Matter of Seamans v New York State Dept. of Hous. & Community Renewal
2015 NY Slip Op 32039(U)
October 15, 2015
Supreme Court, New York County
Docket Number: 100490/15
Judge: Jr., Alexander W. Hunter
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EA 10/15/15 E

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

Index Number : 100490/2015

SEAMANS, GREY

vs

NYS DIVISION OF HOUSING

Sequence Number : 001

ARTICLE 78

PART 33

INDEX NO. 100490/15

MOTION DATE

MOTION SEQ. NO. 001

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

Decided in accordance with the Decision and Judgment annexed hereto.

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

Dated: 10/15/15

ALEXANDER W. HUNTER, JR., J.S.C.

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: PART 33

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In the Matter of the Application of

Index No.: 100490/2015

GREY SEAMANS,

Petitioner,

Decision and Judgment

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

-against-

NEW YORK STATE DEPARTMENT OF HOUSING
AND COMMUNITY RENEWAL,

Respondent,

-and-

CENTRAL PARK SOUTH ASSOCIATES, L.L.C.,

Intervenor-Respondent.

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HON. ALEXANDER W. HUNTER, JR.:

The application by Grey Seamans ("petitioner") for an order pursuant to C.P.L.R. Article 78, annulling the order issued on January 20, 2015 under Docket No.: CO410017RT (ZF410883LD) by the New York State Department of Housing and Community Renewal ("DHCR"), which denied his Petition for Administrative Review ("PAR") is denied.

Petitioner is the tenant of record of apartment 3-L, at 240 Central Park South, in New York County (the "subject apartment"). The subject apartment became subject to rent stabilization pursuant to the Rent Stabilization Law ("RSL") of 1969. Subsequently, on July 1, 1980, the subject apartment began receiving J-51 benefits, which lasted until June 30, 2002. On June 15, 2011, Central Park South Associates, LLC ("Owner") filed a petition for High Income Rent Deregulation ("OPD") of the subject apartment pursuant to the Rent Regulation Reform Act of 1993. On February 7, 2014, the DHCR issued a luxury deregulation order decontrolling the subject apartment. In March 2014, the petitioner filed a PAR from the order of deregulation, which was denied on January 20, 2015.

Petitioner now seeks to annul the PAR order on that grounds that it was arbitrary, capricious and contrary to law. Specifically, petitioner contends that the PAR order improperly found that the DHCR could decontrol the apartment pursuant to the luxury deregulation provisions of the RSL §§ 26-504.1 and 26-504.3, since it is undisputed that: (1) the Owner

received J-51 tax benefits for the subject apartment from 1980-2002; and (2) the Owner never provided the petitioner with notice advising him that the apartment was subject to rent deregulation upon the expiration of the tax benefit period as required by RSL § 26-504(c).

The RSL and the Emergency Tenant Protection Act of 1974 ("ETPA") were enacted by the City Council and the legislature of the State of New York, respectively, due to an extremely serious housing emergency in order "to prevent speculative, unwarranted and abnormal increases in rent" and "to forestall profiteering, speculation and other disruptive practices tending to produce threats to the public health, safety and general welfare." **See ETPA § 8622**. "New York state law authorizes certain municipalities to offer tax breaks to property owners that rehabilitate and substantially improve their buildings. In New York City, the so-called 'J-51' program provides multi-year tax exemptions and/or abatements to property owners who complete eligible project." **United States v. WB/Stellar IP Owner LLC, 800 F.Supp. 2d 496, 501-02 (SDNY 2011) affd sub nom. United States v. Glenn Gardens Assoc., L.P., 534 Fed Appx 17 (2nd Cir. 2013)**. "A property receiving J-51 benefits is always subject to rent regulation. If a property is not already subject to rent regulation, the receipt of J-51 benefits triggers the applicability of the RSL to the property." **Id**.

The Rent Regulation Reform Act of 1993 ("RRRA of 1993") provides for the luxury decontrol of certain rent-stabilized apartments. **Roberts v. Tishman Speyer Properties, L.P., 13 N.Y.3d 270, 280 (2009)**. To qualify for luxury decontrol, the rent stabilized apartment's regulated rent must be at least $2000 and occupied by occupants with a combined annual income of more than $250,000, the income threshold was later lowered to $175,000. **Gersten v. 56 7th Ave. LLC, 88 A.D.3d 189, 195 (1st Dept. 2011)**. "The RRRA, however, also provided that luxury decontrol would not apply to units which 'became or become' subject to rent stabilization 'by virtue of receiving' J-51 tax benefits." **Id**.; **See also, RSL §§ 26–504.1, 26–504.2(a)**. Thus, pursuant to RSL § 26-504(c), when a building becomes subject to rent stabilization due to its participation in the J-51 program, the units may not be deregulated upon termination of the J-51 status until either: (1) the first vacancy after the apartment no longer receives benefits; or (2) at the expiration of the tax benefits period provided that the tenant receives notice. **Id**.; **See RSL § 26-504(c)**. However, this notice requirement is not applicable to dwellings that were subject to rent regulation for a reason other than receipt of the J-51 tax benefits. **72A Realty Assoc. v. Lucas, 101 A.D.3d 401 (1st Dept. 2012)**; **Gersten, 88 A.D.3d 189, 195 (1st Dept. 2011)**

