

Jeong v Jiha
2018 NY Slip Op 31157(U)
May 16, 2018
Supreme Court, New York County
Docket Number: 100807/2016
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: JAMES
Justice

PART 59

JEONG, JINSUNG, ET AL.

INDEX NO. 100807/16

JACQUES JINHA, ET AL.

MOTION DATE _____

MOTION SEQ. NO. 01

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~~ petition is granted in accordance with the attached Memorandum Decision and Order.

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

FILED
MAY 17 2018
COUNTY CLERK'S OFFICE
NEW YORK

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Dated: MAY 16 2018

Debra A. James, J.S.C.
DEBRA A. JAMES

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 NEW YORK COUNTY

PRESENT: HON. DEBRA A. JAMESPART 59*Justice*

-----X

In the Matter of the Application of

INDEX NO. 100807/2016

JEONG, JIN SUNG and MYUNG HEE JEONG,

MOTION DATE _____

Petitioners,

MOTION SEQ. NO. 1

- V -

JIHA, JAQUES as Commissioner of the City of New York
DEPARTMENT OF FINANCE and MID ISLAND L.P. dba TURIAN
MGMT.,**DECISION AND ORDER**

Respondents.

-----X

The following papers, numbered _____, were read on this application to VACATENotice of Petition/ Petition/ - Affidavits - Exhibits No(s) 1, 2Answering Affidavits - No(s) 3, 4Replying No(s) 5

ORDER

FILED**MAY 17 2018****COUNTY CLERK'S OFFICE
NEW YORK**

Upon the foregoing documents, it is
ORDERED that the petition is GRANTED; and it is further

ORDERED that the February 1, 2016 revocation of the DRIE of
petitioner Myung Hee Jeong by the respondent Commissioner of the
City of New York DEPARTMENT OF FINANCE is modified to the extent
that the revocation is effective only as of that date and that
the retroactive recoupment portion of any such revocation is
hereby vacated; and it is further

ORDERED that respondent City Commissioner of the City of New York DEPARTMENT OF FINANCE is hereby enjoined from seeking recoupment of overclaimed DRIE tax abatements granted on behalf of petitioners from July 2014 to the February 1, 2016.

DECISION

Petitioners, who are tenants in premises owned by co-respondent landlord Mid-Island, L.P. (Mid-Island), bring this proceeding, seeking to reverse and annul the action of co-respondent City of New York Department of Finance (the "City"). Petitioners allege that the City seeks recoupment of amounts allegedly erroneously paid to Mid-Island on their behalf of under the Disability Rent Increase Exemption Program (DRIE). The City opposes the relief sought.

DRIE and its related program SCRIE (Senior Citizen Rent Increase Exemption) provide an exemption against future rent increases for eligible disabled persons or senior citizens in rent regulated apartments as of the date of eligibility. See Real Property Tax Law 467-b. The exemption is accomplished by providing the landlord with tax credits to make up the difference between the frozen rent and what the tenants would be paying without the program.

The Petition alleges that petitioner Jin Sung Jeong received SCRIE benefits since March 2014 and continues to receive such benefits through the date of this Petition.

On or about November 2013, petitioner Myung Hee Jeong was injured in a slip and fall accident and rendered bedridden. The Petition asserts that in February 2014 she applied for DRIE benefits at the behest of a social worker handling her case. The Petition asserts that that the petitioners husband and wife were unaware that a single household could not receive both SCRIE and DRIE benefits simultaneously and that due to petitioners' limited language proficiency they merely followed the directions of the social worker, who visited their home with an interpreter.

By Order dated June 19, 2014 of respondent City, petitioner's application for DRIE benefits was granted with the amount of rent payable by petitioners to be frozen at \$1,959.77. The rent bills submitted by the Petitioners reflect that the respondent landlord subtracted first the SCRIE and then the DRIE credits as reported by respondent City from the amount of rent due in calculating the balance due from the petitioners-tenants.

As stated by the respondent itself in answer to the Petition

"After issuing the DRIE order, DOF [Department of Finance] mistakenly provided the Landlord Respondent with an additional monthly tax credit of \$151.88 for twenty months - representing the difference between the contract rent and the tenant's frozen rent - even though the Landlord Respondent was already receiving this monthly tax credit through the SCRIE order. In early 2016, DOF recognized that it had been providing the Landlord Respondent with a double tax credit in conjunction with the SCRIE and DRIE

benefits. Subsequently, by notice dated February 1, 2016, DOF revoked the Petitioners' DRIE benefits retroactive to July 1, 2014. . . . Accordingly, DOF sought to recoup \$2,875.46 in tax credits to the Landlord Respondent that it had mistakenly provided in conjunction with Ms. Jeong's DRIE order."

Petitioner Myung Hee Jeong submitted an administrative appeal of the DRIE revocation in February 2016 and by notice dated March 1, 2016, respondent City denied the appeal because of the rule that SCRIE and DRIE benefits cannot be simultaneously received by the same household.

