

**Matter of 170 W. 130th St. Tenants Assn. v Torres-Springer**

2018 NY Slip Op 31105(U)

June 4, 2018

Supreme Court, New York County

Docket Number: 160438/2017

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 6

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In the Matter of the Application of the 170 West 130<sup>th</sup>  
Street Tenants Association a/k/a Egbatedo Tenants  
Association; Joyce Moore, Carol Faust, Jamellah Ibeji  
and Fosina Moore,

Index No.  
160438/2017

Petitioners,

Decision and  
Order

For Judgment Pursuant to CPLR Article 78 of the Civil  
Practice Law and Rules Setting Aside the Determination  
of the New York City Development of Housing  
Preservation and Development’s Removal of Petitioners  
From the Tenant Interim Lease (TIL) Program,

Motion Seq. 1

- against -

Maria Torres-Springer as Commissioner of the New York  
City Department of Housing Preservation and Development,

Respondent.

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

Petitioner 170 West 130<sup>th</sup> Street Tenants Association a/k/a Egbatedo Tenants Association (“TA”) is a tenant organization composed of four tenants residing at 170 West 130<sup>th</sup> Street in Manhattan (“Subject Premises”). The four tenants are petitioners Joyce Moore, Carol Faust, Jamellah Ibeji, and Fosina Moore. The Subject Premises were leased to TA from respondent, the New York City Department of Housing Preservation and Development (“HPD”) from November 1, 2001 through August 1, 2017 pursuant to HPD’s Tenant Interim Lease Program (“TIL Program”).

Petitioners bring this Article 78 proceeding to challenge the HPD’s decision, dated June 7, 2017, to terminate the Subject Premises from the TIL Program. Petitioners allege that HPD’s decision “was arbitrary and capricious as to the measure and mode of penalty imposed against the Petitioners,” and “against the

weight of the evidence and was unfair to these struggling seniors who have diligently attempted to comply with the sometimes-unreasonable mandates of the Respondent.” (Verified Petition [“Ver. Pet.”], at ¶¶17-18). Petitioners seek an order setting aside HPD’s determination and restoring their lease and membership in the TIL Program. HPD interposed a Verified Answer to the Petition on January 24, 2018.

#### A. Background/Factual Allegations

In 2001, TA entered into a Tenant Interim Lease (“TIL”) with the City of New York in connection with the Subject Premises (Verified Answer (“Ver. Answer”) at ¶36; Exh. B). The TIL Program, which is run by HPD, “enables tenants of City-owned residential properties to seek ownership of their building” previously acquired by the City through in rem tax foreclosure actions (*id.* at ¶ 23). “If the tenant association demonstrates that it can successfully manage the building, HPD may elect to convert the building into a housing development fund corporation (HDFC) and distribute the shares of the HDFC to the tenants.” (*id.*).

Under the TIL guidelines which a tenant association must abide by, the TA Board is obligated to send monthly financial statements to HPD for the previous month’s finances. (Ver. Answer at ¶39; Exh. D). On June 13, 2016, HPD informed TA that it had failed to submit completed monthly financial reports in a timely manner, and as a result, it had been issued a six month Corrective Action Plan (“CAP”) starting on June 20, 2016. (*id.* at ¶40; Exhs. E and F). The CAP directed TA to submit “[a]ll outstanding monthly financial reports for March and April 2016 ... immediately” and “[c]omplete monthly financial reports ... no later than the 15<sup>th</sup> of each month.” (*id.*). The CAP stated that “[b]y December 20, 2016, all financial reporting must be up to date.” (*id.* at ¶¶ 40-42). The CAP advised that a failure to comply with its directives would result in termination from the TIL Program. (*id.*).

On November 4, 2016, HPD informed TA that the reports submitted for the months of March 2016, May 2016, and June 2016 were incomplete because they were missing required items. (Ver. Answer at ¶46; Exh. H). HPD notified TA that “[s]ince the reports were incomplete ... [HPD] would not accept any additional reports until all missing items are submitted and the report(s) ... are deemed complete.” (*id.*).

On February 24, 2017, HPD sent TA a Notice of Final Update on the CAP and TIL Tenant Association Final Status Update on the CAP. (Ver. Answer at ¶47; Exhs. I and J). HPD notified TA, *inter alia*, that it had failed to comply with TIL's financial reporting requirements since the last complete report submitted was for the month of July 2016. (*id.*). HPD informed TA that it would be afforded "the opportunity to correct and/or dispute the HPD records" at a final compliance session. (*id.*).

On March 15, 2017, HPD notified TA that the final compliance session was scheduled on March 23, 2017. (Ver. Answer at ¶50; Exh. K). On March 15, 2017, TA submitted a financial report for August 2016. (*id.* at ¶ 51, Exh. L). On March 15, 2017, HPD notified TA that the August 2016 was incomplete, and requested that the missing items be submitted. (*id.* at ¶52, Exh. M).

On March 21, 2017, HPD mailed TA's Treasurer a Notice of Failure to Submit Monthly Financial Report. (Ver. Answer at ¶53; Exh. N). In relevant part, the Notice states that the TA had failed to submit a complete financial report for August 2016. (*id.*) On March 23, 2017, HPD notified petitioners that the financial session with HPD was re-scheduled for April 18, 2017. (*id.* at ¶54, Exh. O).

The final session was held on April 18, 2017. (Ver. Answer at ¶56). HPD stated "during the corrective action period, the TA had submitted documentation for 7 months (1/2016 -7/2016)" and "[a]dditional documentation is missing for August 2016." (*id.*, Exh. Q). After the Final Compliance Review Session, on April 18, 2017, HPD granted TA a Conditional Corrective Action Extension so that TA would have additional time to become compliant. (*id.* at ¶57).

On April 26, 2017, HPD sent the Board of Directors of TA a summary of the Final Compliance Review Session. (Ver. Answer at ¶¶60-63; Exh. S). HPD notified TA that it was not compliant with the TIL Program's financial reporting requirement. (*id.*). The summary states, in relevant part:

#### Financial Reporting - NOT COMPLIANT

The TA is non-compliant if two consecutive reports are missing. The last **complete** report submitted by your TA is July 2016. Your TA is not compliant by missing 8 months of **complete** reports. Under HPD's updated financial reporting protocol, until all submitted reports are deemed complete, HPD will not accept subsequent

reports. Further, going forward, HPD will only accept one report at a time. When a submitted report is deemed complete and processed, then HPD will accept the next report. (*id.*).

The April 26, 2017 letter further stated that HPD had granted TA a conditional extension to the CAP until May 31, 2017. (Ver. Answer at ¶¶60-63; Exh. S). HPD directed TA to complete the August 2016 report and submit a complete report for September 2016 by May 31, 2017. (*id.*). HPD informed TA, “If the TA completes the above tasks on time and no new non-compliance issues arise, HPD shall grant another month extension.” (*id.*). HPD stated, “Please be reminded that if the TA becomes non-compliant with other issues within this extension schedule, such non-compliance will nullify this extension schedule and the TA shall be terminated from the TIL program.” (*id.*).

On June 7, 2017, HPD sent TA’s Treasurer a Notice of Failure to Submit Complete Monthly Financial Report. (Ver. Answer at ¶68; Exh. X). HPD informed TA that as of June 7, 2017, TA had not submitted a complete financial report for September 2016, and listed the missing items. (*id.*). On June 8, 2017, HPD sent TA’s board members a 30-day notice to terminate the Net Lease between HPD and TA based upon TA’s failure to submit a complete September 2016. (*id.* at ¶69, Exh. Y). The notice stated, in relevant part:

On April 18, 2017, your Tenant Association (TA) attended a final compliance review session in which we delineated a set of immediate deliverables that were due to HPD by May 31, 2017, and a schedule for financial reporting. As of today, the May 31, 2017 deliverables were not satisfied. As such, HPD is terminating your enrollment in the TIL program as per the final compliance review letter that was issued on April 26, 2017. (*id.*)

On July 14, 2017, HPD sent Petitioners a notice of termination of the Net Lease between the TA and HPD. (Ver. Answer at ¶74-75; Exhs. Z, AA, BB, and CC). The notice “advised that HPD is terminating the Lease in accordance with Section 2.2. thereof, as of August 1, 2017.” (*id.*). The notice also advised Petitioners that they would “remain a legal tenant of the City of New York” and the Subject Building would be transferred to HPD Central Management for management and maintenance.” (*id.*).