In reviewing an administrative agency determination, the court must ascertain whether there is a rational basis for the agency action or whether it is arbitrary and capricious. **See Matter of Gilman v. N.Y. State Div. of Hous. & Cmty. Renewal, 99 N.Y.2d 144, 149 (2002) (citation omitted)**. An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts. **See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 231 (1974)**. If the court finds that the determination is supported by a rational basis, it must sustain the determination even if the court concludes that it would have reached a different result than the one reached by the agency. **Id**. Further, courts must defer to the rational interpretation by an administrative agency of its own regulations in its area of expertise. **See, Salvati v. Eimicke, 72 N.Y.2d 784 (1988)**. The function of the court is exhausted when there is a rational basis for the

conclusion reached...." **Bambeck v. State Div. of Hous. & Cmty. Renewal, Office of Rent Admin., 129 A.D.2d 51, 55 (1st Dept. 1987).**

It is clear from the record that there existed sufficient documentary evidence for the RA to rationally conclude that the subject apartment was properly subject to luxury decontrol in accordance with the RSL. It is undisputed that: (1) the subject apartment was subject to the RSL prior to receiving the J-51 tax benefit; (2) the J-51 tax-benefit expired in 2002, approximately nine years prior to the Owner's petition for OPD; and (3) the petitioner's rent exceeded $2,000 and the total relevant household income exceeded $175,000. Under these circumstances, the question for this court to decide is whether a dwelling that was subject to rent regulation prior to the owner receiving J-51 tax benefit can be subject to luxury decontrol, and if so, is there a notice requirement when the owner applies for luxury decontrol after the J-51 tax benefit has expired.

"The plain language of Administrative Code §11-243 and the [RSL] § 26-504(c) supports the conclusion that the legislature intended to provide that a building that is already regulated when it receives J-51 benefits will continue to be regulated under the original rent-regulation scheme when the tax benefits expire." **Schiffren v. Lawlor, 101 A.D.3d 456, 457 (1st Dept. 2012).** Once the J-51 tax benefits expires, the subject apartment becomes subject to the same terms and conditions as before the receipt of the J-51 tax benefits, and thus is subject to luxury decontrol. **Id.** The question then remains whether it is necessary for the tenant, pursuant to RSL § 26-504(c) to vacate the premises or to receive notice in the lease in order to revert the unit to the status before the receipt of the J-51 tax benefits. This court finds that there is no such notice requirement under RSL § 26-504(c).

RSL § 26-504(c) provides in its last clause that, when a dwelling receiving the benefits of section 11-243 or section 11-244 of the Administrative Code "would have been subject to this chapter or the emergency tenant protection act of nineteen seventy-four in the absence of this subdivision, such dwelling unit shall, upon the expiration of such benefits, continue to be subject to this chapter or the emergency tenant protection act of nineteen seventy-four to the same extent and in the same manner as if this subdivision had never applied thereto." **Rent Stabilization Law § 26-504 (c).** Based on this provision, the subject apartment reverted back to its original rent regulation scheme upon the expiration of its J-51 status in June 2002, as if § 26-504(c) "never applied". Thus, when the owner applied for OPD in 2011, there existed no notice requirement because the J-51 status had long expired. **See, 73 Warren St., LLC v. State Div. of Hous. and Community Renewal, 96 A.D.3d 524, 527 (1st Dept. 2012)** ("The statute also provides that if the building was already regulated when the owner began to receive tax benefits, it continues to be regulated upon expiration of the tax benefits under the statutory scheme that initially gave rise to regulation.").

For the foregoing reasons, this court finds that DHCR's denial of the petitioner's PAR has a rational basis in the record and, hence, is neither arbitrary, capricious nor contrary to the law.

Accordingly, it is hereby

ADJUDGED that the application by the petitioner for an order pursuant to C.P.L.R. Article 78, annulling the Order issued on January 20, 2015 by the DHCR which denied his PAR is denied and the petition is dismissed without costs and disbursements to either party.

Dated: October 15, 2015

ENTER:

ALEXANDER W. HUNTER, JR.
J.S.C.