

BFS 519 W. 143rd St. Holding LLC v New York State Div. of Hous. and Community Renewal
2019 NY Slip Op 31952(U)
July 8, 2019
Supreme Court, New York County
Docket Number: 152246/2018
Judge: Melissa A. Crane
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MELISSA A. CRANE
Justice
HON. MELISSA CRANE

PART 15

BFS 519 W 143rd STREET HOLDING LLC,

Petitioner,

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

INDEX NO. 152246/2018
MOTION DATE _____
MOTION SEQ. NO. 001 and 002
MOTION CAL. NO. _____

- v -

NEW YORK STATE DIVISION OF
HOUSING AND COMMUNITY RENEWAL,

Respondent.

The following papers, numbered _ to _ were read on this motion to/for _____.

Notice of Motion/Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED

CROSS-MOTION: YES NO

HON. MELISSA CRANE, J.S.C.:

Motions designated Sequence Numbers 001 and 002 are consolidated for disposition in this rent overcharge proceeding.

In Motion Sequence Number 001, petitioner, BFS 519 W 143rd Street Holding LLC, moves, pursuant to CPLR article 78, for an order reversing, annulling, and setting aside so much of an order of respondent, New York State Division of Housing and Community Renewal (“DHCR”), that modified the District Rent Administrator’s Order by assessing treble damages against petitioner.

In Motion Sequence Number 002, nonparty Laura Carrion moves, pursuant to CPLR 1013 and 7802(d), to intervene in this proceeding; to amend the caption to add her name as a

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

respondent; to interpose a pre-answer motion to dismiss the proceeding; and, pursuant to CPLR 3211(a)(5) and (10) and 7804(f), to dismiss the petition.

BACKGROUND

Petitioner is the current owner and landlord of the building located at 519 West 143rd Street, New York, New York (the "Building"). Respondent is charged with the duty of administering the Rent Stabilization Law of 1969 ("RSL") and the implementing Rent Stabilization Code ("RSC").

This CPLR article 78 proceeding arises from an underlying rent overcharge complaint filed with DHCR by the tenant, Laura Carrion (the "Tenant") of apartment 31 in the Building. The Tenant essentially alleged that the rent of \$1,129.32 charged and collected by the owner on March 12, 2012 constitutes an overcharge (see Petition, NYSCEF Doc. No. 1).

By order issued on November 21, 2014, the DHCR Rent Administrator granted the rent overcharge complaint (Order NYSCEF Doc. No. 3). The Rent Administrator determined that the base date for the rent overcharge proceeding is March 12, 2008, the date four years prior to the filing of the rent overcharge complaint. The Rent Administrator further found that, subsequent to base date, a rent overcharge occurred and that the owner is responsible for interest on the entire overcharge (id.). Specifically, the Rent Administrator determined that the legal regulated rent was \$988.75, that the rent had been reduced on November 8, 2012, and remained frozen at \$550.00, due to a service reduction order. Moreover, the rent could not be increased or restored to the full amount until DHCR issued an order restoring the rent (id.). Thus, the Rent Administrator determined that the Tenant had been overcharged in the amount of \$37,836.98, plus interest of \$12,413.71, for a total refund of \$50,250.69 (id.). Noting that the Tenant had confirmed receiving from the owner a refund check in the amount of \$50,075.59, the Rent Administrator stated that \$175.00 was due to the Tenant (id.). The Rent Administrator also

stated that Majestic Partners LLC (“Majestic”), the current owner, had purchased the Building at a judicial sale in November 2012; that the prior owner, BP III-519 West 143rd Street LLC c/o JADAM Equities LLC was responsible for overcharges and penalties prior to the sale; and that Majestic was responsible from November 2013 (id.). The Rent Administrator declined to assess treble damages (id.).

The Tenant filed a petition for administrative review (“PAR”) challenging the denial of treble damages. The Tenant argued that the Rent Administrator erred in finding that the owner purchased the building at a judicial sale in November 2013. By order issued on January 6, 2015, the DHCR Commissioner denied the PAR and upheld the Rent Administrator’s determination, stating, in part:

“A review [of] the record reveals that the monthly rental amount on March 12, 2018, was \$988.75. A further review of the record reveals that on May 30, 2011 the prior owners BPIII-519 West 143 Street LLC offered the subject premises for foreclosure sale at public auction Thereafter, on November 6, 2013, the prior [owner] by bargain and sale deed conveyed the subject premises to the current owner Majestic Owners LLC.

The Rent Administrator’s review during the proceeding below revealed the existence of an outstanding service reduction order issued on September 16, 1988, ... which froze the collectible rent for the subject apartment at \$550.00 per month. Furthermore, the record reveals that in a letter dated April 21, 2014, the tenant admitted receiving a check in the amount of \$50,075.59 from Majestic Owners LLC

In the instant matter Majestic Owners LLC took possession of the subject premises after the filing of the overcharge complaint. When made aware of the overcharge they immediately refunded to the tenant almost the entire amount plus interest. The Commissioner finds that the Rent Administrator acted reasonably in declining to impose treble damages penalty. It is for this reason and not the fact of the building purchase at judicial sale which brought about the denial of treble damages. Since there was a small amount of overcharge refund remaining the note in the calculation chart was simply meant to apportion responsibility for that remaining portion” (Order and Opinion Denying PAR, NYSCEF Doc. No. 4).

