904 Tower Apt. LLC v Cuomo
2014 NY Slip Op 33493(U)
May 23, 2014
Supreme Court, New York County
Docket Number: 105022/2010
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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904 TOWER APARTMENT LLC and MADISON APARTMENT 905 LLC,

Petitioners

- against -

ANDREW CUOMO, Attorney General of the State of New York,

Respondent,

MARK HOTEL SPONSOR LLC,

Intervenor-Respondent

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Index No. 105022/2010

DECISION AND ORDER

FILED
JUN 18 2014
COUNTY CLERK'S OFFICE
NEW YORK

LUCY BILLINGS, J.S.C.:

I. INTRODUCTION

Petitioners, purchasers of two suites in a cooperative for which intervenor-respondent Mark Hotel Sponsor LLC was the sponsor, seek to vacate a determination by respondent attorney General of the State of New York dated January 15, 2010, concluding that petitioners forfeited to the sponsor their $2,593,750.00 downpayment for the suites. The sponsor has moved to intervene in the proceeding, C.P.L.R. §§ 1012(a), 7802(d), and to dismiss the amended petition because it fails to state a claim under C.P.L.R. § 7803(3) and fails to join a necessary party, the sponsor. C.P.L.R. §§ 3211(a)(7) and (10), 7803(3), 7804(f). If the court remands the proceeding to respondent, the sponsor moves for permission to appeal. C.P.L.R. § 5701. Petitioners have cross-moved to extend their time to serve their notice of the

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amended petition and their amended petition on the sponsor and for disclosure regarding the sponsor's actual notice of this proceeding. C.P.L.R. §§ 306-b, 408.

In a stipulation dated June 21, 2013, the parties consented to the sponsor's intervention, and petitioners withdrew their cross-motion for disclosure. At oral argument July 31, 2013, respondent withdrew its objection to petitioners' failure to sign their verified amended petition. For the reasons explained below, the court grants the sponsor's motion to dismiss the amended petition. C.P.L.R. §§ 3211(a)(7), 7803(3), 7804(f).

II. THE SPONSOR'S MOTION TO DISMISS THE PETITION

Since the parties consented to the sponsor's intervention in the proceeding, its motion to dismiss the amended petition based on petitioners' failure to join a necessary party, C.P.L.R. §§ 1003, 3211(a)(10), and petitioners' cross-motion to extend their time to serve the sponsor, C.P.L.R. § 306-b, are moot.

A. The Administrative Proceeding

Petitioners applied to respondent May 22, 2009, for return of their $2,593,750.00 downpayment held in escrow. 13 N.Y.C.R.R. § 21.3(l)(3)(vii). New York General Business Law § 352-e and its implementing regulations authorize the State Attorney General to determine disputes regarding downpayments toward purchases of cooperative units that have required the filing of an offering plan with the Attorney General. 13 N.Y.C.R.R. § 21.3(l)(3)(viii)(a). See Madison Park Owner LLC v. Schneiderman, 93 A.D.3d 555 (1st Dep't 2012); Dunlop Dev. Corp. v. Spitzer, 26

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A.D.3d 180 (1st Dep't 2006). The parties originally focussed on additional financing of $23,345,991.00 for the cooperative's construction, which the sponsor secured on April 1, 2009, and do not dispute that the sponsor failed to amend the offering plan to reflect this loan as required. 13 N.Y.C.R.R. § 18.5(a).

Respondent's determination addressed petitioners' claim that the sponsor's failure to disclose the additional financing constituted a material omission entitling petitioners to rescission of their purchase agreement. In denying petitioners' application, respondent explained that:

> Seller asserts, and Purchasers do not dispute, that these loans are "subordinate to the rights of the Cooperative and each and every proprietary lease holder to remain, undisturbed, at the Property [Co-Tenancy and Reciprocal Operating Agreement] and each and every Proprietary Lease entered into by the Cooperative." Response at 7. Consequently, Seller's obtaining of additional financing would not, even if included in an amendment submitted to and accepted for filing by the Attorney General, be "a substantial amendment to the offering plan that adversely affects the purchasers." 13 NYCRR § 18.5(a). Purchasers' further claim that the subordination of the mortgages is irrelevant because of "the additional liens on the building" does not change this result, and is in any event speculative.

Aff. of David A. Pellegrino in Opp'n to Mot. to Dismiss Ex. 3, at 5.