Petitioners commenced the instant Article 78 proceeding by Notice of Petition on November 24, 2017, seeking an “order overturning Respondent's determination removing Petitioners from the Tenant Interim Lease Program restoring their interim lease with the City of New York.”

#### B. Discussion

According to CPLR § 217, Article 78 proceedings must be brought “within four months after the determination to be reviewed becomes final and binding upon the petitioner.” CPLR § 217 further provides, “An agency determination is final when the petitioner is aggrieved by the determination.”

HPD argues that the instant Article 78 proceeding is time-barred. HPD asserts that the four month statute of limitations began to run when HPD mailed the final determination, dated June 9, 2017, terminating the Subject Premises from the TIL Program. HPD asserts that Petitioners should have commenced an Article 78 proceeding by October 12, 2017; however, they did not commence the proceeding until November 24, 2017. Petitioners, in turn, argue that statute of limitations did not begin to run until HPD’s termination took effect on August 1, 2017, and the action is therefore timely.

Even assuming that the Petition is timely, the Petition fails because HPD’s determination to terminate the Subject Premises from the TIL Program was rational under the circumstances. In an Article 78 proceeding, the reviewing court “may not substitute its judgment for that of the agency responsible for making the determination, but must ascertain only whether there is a rational basis for the decision or whether it is arbitrary and capricious.” (*Flacke v Onondaga Landfill Systems, Inc.*, 69 N.Y. 2d 355, 363 [1987]).

“An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts.” (*Testwell, Inc. v New York City Dept. of Bldgs.*, 80 AD3d 266, 276 [1st Dept 2010]). Once it is determined that a rational basis exists in the record for the determination, the review process is concluded. (*Matter of Pell v. Bd. of Educ.*, 34 N.Y.2d 222, 231 [1974]). An agency’s interpretation of its own regulations is entitled to great weight and judicial deference. (*Matter of Howard v. Wyman*, 28 N.Y.2d 434, 438 [1971]). Determinations by HPD to terminate tenants’ participation in the TIL Program based on their non-compliance

with the program requirements has been held to be rational. (*See 151 West 140th Street Tenant Ass'n v. New York*, 161 A.D.2d 160, 163 [1st Dept 1990]; *In the Matter of the Application of 264 W. 117th St. Tenant Ass'n v. New York City Dep't of Hous. Pres. & Dev.*, 452372/2017, 2018 WL 2348546, at \*4 [N.Y. Sup. Ct. May 4, 2018]; *In re 159 West 119th St. Tenant Ass'n v. Donovan*, 10722/2015, 2005 WL 8135025 [N.Y. Sup. Ct. August 10, 2015], at \*1).

“The purpose of the TIL program is to prepare tenants for home ownership in an HDFC.” (*In the Matter of the Application of 264 W. 117th St. Tenant Ass'n*, 2018 WL 2348546, at \*4). The record here shows that TA failed to comply with financial reporting requirements of the TIL Program. After months of non-compliance by TA with the financial reporting requirements of the TIL Program, HPD placed the Subject Premises in a CAP. Although TA failed to submit timely and complete monthly financial reports in accordance with the CAP, HPD extended the CAP to May 31, 2017 to give TA another opportunity to become compliant. After TA failed to come into compliance with the TIL Program requirements by May 31, 2017, HPD issued a determination to terminate the Subject Premises' participation in the TIL Program. Under these circumstances and Petitioners' continued non-compliance with the financial reporting requirements of the TIL Program despite many opportunities to become compliant, HPD's determination to remove the Subject Premises from the TIL Program was reasonable, rational, and based on the administrative records and relevant law.

Wherefore it is hereby

ORDERED and ADJUDGED that the petition is denied and the proceeding is dismissed and the Clerk is directed to enter judgment accordingly.

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

Dated: JUNE 4, 2018

  
EILEEN A. RAKOWER, J.S.C.