Thereafter, the tenant commenced a proceeding, *Carrion v New York State Div. of Hous. & Community Renewal*, Sup Ct, NY County, Schlesinger, J., index No. 101619/15, seeking judicial

review of the Commissioner's order. By order, entered May 18, 2016, this Court (Schlesinger, J.S.C.) granted the petition to the extent of remanding the matter to DHCR to reconsider the issue of treble damages (Order, NYSCEF Doc. No. 5). The Court stated, in part:

"So this court is vacating the commissioner's order, and I am remanding them to DHCR so as to put the tenant on notice as to what issues have to be argued so that the tenant can have an opportunity to address those issues, and for the commissioner to take a whole new look at this and make a decision either as to the equities or as to the [willfulness], but to make a legitimate straightforward rational decision with regard to the overpayment and with regard to the treble damage issue which is the only issue extant"

(Transcript of Proceedings, *id.*).

On remand, the Commissioner granted the petition and awarded treble damages to the Tenant, stating:

In the instant matter, the Rent Administrator notified the prior owner, BP III-519 West 143rd Street LLC, of the [Tenant's] complaint and the existence of the outstanding service reduction order on March 12, 2012. However, ... the prior owner failed to tender any refund whatsoever to the [Tenant] and continued to overcharge her until it conveyed the building to the current owner on November 6, 2013. It thus failed to rectify the outstanding rent overcharge and continued to knowingly collect rent overcharges for twenty (20) months. Neither the prior owner nor the current owner has submitted any evidence that would rebut the presumption of willfulness resulting from this conduct

[DHCR] mailed a Final Notice to Owner-Imposition of Treble Damages to ... Majestic Partners LLC ... on February 21, 2014. Thereafter, on March 17, 2014, Majestic Partners sent the [Tenant] a check in the amount of \$50,079.59, \$175.06 less than the total overcharge found by the Rent Administrator While the current owner refunded the [Tenant] nearly the entire overcharge four months after having acquired the subject building and within thirty days of the date of the agency's treble damages notice, the action is unavailable to overcome the presumption of willfulness that the current owner inherited when it acquired the subject building

[T]he Commissioner notes that ... the imposition of treble damages is predicated not on the prior owner's collection of overcharges prior to the filing of the [Tenant's] complaint but specifically on its having failed to refund the outstanding rent overcharge and knowingly continued to collect rent overcharges even after having been notified of the existence of the outstanding service reduction order"

(Order and Opinion Granting PAR Upon Remand, NYSCEF Doc No. 7).

This proceeding ensued, with petitioner challenging the treble damages award, and the Tenant seeking to intervene.

DISCUSSION

The Court denies Tenant's motion to intervene, in an exercise of the Courts broad discretion, because the Tenant is not an indispensable party to this proceeding within the meaning of CPLR 1001 (*see Matter of Whitney Museum of Am. Art. [New York State Div of Hous. & Community Renewal]*, 139 AD3d 444, 447 [1st Dept 1988]). Moreover, the Tenant had the opportunity to appear, with counsel, in the underlying overcharge petition, and submit evidence to support her position (*id.*).

Turning to the issue of treble damages, the Rent Stabilization Law, Administrative Code of the City of New York §26-501 et seq., provides that if DHCR finds that an owner, after a reasonable opportunity to be heard, has collected an overcharge above the rent authorized for a housing accommodation, the owner is liable to the tenant for a penalty equal to three times the amount of the overcharge, unless the owner establishes by a preponderance of the evidence that the overcharge was not "willful" (*see Administrative Code of the City of N.Y. §25-516[a]; 508 Realty Assocs, LLC v New York State Div. of Hous. & Community Renewal*, 61 AD3d 753, 754 [2d Dept 2009]). In reviewing a DHCR determination, the court's inquiry is limited to whether the determination is arbitrary and capricious, or without a rational basis in the record and a reasonable basis in law (*see CPLR 7803[3]; Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]).

In challenging the imposition of treble damages against it, petitioner argues that DHCR misunderstood the chain of ownership and the current owner's place in the chain of title. Petitioner maintains that DHCR erroneously assessed treble damages since a prior owner in the chain of title

had refunded the overcharge amount prior to DHCR issuing the order of overcharge. Thus, petitioner asserts that it satisfactorily establishes that the overcharge was not willful.

Petitioner's argument ignores DHCR's ability, in deciding whether to impose treble damages, to consider not only willfulness, but "all factors bearing on the equities involved," including as a long delay in repaying the overcharge (see Rent Stabilization Code §2522.7; *Matter of Waverly Assocs. v New York State Div. of Hous. & Community Renewal*, 12 AD3d 272, 275 [1st Dept 2004]). Here, the submissions support the finding that an order reducing the rent for lack of services had been in effect for a long period prior to the Tenant filing of the rent overcharge complaint, and that the prior owner continued to charge the Tenant an inflated rent during the pendency of the overcharge claim and after having been notified of the existence of the service reduction order. The submissions reveal no evidence by the prior owner or petitioner to rebut the presumption of willfulness. As such, DHCR's award of treble damages based on willfulness and other factors bearing on the equities involved was neither irrational or unreasonable, and is entitled to deference (see *Matter of Salvati v Eimicke*, 72 NY2d 784, 791 [1988]).

Accordingly, it is

ORDERED that the petition is denied, and the proceeding is dismissed, with costs and disbursements to respondent; and it is further

ORDERED that the motion to intervene is denied; and it is further

ADJUDGED that respondent shall recover from petitioner costs and disbursements in the amount of \$ _____ as taxed by the Clerk, and that respondent have execution therefor.

Dated: 7-8-2019

ENTER: 

MELISSA A. CRANE, J.S.C,
HON. MELISSA A. CRANE
J.S.C.