A further ground on which petitioners claim entitlement to rescission of their purchase agreement is the sponsor's unreadiness to close the sale due to its alleged failure to obtain a zoning designation from the New York City Department of Buildings (DOB) that petitioners' suites were for unlimited stays. Respondent's determination addressed this claim by

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pointing out that the purchase agreement, pursuant to a DOB ruling, authorized the sponsor itself to designate suites for unlimited stays, by simply filing a written designation with DOB, and required the sponsor to do so before or at the closing. Respondent denied petitioners' application on this ground by concluding that petitioners were precluded from claiming the sponsor's noncompliance with the designation requirement, because the sponsor was allowed to comply at the closing, for which petitioners never appeared. Id. at 6-7.

B. Applicable Standards

The court may vacate an administrative determination if it "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion." C.P.L.R. § 7803(3). See Flacke v. Onondaga Landfill Sys., 69 N.Y.2d 355, 363 (1987); CRP/Extell Parcel I, L.P. v. Cuomo, 101 A.D.3d 473 (1st Dep't 2012); Slesinger v. Department of Hous. Preserv. & Dev. of City of N.Y., 39 A.D.3d 246 (1st Dep't 2007). The court may set aside an administrative determination as arbitrary if it is "without sound basis in reason or regard to the facts." Peckham v. Calogero, 12 N.Y.3d 424, 431 (2009); Testwell, Inc. v. New York City Dept. of Bldgs., 80 A.D.3d 266, 276 (1st Dep't 2010). See Goodwin v. Perales, 88 N.Y.2d 383, 392 (1996); Pell v. Board of Educ., 34 N.Y.2d 222, 231 (1974); Soho Alliance v. New York State Liq. Auth., 32 A.D.3d 363, 364 (1st Dep't 2006). In reviewing an administrative determination, the court may not substitute its judgment for the

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administrative body conducting factual evaluations in areas in its expertise. Peckham v. Calogero, 12 N.Y.3d at 431; Flacke v. Onondaga Landfill Sys., 69 N.Y.2d at 363; City Servs., Inc. v. Neiman, 77 A.D.3d 505, 507 (1st Dep't 2010); Cuccia v. Martinez & Ritorto, P.C., 61 A.D.3d 609, 610 (1st Dep't 2009). See Testwell, Inc. v. New York City Dept. of Bldgs., 80 A.D.3d at 276. In evaluating whether a rational basis supports a determination, the court may consider only the grounds the agency invoked. Rizzo v. New York State Div. of Hous. & Community Renewal, 6 N.Y.3d 104, 110 (2005); Scherbyn v. Wayne-Finger Lakes Bd. of Coop. Educ. Servs., 77 N.Y.2d 753, 758 (1991); Weill v. New York City Dept. of Educ., 61 A.D.3d 407, 408 (1st Dep't 2009); Slesinger v. Department of Hous. Preserv. & Dev. of City of N.Y., 39 A.D.3d 246.

C. Respondent's Determination Regarding the Additional Financing

The sponsor must allow petitioners rescission if "there is a substantial amendment to the offering plan that adversely affects the purchasers." 13 N.Y.C.R.R. § 18.5(a)(5). See 13 N.Y.C.R.R. § 21.5(a)(6). A "substantial amendment" includes "an increase . . . in the mortgage amount." 13 N.Y.C.R.R. § 18.5(a)(7). See Knopf v. Abrams, 174 A.D.2d 915, 917 (3d Dep't 1991). Thus the only issue is whether respondent's determination that the additional financing did not adversely affect petitioners, because the lender's security interest in the Mark Hotel was subordinated to the rights of the cooperative and purchasers of units, was arbitrary. Parties to a transaction involving real

property, such as this additional financing for renovation of the Mark Hotel, may agree to subordinate the parties' rights in the property to the rights of other interested parties, here the cooperative and purchasers of units. See Dime Sav. Bank v. Pesce, 93 N.Y.2d 939, 941 (1999); PETRA CRE CDO 2007-1, Ltd. v. Morgans Group LLC, 84 A.D.3d 614 (1st Dep't 2011).

