

Matter of Gianella v Housing Preserv. & Dev. N.Y.C.
2015 NY Slip Op 32107(U)
July 8, 2015
Supreme Court, New York County
Docket Number: 117457/05
Judge: Eileen A. Rakower
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**

PRESENT: **HON. EILEEN A. RAKOWER**
Justice

PART 15

Gianella

INDEX NO. 117457/05

-v-

MOTION DATE _____

Housing Preservation and Development NYC

MOTION SEQ. NO. 3

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
ACCOMPANYING DECISION / ORDER**

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

RECEIVED
JUL 9 2015
GENERAL CLERK'S OFFICE
NYS SUPREME COURT - CIVIL

FILED
JUL 10 2015
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 7/8/15
JUL 08 2015

 J.S.C.

HON. EILEEN A. RAKOWER

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 15

-----X

In the matter of the application

Patricia Gianella, Elected Tenant Representative
Tenants of 165 West 80th Street, New York
New York, 10024,

Plaintiff,

Index No.:

117457/05

Decision and
Order

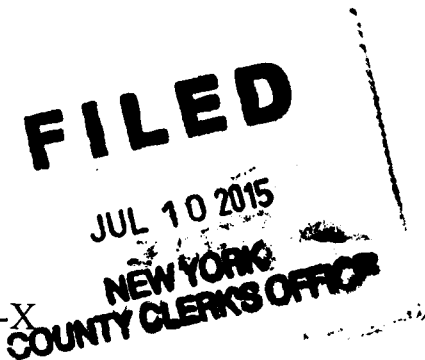
- against -

Mot. Seq.: 03

Housing Preservation and Development N.Y.C.,
Anne Marie Hendrickson, Associate Commissioner,
Nick Stavriotis, Director of Special Projects, Gale
Brewer, Council Woman, District 6,

Defendants.

-----X



HON. EILEEN A. RAKOWER, J.S.C.

This Article 78 proceeding pertains to a multiple dwelling locating at 165 West 80th Street, New York, New York (“Premises”), of which Petitioner is a resident. The Premises is a City-owned parcel of real property that is managed by The Department of Housing Preservation and Development of the City of New York (“HPD”).

In or about 2005, “HPD determined upon a plan to dispose of the Premises, i.e., to convey it back to privately owned, taxpaying status: the Premises would be net-leased for a time and then conveyed to a local not-for-profit social services

provider, The West Side Federation for Senior and Supporting Housing (“WSFSSH”), which would be obligated to retain the Premises as affordable housing.” The proposed plan “was explained to the tenants of the Premises both in writing and at tenants’ meetings.”

Petitioner, elected tenant representative of the tenants of the Premises, commenced this proceeding by way of Order to Show Cause dated December 19, 2005, seeking to enjoin Respondents from taking any steps to carry out the challenged determination. Justice Stone signed the Order to Show cause and granted the TRO, which restrained Respondents from conveying title or management of the Premises to WFSHH or other third parties. On or about February 22, 2006, Respondents served the answer. The matter was thereafter adjourned. Respondents state that to the best of their recollection, oral argument did not take place on June 16, 2006 (the adjourned return date), nor was the matter submitted for decision. Rather, the parties informed Justice Stone that they were attempting to resolve the matter.

In 2014, Respondents moved to vacate the Temporary Restraining Order granted by Justice Lewis Bart Stone on December 18, 2005 on the grounds that the proceeding is “moot and/or without merit as a matter of law.” Respondents’ motion was denied by Order dated June 6, 2014. The Order stated, “Respondents have failed to demonstrate that the proceeding is “moot and/or without merit” to warrant dismissal. Respondents have not made a proper summary judgment motion. In addition, Respondents have not demonstrated that the case has been abandoned or that Respondents served Petitioner with a demand to resume prosecution pursuant to CPLR § 3216. Accordingly, the case proceeds.”

To date, while the parties have tried to work to settle the case, no settlement has been reached.

Where there was no evidentiary hearing, the appropriate standard of review is whether the agency’s determination was arbitrary and capricious in that it lacked a rational basis. *Nyack Nursing Home v. Dowling*, 230 A.D. 2d 42, 44-45 [3d Dept 1997]. It is well settled that the “[j]udicial review of an administrative determination is confined to the ‘facts and record adduced before the agency’.” (*Matter of Yarborough v. Franco*, 95 N.Y.2d 342, 347 [2000], quoting *Matter of Fanelli v. New York City Conciliation & Appeals Board*, 90 A.D.2d 756 [1st Dept.

1982]). The reviewing court may not substitute its judgment for that of the agency's determination but must decide if the agency's decision is supported on any reasonable basis. (*Matter of Clancy -Cullen Storage Co. v. Board of Elections of the City of New York*, 98 A.D.2d 635,636 [1st Dept. 1983]). Once the court finds a rational basis exists for the agency's determination, its review is ended. (*Matter of Sullivan County Harness Racing Association, Inc. v. Glasser*, 30 N.Y. 2d 269, 277-278 [1972]). The court may only declare an agency's determination "arbitrary and capricious" if it finds that there is no rational basis for the determination. (*Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 231 [1974]).

Here, in or about 2005, the HPD ultimately made a determination that the Premises were to be conveyed to WSFSHH. Plaintiff timely challenged the HPD's determination. Upon review, there was no evidentiary hearing, factual recitation, or a discussion regarding what factors the HPD considered in rendering its determination. As such, it is impossible based on this record to determine whether the HPD's determination was arbitrary or capricious or supported by a rational basis. The matter is remanded to the HPD to enhance the record as to what formed the basis for its determination relating to the disposition of the Premises.

Wherefore it is hereby,

ORDERED that the matter is remanded back to the HPD to enhance the record as to what formed the basis for its determination relating to the disposition of the Premises.

This constitutes the decision and order of the Court. All other relief requested is denied.

Dated: JULY __8__, 2015



Eileen A. Rakower, J.S.C.

FILED
JUL 10 2015
NEW YORK
COUNTY CLERK'S OFFICE