Based upon respondent City's attempt to recoup the DRIE credits, respondent landlord commenced a non-payment proceeding against petitioners in Queens Housing Court. This court upon the respondent's Order to Show Cause commencing this proceeding stayed the non-payment proceeding. Petitioners assert without contravention that except for the amount sought in recoupment all amounts due under their lease are current through the date of this filing.

Petitioners here challenge the respondent City's attempt to recoup the DRIE credits as arbitrary and capricious because the DRIE application and the DRIE Order issued by the respondent City failed to set forth that there was any prohibition on receiving DRIE and SCRIE simultaneously and there is no evidence nor allegation that the petitioners or the landlord made any

false or misleading statement or misrepresentation with respect to the DRIE credits initially granted by the City.

Respondent City counters that the amount of rent to be paid by the petitioners was clearly set forth in the DRIE and SCRIE orders and that therefore the petitioners were not prejudiced by any additional credits issued to the landlord on their behalf to the extent they exceed those to which they were entitled.

Petitioners do not challenge the City's revocation of DRIE benefits in the February 1, 2016 Order to the extent that the Order revokes the issuance of any credits after that date.

Rather at issue here is whether respondent's recoupment on the facts presented here is a valid exercise.

It has been held that where there is no valid SCRIE/DRIE Order issued by the City, recoupment is an appropriate remedy because a landlord is not authorized to take a tax abatement unless a valid Order has been issued and a landlord is required to take reasonable steps to determine whether a tenant has been certified as eligible for SCRIE/DRIE. 48 W. 138th Ltd.

Partnership v Stupp, 270 AD2d 132, 133 (1st Dept 2000).

Recoupment was also permitted in the case of Jadam Equities, Ltd. v Stupp (182 Misc 2d 666, 668 [Sup Ct, NY County, 1999])

where evidence established that the deceased tenant had not submitted any renewal/recertification applications from after

1984 even though the landlord, aware of this fact, continued to claim abatements.

However, both 48 W. 138th Ltd. Partnership and Jadam Equities differ from the case at bar insofar as in the case at bar the City did issue a DRIE exemption Order to petitioner Myung Hee Jeong. Thus, at the time the City granted the respondent-landlord Mid-Island an abatement on that basis. The respondent City does not argue that the application was improperly completed. Furthermore, while the City argues that it "mistakenly" provided the landlord with a DRIE tax credit, such an argument is incorrect because the City itself issued the order and followed it. Any mistake was not in the payment, but in the City's processing of the petitioner's initial application. Unlike in the above cited cases, the landlord here did not retain any benefit from the credits but fully passed them through to the tenants.

Based upon the facts presented here, where there is no allegation of intentional misconduct by the tenants or the landlord in applying for or receiving the DRIE exemption; the City issued a DRIE Order which the landlord and the tenants properly obeyed; and there was no notice to either the tenants or landlord that the benefits claimed were in anyway improper; it would be unfair and against the purpose of the program to allow the City to retroactively deny those benefits in a manner

that would cause the tenants the very financial harm the DRIE program was created to avoid in the first place. The City is the only party which had in its possession all the information needed to determine the validity of the order it issued and therefore it is equitable to place the burden on the City of administering the program by verifying its records in cases such as these. The City cannot claim to be surprised by such a result since a Justice of this Court has previously rejected its arguments to place the burden of recoupment in SCRIE/DRIE matters on innocent parties. The Court in Coccaro v Stupp (166 Misc 2d 948, 952 [Sup Ct, NY County 1995]) held that

The agency here seeks to place the burden of the mistake that occurred between the landlord and the SCRIE agencies upon the senior citizen tenant, the innocent party who is in need of the most protection. This court agrees with the opinion of the Hon. William McCooe in Dwyer v Department of Hous. Preservation & Dev. (index No. 41092/95), in which Judge McCooe granted the CPLR article 78 petition of a senior citizen from whom HPD sought to recoup back increased rent allegedly owed when she became ineligible for SCRIE . . . "The tenant was blameless and any loss should be borne by the responsible party."

In this case, the respondent City issued a DRIE Order based upon an application which was properly completed. There was no fault by the petitioners nor landlord and any fault was on the part of the City in administering the program. Any fault was that of the City's and therefore

"The tenant had the right to rely on the . . . conduct . . . of HPD [in] granting [the] exemption for the disputed period. It would be inequitable to subject a

tenant to eviction for arrears when he was unaware it was due and owing and did not have the opportunity to budget his income to provide for the increased rent and now faces a judgment for the arrears. The tenant was blameless and any loss should be borne by the responsible party."

Id.

Therefore, the court shall grant the petition to vacate respondent City's determination of February 1, 2016, only to the extent vacating that portion of the determination which seeks to retroactively recoup DRIE credit amounts granted to the petitioners' landlord prior to that date.

This is the decision and order of the court.

FILED

MAY 17 2018

5/16/2018

DATE

**COUNTY CLERK'S OFFICE
NEW YORK**

ABRAHAM A. JAMES, J.S.C.

CHECK ONE:

☒ CASE DISPOSED

☐ NON-FINAL DISPOSITION

☒ GRANTED

☐ DENIED

☐ GRANTED IN PART

☐ OTHER

APPLICATION:

☐ SETTLE ORDER

☐ SUBMIT ORDER

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