Petitioners claim that the additional financing, once they learned about it, and despite its subordination to their rights, raised doubts concerning the sponsor's financial ability to complete the Mark Hotel's renovation into luxury cooperative units, thus heightening risks that they would not receive the luxury accommodations they bargained for. A determination whether the omission of this additional financing from the offering plan was material requires consideration of the undisclosed facts' impact on the total mix of relevant information, State of New York v. Rachmani Corp., 71 N.Y.2d 718, 727 (1988); Academy St. Assoc. v. Spitzer, 50 A.D.3d 271, 272 (1st Dep't 2008), and is necessarily a factual question. See 2 Fifth Ave. Tenants Assn. v. Abrams, 183 A.D.2d 577, 578 (1st Dep't 1992); Green Harbour Homeowners' Assn., Inc. v. G.H. Dev. & Constr., Inc., 14 A.D.3d 963, 967 (3d Dep't 2005). While the sponsor's inability to perform its obligations under the parties' purchase agreement is material, Academy St. Assoc. v. Spitzer, 50 A.D.3d at 272; State of New York v. Manhattan View Dev., 191 A.D.2d 259 (1st Dep't 1993), the total mix of relevant information includes petitioners' notice, through the offering

plan and its amendments, of the potential for further loans and renovation work after their purchase closed. The offering plan also expressly disclaimed any assurance that the sponsor would be able to sell all the cooperative units and thus realize that projected revenue to repay the indebtedness. Despite that knowledge, petitioners executed their purchase agreements.

The purpose of the requirement that the sponsor disclose material facts is to afford purchasers "an adequate basis upon which to found their judgment." N.Y. Gen. Bus. Law § 352-e(1)(b); 13 N.Y.C.R.R. § 21.1(b); People v. Lurie, 249 A.D.2d 119, 121 (1st Dep't 1998). Given that purpose and the information in the offering plan and its amendments, respondent rationally concluded that the sponsor's nondisclosure of the additional financing did not bear on petitioners' decision to purchase the cooperative units. State of New York v. Rachmani Corp., 71 N.Y.2d at 728. This conclusion was particularly warranted in light of petitioners' failure to seek rescission after the sponsor's disclosure of loans for $83.5 million and $43.27 million in the first amendment to the offering plan filed June 6, 2008.

While petitioners insist that the sponsor may not raise claims regarding the offering plan's contents that respondent did not address, those contents were part of the total mix of information. Respondent discussed the offering plan in his determination, demonstrating that he considered the offering plan. Petitioners, for their part, are presumed to know

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previously disclosed information. State of New York v. Rachmani Corp., 71 N.Y.2d at 727.

Petitioners also contend that the timing of the undisclosed additional financing, secured on the eve of the scheduled closing, rendered the undisclosed financing materially adverse, as it heightened the risk of late project completion as well as the risk of inadequate finances to complete the hotel renovation. Petitioners fail to show that their purchase agreement allowed them to rescind the agreement under these circumstances. In fact petitioners acknowledge that, while purchasers might hesitate and reassess their decision to purchase if advised of the additional financing, petitioners' agreement required closing regardless of project completion. Even had the sponsor's conduct amounted to a breach of its performance obligations under the purchase agreement, petitioners further fail to demonstrate that any such breach was willful and so fundamental and substantial as to defeat the agreement's purpose and entitle them to rescind the agreement on that ground. Bisk v. Cooper Sq. Realty, Inc., 115 A.D.3d 419 (1st Dep't 2014); Jacobs Private Equity, LLC v. 450 Park LLC, 22 A.D.3d 347 (1st Dep't 2005); Lasker-Goldman v. City of New York, 221 A.D.2d 153 (1st Dep't 1995); North Star Contr. Corp. & Tern Star v. City of New York, 203 A.D.2d 214, 215 (1st Dep't 1994). See Eldridge v. Shaw, 99 A.D.3d 1224, 1225-26 (4th Dep't 2012).

In sum, petitioners have not shown that the purchase agreement entitled them to rescission under the alleged

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heightened risks of late project completion and of inadequate finances to complete the renovation. Absent such a showing, and given the warnings in the offering plan and its amendments regarding additional financing and the possibility of noncompletion, a rational basis supports respondent's conclusion that these risks were not materially detrimental to petitioners.

D. Respondent's Determination Regarding the Sponsor's Readiness to Close and Petitioners' Default on the Closing Date

Petitioners further claim that the sponsor never notified them of any date for the closing when the sponsor was ready to close and petitioners defaulted. The parties agree a closing was scheduled for April 16, 2009, and petitioners then requested an adjournment of that scheduled closing because they had not received an offering plan amendment accepted by respondent, declaring the offering plan effective. The sponsor initially granted an adjournment to April 23, 2009, but then rescinded the adjournment and maintained that petitioners defaulted.

