

507-09 E. 11th St. Tenants Assn. v City of New York
2018 NY Slip Op 32575(U)
October 9, 2018
Supreme Court, New York County
Docket Number: 158753/2017
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 32

Justice

-----X INDEX NO. 158753/2017

507-09 EAST 11TH STREET TENANTS ASSOCIATION BY ITS
TREASURER BLANCA CAP MOTION DATE. 09/20/2018

Petitioner, MOTION SEQ. NO. 001, 002

- v -

CITY OF NEW YORK BY AND THROUGH ITS DEPARTMENT OF
HOUSING PRESERVATION AND DEVELOPMENT, DECISION AND ORDER

Respondent.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 42, 45, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER)

The following e-filed documents, listed by NYSCEF document number (Motion 002) 23-26, 39

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR

Motion Sequence Numbers 001 and 002 are consolidated for disposition. The petition (MS001) to *inter alia* annul respondent’s decision to terminate petitioner from the Tenant Interim Lease (“TIL”) program is denied. The motion (MS002) by respondent to enjoin petitioner from accessing a Citibank Account is granted without opposition.

Background

This proceeding arises out of petitioner’s participation in respondent’s TIL program. The TIL program, run by respondent New York City Department of Housing Preservation and Development (“HPD”), allows tenants to form low-income housing cooperatives and eventually become homeowners. The tenants must follow certain obligations and, in return, HPD renovates the property. If HPD is satisfied that the tenants are properly managing the building, then HPD

creates a Housing Development Fund Corporation (“HDFC”) in which the tenants acquire the chance to buy shares in the building.

Petitioner entered the TIL program in 1999. Respondent contends that petitioner has a history of failing to comply with TIL program requirements. As a result of non-compliance, respondent points to a correction action plan (“CAP”) petitioner entered into on July 1, 2016. The CAP is essentially a short leash and last-chance type program.

In February 2017, Shannon Adams (the purported super for the building) submitted two money orders to petitioner, each for \$247.50 (NYSCEF Doc. No. 50). On March 1, 2017, Adams was issued receipts that stated the two \$247.50 money orders were for rent (NYSCEF Doc. No. 51). Petitioner deposited the \$495 and identified this deposit as rent in its records (*see* NYSCEF Doc. No. 52).

On June 5, 2017, respondent terminated petitioner from the TIL program (*see* NYSCEF Doc. No. 53). Respondent noted that “Your February 2017 financial report reflected payments from a Shannon Adams who allegedly became employed by the Tenant Association as the superintendent. The financial report indicated a payment in the sum of four hundred and ninety-five dollars, dated March 1, 2017 for apartment 5” (*id.*).

“According to HPD’s records apartment 5 had been listed as vacant. No written request was made by the Tenant Association to HPD to lease the vacant apartment nor did HPD grant approval for the leasing of this apartment. Furthermore, there was no notification by the Tenant Association to HPD that a superintendent was going to be hired or the terms of employment” (*id.*).

Petitioner challenges this termination and claims that it complied with all the terms of its net lease with respondent. Petitioner claims that it was supposed to undergo a renovation but that

“a local politician, Rosie Mendez, in whose district the building was located, had directed the City not to expend the funds necessary to renovate the building” (NYSCEF Doc. No. 1, ¶ 30). Petitioner insists that apartment 5 has been occupied by the building’s superintendents since August 2002, except when the last super was terminated in 2016. Petitioner contends that respondent knew about Mr. Adams’ employment as a super and his residence in apartment 5. Petitioner claims that respondent told petitioner to fire the previous super and hire a new one.

Petitioner maintains that Mr. Adams did not pay rent and that the “deposit was made inadvertently by an individual who was not a member of the Executive Committee” (*id.* ¶ 99). Petitioner insists the deposit was made by Teresa Parchue, the wife of the president of petitioner, and that the money was eventually returned to Mr. Adams.

Mr. Adams submits an affidavit in which he claims he “offered to advance monies to [petitioner] with which repairs or other urgent expenses could be made” and “voluntarily delivered two (2) money-orders in the sum of two hundred and forty-seven dollars and 50 cents (\$247.50) totaling four hundred and ninety-five dollars for that purpose” (NYSCEF Doc. No. 4 ¶¶ 11-12).

Discussion

In an article 78 proceeding, “the issue is whether the action taken had a rational basis and was not arbitrary and capricious” (*Ward v City of Long Beach*, 20 NY3d 1042, 1043, 962 NYS2d 587 [2013] [internal quotations and citation omitted]). “An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts” (*id.*). “If the determination has a rational basis, it will be sustained, even if a different result would not be unreasonable” (*id.*). “Arbitrary action is without sound basis in reason and is generally taken without regard to

the facts" (*Matter of Pell v Board of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231, 356 NYS2d 833 [1974]).

Here, the Court finds that respondent's determination to terminate petitioner from the TIL program had a rational basis. The rules governing buildings in the TIL program require that respondent must approve leases for vacant apartments and that respondent has authority over the rents to be charged (*see* 28 RCNY § 34-04[b]-[c]). Respondent is permitted to terminate a building from the TIL program if it fails to comply with respondent's directives (28 RCNY § 34-07[f]).

Respondent rationally terminated petitioner from the TIL program because although petitioner was not allowed to rent a unit or set the rent without respondent's approval, respondent caught petitioner doing just that - accepting rent payments. Petitioner only repaid the money after respondent announced petitioner's termination from the program. While petitioner provided evidence that respondent may have known about the hiring of Mr. Adams (*see* NYSCEF Doc. No. 8 [emails between petitioner and respondent about a new super]), petitioner did not meet its burden to show respondent's decision to terminate petitioner *because it accepted rent payments from him* was irrational.

Quite simply, it was against the rules to set and accept rent without respondent's permission and petitioner, already subject to a CAP, violated those rules. It was not arbitrary for respondent to look at the rent receipts and the March 2017 budget, both of which suggest that these were rent payments, and conclude that petitioner had violated the TIL program rules by accepting rent without permission.

Summary

The ultimate purpose of the TIL program is to prepare a building to start an HDFC where tenants acquire shares in the building. Here, a super made payments that petitioner classified as rent payments and petitioner only took corrective action after respondent decided to terminate petitioner from the TIL program. Even if the Court were to wholeheartedly accept petitioner's version of events, which is not the proper standard in an Article 78, it still leads to the conclusion that petitioner was incompetent and it would not have been irrational to terminate petitioner from the program. It accepted purported "donations" and classified them as rent payments in its records.

Accordingly, it is hereby

ADJUDGED that the application (MS001) is denied and the petition is dismissed, with costs and disbursements to respondent upon presentation of proper papers to the Clerk of the Court and respondent shall have execution therefor; and it is further

ORDERED that the motion (MS002) by respondent to enjoin petitioner from accessing Citibank Account 105020598 is granted without opposition.

10.9.18

DATE

ARLENE P. BLUTH, J.S.C.

HON. ARLENE P. BLUTH

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	

NON-FINAL DISPOSITION

<input type="checkbox"/>	GRANTED IN PART	<input checked="" type="checkbox"/>	OTHER
<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: