before DHCR and some representatives appeared before this Court for oral argument, urging that DHCR's decision be upheld.

Background Facts

By complaint filed with DHCR on November 28, 2011, various Park West tenants requested an order reducing their rent stabilized rents on the ground that the owner had

failed to maintain all services required by the rent laws. In the multi-page complaint, signed by the various tenants, the tenants detailed their claims of reduced services in the common areas of the building, such as the hallway, the compactor room, the roof, and the laundry room (DHCR Administrative Return, Exh A-1).

After the owner was given an opportunity to be heard, and after DHCR conducted inspections on May 29, May 30 and June 1, 2012 and took photographs, DHCR's District Rent Administrator (DRA) issued an Order Reducing Rents dated July 12, 2012 (A-7). The Order was based on the finding that the following three services were not maintained:

- 1) Janitorial services are not being maintained in the Building's Hallways. The Hallway carpeting is dirty, stained and has some rubbed/worn areas.
- 2) Janitorial services are not being maintained in the compactor room. The trash barrel is overflowing with garbage and there is assorted rubbish on the floor.
- 3) The building's roof has areas of tar paper which are uneven and bulging. The roof also has water accumulation in various areas.

In addition, the DRA rejected certain of the tenants' complaints and found that services were being maintained in connection with the Main Entry door, the elevators, the laundry room, and security.

As a result of the reduced services, the DRA reduced the legal regulated rents of the complaining tenants to the level in effect prior to the most recent guidelines increase for the tenant's lease which commenced before the effective date of the Order, January 1, 2012. Additionally, the Order barred the owner from collecting any future rent increases until it applied for, and DHCR issued, an order restoring rents based on a finding that the services at issue had been fully restored. Last but not least,

the DRA in the Order directed the owner to refund monies due the tenants as a result of the retroactive rent reduction within thirty days of the date of the Order (i.e., by January 2013), failing which the tenants were authorized to deduct the amount from future rents until the total amount was refunded.

The owner then filed a Petition for Administrative Review (PAR) to appeal the DRA Order (B-1). Regarding the two items relating to janitorial services, the owner argued that the findings were factually incorrect, that any issues were attributable to misuse of the areas by the tenants, and that, in any event, any failure to maintain services was *de minimus* and insufficient to warrant a rent reduction. Regarding the roof, the owner argued that, absent proof of leaks and water damage, no rent reduction was warranted. The tenants opposed the PAR, disputing the owner's allegations and providing more details to support their claims (B-4).

DHCR issued an Order on August 2, 2013 granting the PAR in part (B-5). Regarding the janitorial services, DHCR rejected the owner's appeal, concluding that the factual findings were amply supported by the inspections and that the conditions were not *de minimus* and warranted a rent reduction. However, as to the roof, DHCR agreed that no rent reduction was warranted based on the pooling of water, as the inspector had not found any leaks nor any dangerous or hazardous conditions.

This Article 78 proceeding ensued, with the owner asserting claims similar to those asserted in the administrative proceeding.

Discussion

Pursuant to Section 26-514 of the Rent Stabilization Law, the owner is required to maintain services to be eligible for a rent increase, and DHCR is obligated to issue

an order reducing rents upon a finding that required services are not being maintained. Included among “required services” are janitorial services, the removal of refuse and the general maintenance of common areas. Rent Stabilization Code § 2520.6(r). The First Department has upheld the mandatory rent reduction provisions in the rent regulatory scheme. *ANF Co. v DHCR*, 176 AD2d 518 (1st Dep’t 1991). The First Department has also upheld a tenants’ building-wide rent reduction for compactor rooms that, like the rooms here, were dirty with garbage overflowing, deferring to the agency’s broad discretion and expertise in determining what constitutes a “required service” that the owner must maintain to receive a rent increase. *333 East 49th Assoc., LP v DHCR*, 40 AD3d 516 (1st Dep’t 2007), *aff’d* 9 NY3d 982. As the tenants here asserted in detail that the conditions found by the inspector impacted them, this Court cannot say that it was arbitrary and capricious for the agency to find that the conditions were not *de minimus*.

What is more, as to each of the particular conditions found in this case, the agency’s findings were amply supported by the three inspections conducted by DHCR’s inspectors. The inspector’s findings were documented in reports and photographs which were included in the administrative record. As DHCR correctly notes in its opposition papers here, the owner failed to submit persuasive evidence to the agency to somehow show that the inspector’s findings and photographs were inaccurate. The factual findings have a rational basis in the record and are entitled to judicial affirmance here. *Oriental Blvd. Co. v Conciliation and Appeals Board*, 92 AD2d 470 (1st Dep’t 1983), *aff’d* 60NY2d 633 (1983). Indeed, the courts typically give great weight to the findings made during on-site physical inspections. *Howard-Carol Tenants’ Association v*

* 6]
Conciliation and Appeals Board, 64 AD2d 546 (1st Dep't 1978), *aff'd* 48 NY2d 768 (1979).

Contrary to the owner's claim, the agency is not prohibited by DHCR Fact Sheet #37 from issuing a rent reduction in this case. While the Fact Sheet does list some conditions that oftentimes are *de minimus* and not worthy of a rent reduction, the Fact Sheet specifically states that it is neither all inclusive nor dispositive but rather is intended as a guideline for the agency to consider. Thus, the Fact Sheet states that "there may be circumstances where a condition although included on the schedule, will nevertheless be found to constitute a decrease in a required service." (See Exh B to DHCR Answer).

Similarly misguided is the owner's reliance on Rent Stabilization Code § 2523.4(e) to argue that the conditions at issue are, by definition, *de minimus* and not worthy of a rent reduction. First and foremost, that section defines *de minimus* conditions as "those that have only a minimal impact on tenants [and] do not affect the use and enjoyment of the premises" Here, the tenants disputed the owner's claim of regular maintenance and provided detailed statements of the impact of the conditions on their use and enjoyment of the premises.

Further, the Code provision states that "there may be circumstances where a condition, although included on the schedule, will nevertheless be found to constitute a decrease in a required service." In light of the detailed tenant complaints, which were substantiated by DHCR during three separate inspections on three separate dates, the agency's finding of a decrease in services was wholly consistent with the terms of the Rent Stabilization Code and Law and not arbitrary or capricious in any way. No basis has been stated to annul DHCR's Order.

Finally, as was done at oral argument, the Court here urges the owner to promptly comply with the terms of the DRA Order directing a refund of rents. Should the owner fail to do so, the tenants are authorized to utilize the remedy explained by the DRA at the conclusion of the July 12, 2012 Order. As previously noted, the rent reduction remains in effect until the owner restores all services and applies for and is granted by DHCR an order restoring the rents. As such an order may well be retroactive, the tenants are encouraged to appropriately budget their rent monies.

Accordingly, it is hereby

ADJUDGED that the Article 78 petition is denied and this proceeding is dismissed. The Clerk may enter judgment accordingly.

Counsel for DHCR shall promptly pick up the Administrative Record from the Part Clerk in Room 222 at the courthouse at 60 Centre Street.

Dated: June 17, 2014

JUN 17 2014



J.S.C.
ALICE SCHLESINGER

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).