Petitioners no longer claim, as they did before respondent, that the sponsor failed to afford them adequate advance notice of the closing. They claim only that, because of the absence of both the effectiveness amendment accepted by respondent and the zoning designation from DOB, the sponsor was not ready to close April 16, 2009. Although petitioners do not explicitly articulate why they failed to appear for a closing April 16, 2009, insofar as their nonappearance was an anticipatory breach based on the sponsor's unreadiness or inability to close, none of

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its conduct that they identify demonstrates definitely and unequivocally its intent not to perform, so as to excuse their own performance. Viacom Outdoor, Inc. v. Wixon Jewelers, Inc., 82 A.D.3d 604 (1st Dep't 2011). See Kaplan v. Madison Park Group Owners, LLC, 94 A.D.3d 616, 619 (1st Dep't 2012); Jacobs Private Equity, LLC v. 450 Park LLC, 22 A.D.3d 347.

Petitioners claim a further reason why the sponsor was not ready to close was its failure to obtain a zoning designation from DOB that petitioners' suites were for unlimited stays. As set forth above, however, a DOB ruling recognized in the purchase agreement authorized the sponsor to designate suites for unlimited stays by filing the sponsor's own written designation, and the purchase agreement simply required that filing before or at the closing. Respondent rejected this ground for rescission by rationally concluding that petitioners' nonappearance for a closing precluded their claim of noncompliance with a requirement that allowed compliance up through the closing. In fact, the sponsor satisfied the purchase agreement's conditions when on May 6, 2009, at which point no closing yet had occurred, DOB accepted the sponsor's filing of an "ALT II Application," V. Answer of Intervenor-Resp't ¶ 64, which designated petitioners' suites for unlimited stays.

To claim the sponsor's breach of the purchase agreement as a ground for return of petitioners' downpayment, moreover, petitioners must demonstrate that they themselves were ready, willing, and able to perform at the closing. Pesa v. Yoma Dev.

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Group, Inc., 18 N.Y.3d 527, 532 (2012); 1861 Capital Master Fund, LP v. Wachovia Capital Mkts., LLC, 95 A.D.3d 620, 621 (1st Dep't 2012). See 3801 Review Realty LLC v. Review Realty Co. LLC, 111 A.D.3d 509, 510 (1st Dep't 2013); Hossain v. Selechnik, 107 A.D.3d 549 (1st Dep't 2013); Nassau Beekman LLC v. Ann/Nassau Realty LLC, 105 A.D.3d 33, 38-39 (1st Dep't 2013); Donerail Corp. N.V. v. 405 Park LLC, 100 A.D.3d 131, 138 (1st Dep't 2012). Even if the evidence demonstrated grounds for an anticipatory breach by petitioners, excusing their actual performance by closing their purchase, their nonappearance at the closing April 16, 2009, demonstrated they were not ready, willing, and able to close their purchase and thus perform as required. Hossain v. Selechnik, 107 A.D.3d 549; Nassau Beekman LLC v. Ann/Nassau Realty LLC, 105 A.D.3d at 39; Donerail Corp. N.V. v. 405 Park LLC, 100 A.D.3d at 138. See Pesa v. Yoma Dev. Group, Inc., 18 N.Y.3d at 533-34. On this basis, and since the sponsor afforded petitioners 30 days to cure their default by May 27, 2009, to which petitioners responded by refusing to close, neither the circumstances surrounding the April 16 closing date nor the condition regarding the suites' designation entitles petitioners to rescission of their purchase agreement or to return of their downpayment.

E. Petitioners' Right to Inspect the Suites

Although the original petition claimed the sponsor denied petitioners their right under their purchase agreement to inspect the suites to be purchased before closing the purchase, the

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amended petition does not incorporate the original petition or independently claim such a breach. Nor do petitioners raise such a breach in opposition to the sponsor's motion to dismiss the amended petition. Therefore this claim is no longer before the court.

III. A REMAND FOR CONSIDERATION OF NEW EVIDENCE

As an alternative to a judgment granting the petition, petitioners seek a remand to respondent for his consideration of new evidence. In an order dated October 26, 2012, the court permitted petitioners to amend their petition to request this alternative relief based on evidence that they allege became publicly available through two separate actions involving the sponsor's principals and affiliates. Petitioners claim the sponsor's prior concealment of this evidence, regarding still further financing, beyond the $23,345,991.00 on which respondent's determination focussed, prevented petitioners from presenting the full scope and materiality of the nondisclosures of information adverse to petitioners' interests, to support rescission of their purchase agreements. Petitioners allege that further financing further jeopardized the Mark Hotel's renovation and projected operation, because the financing depended on renovations at two other hotels and required repayment of over $700,000,000 in loans, which could not be repaid through the Mark Hotel's operation. According to petitioners, the sponsor's principals and affiliates already had defaulted on their repayments before the sale of any cooperative units.

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The evidence that became publicly available and that petitioners present regarding financing for the Mark Hotel's renovation, through loans for which two other hotels undergoing renovations were collateral, is not relevant to assessing whether respondent's determination was arbitrary or affected by an error of law. See CRP/Extell Parcel I, L.P. v. Cuomo, 101 A.D.3d at 474. Since this evidence was not before respondent, the court may not consider the evidence. Rizzo v. New York State Div. of Hous. & Community Renewal, 6 N.Y.3d at 110; Weill v. New York City Dept. of Educ., 61 A.D.3d at 408; Slesinger v. Department of Hous. Preserv. & Dev. of City of N.Y., 39 A.D.3d 246. See Matter of Washington, 100 N.Y.2d 873, 876-77 (2003); Luisi v. Safir, 262 A.D.2d 47, 49-50 (1st Dep't 1999). Petitioners do not claim that this evidence was before respondent, but his record of it is inadequate, which might permit the court to consider the parties' reproductions of that evidence. E.g., Hassan v. New York City Dept. of Corr., 105 A.D.3d 601 (1st Dep't 2013); ADC Contr. & Constr. Corp. v. New York City Dept. of Design & Constr., 25 A.D.3d 488, 489 (1st Dep't 2006); Kirmayer v. New York State Dept. of Civ. Serv., 24 A.D.3d 850, 852 (3d Dep't 2005). See C.P.L.R. § 7804(h); Citizens' Envtl. Coalition, Inc. v. New York State Dept. of Envtl. Conservation, 57 A.D.3d 1279, 1280 n.* (3d Dep't 2008). When the administrative record of relevant evidence already is developed sufficiently to provide an adequate basis on which to review the rationality of the administrative body's determination, the court is not authorized to require the

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presentation of further evidence or to order a remand providing a second chance to reach a different determination. Gersten v. 56 7th Ave. LLC, 88 A.D.3d 189, 206 (1st Dep't 2011); Global Tel*Link v. State of N.Y. Dept. of Correctional Servs., 70 A.D.3d 1157, 1159 (3d Dep't 2010).

As to whether petitioners show grounds for a remand for respondent, rather than for the court, to consider the evidence of loans secured by two other hotels, in the October 2012 order, the court laid out the showing required to support a remand. If any circumstances permit the court to order an administrative body to reconsider its determination based on new evidence, rather than when that body's own procedures permit a reopening of its proceeding on such a basis, those circumstances include, at minimum, when the new evidence (1) bore on the claims when previously adjudicated, but (2) was unavailable then. See Matter of Washington, 100 N.Y.2d at 876-77; Douglaston Civic Assn. v. Galvin, 36 N.Y.2d 1, 8-9 (1974). Those circumstances parallel the requirements to defeat the collateral estoppel effect and thus the finality of an administrative body's determination. Clemens v. Apple, 65 N.Y.2d 746, 748 (1985); Ryan v. New York Tel. Co., 62 N.Y.2d 494, 504 (1984). Even assuming parallel criteria would permit a reopening of the administrative proceeding under review here, petitioners fail to meet either criterion.

Petitioners present the affidavits of Simon Elias, the president of Games Lodging LLC, which managed the Mark Hotel, and

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a co-owner of Mark Hotel LLC, which owned the hotel, and of his partner Izak Senbahar. Elias attests that he and Senbahar controlled the entity renovating the Mark Hotel. While Elias and Senbahar further attest to a relationship between the entity developing the Mark Hotel and entities developing two other hotels and to loans secured by the two other hotels and guaranteed by Elias and Senbahar, no evidence shows any further undisclosed mortgages on the Mark Hotel. The loans to which Elias and Senbahar attest and that petitioners only now rely on occurred between 2007 and 2009, before respondent's determination. See Ryan v. New York Tel. Co., 62 N.Y.2d at 504; Douglaston Civic Assn. v. Galvin, 36 N.Y.2d at 9. No evidence indicates, however, that respondent had this evidence within his own offices, at his disposal, yet failed to consider it. See Luisi v. Safir, 262 A.D.2d at 50.

Petitioners nevertheless fail to demonstrate that the evidence they now present was unavailable to present to respondent before he made his determination. Petitioners were purchasing units in the Mark Hotel, owned and managed by Elias's and Senbahar's businesses, and being renovated by their business to house petitioners and other purchasers of the hotel's suites. Petitioners never indicate what measures they undertook to ascertain the financing on which completion of the renovation and operation of the renovated hotel depended or any risks to the renovation and operation. Petitioners never explain why, if Elias and Senbahar were personally knowledgeable about the

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financing and relationships to which these witnesses attest, petitioners were unable to discover these transactions closer to when they occurred. Despite petitioners' charge that the sponsor affirmatively concealed them, petitioners present no evidence to support such a conclusion.

Nor do petitioners claim that their further evidence is so rudimentary or fundamental to whether respondent's determination was within his jurisdiction or rationally based as might permit either respondent or the court to consider the evidence. See C.P.L.R. § 7804(h); Hassan v. New York City Dept. of Corr., 105 A.D.3d 601; ADC Contr. & Constr. Corp. v. New York City Dept. of Design & Constr., 25 A.D.3d at 489; Kirmayer v. New York State Dept. of Civ. Serv., 24 A.D.3d at 852; Poster v. Strough, 299 A.D.2d 127, 138-39 (2d Dep't 2002). In fact, petitioners never directly or specifically show how the loans secured by the two other hotels and guaranteed by Elias and Senbahar adversely affected their purchases, to show even the relevance of this financing to respondent's determination. 13 N.Y.C.R.R. § 18.5(a)(5). See 13 N.Y.C.R.R. § 21.5(a)(6); R & L Realty Assoc. v. 205 W. 103 Owners Corp., 98 A.D.3d 421, 422 (1st Dep't 2012). The undisputed evidence establishes that the loans did not encumber the Mark Hotel in any way. Thus the financing did not represent "an increase . . . in the mortgage amount." 13 N.Y.C.R.R. § 18.5(a)(7). Nor do petitioners present any evidence to explain how that financing nonetheless jeopardized the Mark Hotel's renovation and projected operation, even if the Mark

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Hotel sponsor's principals and affiliates defaulted on their repayments of the loans, a claim for which petitioners also fail to provide any evidentiary support.

For all the above reasons, the court denies petitioners' request for a remand. This denial, however, is without prejudice to their application for a reopening of respondent's proceeding or reapplication to respondent to consider new evidence pursuant to any procedure of respondent that allows such reconsideration. See Matter of Washington, 100 N.Y.2d at 876-77; Douglaston Civic Assn. v. Galvin, 36 N.Y.2d at 8; Auringer v. Department of Bldgs. of City of N.Y., 24 A.D.3d 162, 164 (1st Dep't 2005).

IV. CONCLUSION

Because respondent, in reaching his conclusion, addressed the contentions petitioners' application raised, his determination was not arbitrary. See Chinese Staff & Workers' Assn. v. Burden, 19 N.Y.3d 922, 924 (2012); Salnikova v. Cuomo, 93 A.D.3d 445 (1st Dep't 2012); Soho Alliance v. New York State Liq. Auth., 32 A.D.3d at 364. Therefore the court must uphold respondent's rationally based determination. Peckham v. Calogero, 12 N.Y.3d at 431; Soho Alliance v. New York State Liq. Auth., 32 A.D.3d 363.

Consequently, the court need not address the sponsor's remaining grounds for dismissal. For all the reasons explained above, the court grants intervenor-respondent Mark Hotel Sponsor LLC's motion to dismiss the petition. C.P.L.R. §§ 3211(a)(7), 7803(3), 7804(f). Since the court does not remand the proceeding

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to respondent, intervenor-respondent's motion for leave to appeal is moot and therefore denied. Petitioners' cross-motion to extend their time to serve the sponsor likewise is moot and therefore denied. This decision constitutes the court's order and judgment of dismissal. C.P.L.R. § 7806.

DATED: May 23, 2014

Lucy Billings

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.

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