

66-68 E. 3rd St. Tenants Assn. v City of New York

2019 NY Slip Op 33629(U)

December 11, 2019

Supreme Court, New York County

Docket Number: 160663/2018

Judge: W. Franc Perry

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. W. FRANC PERRY PART IAS MOTION 23EFM

Justice

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INDEX NO. 160663/2018

66-68 EAST 3RD STREET TENANTS ASSOCIATION, BY
CRISTINA CAP AS PRESIDENT

MOTION DATE 08/15/2019

Petitioner,

MOTION SEQ. NO. 001

- v -

THE CITY OF NEW YORK, ACTING BY AND THROUGH
ITS DEPARTMENT OF HOUSING PRESERVATION AND
DEVELOPMENT,

**DECISION + ORDER ON
MOTION**

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123

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

Petitioner seeks to set aside the determination (the Determination) of the New York City Department of Housing Preservation and Development (HPD) dated July 18, 2018 that terminated petitioner's enrollment in the Tenant Interim Lease program (the Program). The court heard oral argument on the motion on August 15, 2019 (the Hearing).

BACKGROUND/CONTENTIONS

Petitioner is the tenants' association of a building (the Building) located at 66-68 East 3rd Street, New York, New York. HPD administers the Program, "which affords tenants living in city-owned buildings an opportunity to purchase the buildings and run them as not-for-profit housing cooperatives" (Matter of 151 W. 140th St. Tenant Assn. v City of New York, 161 AD2d 160, 161 [1st Dept 1990]). "As an intermediate step, tenant associations maintain and operate

their buildings under a contract with the city [the Program] . . . which details the tenant's associations responsibilities in managing the [B]uilding" (id.).

In this matter, HPD found various deficiencies in the management of the Building and advised petitioner by letter dated May 10, 2018 (the May 2018 Letter). These issues involved financial reporting and annual elections. Petitioner had previously been placed into a corrective action plan (the CAP) for management problems, including failure to meet financial reporting requirements. HPD extended the CAP to enable petitioner to meet the management responsibilities. The Determination found that petitioner had not met these responsibilities, including the failure to submit complete financial reports, to conduct annual elections, storage and garbage removal issues (Hearing at 7-10). Petitioner contends that HPD's findings are flawed, that it did meet its financial reporting requirements, or to the extent that it did not, that HPD's actions interfered with its ability to do so and that, consequently, the Determination should be annulled (id. at 3-6, 13-15).

STANDARD OF REVIEW/ANALYSIS

In reviewing an administrative agency's determination as to whether it is arbitrary and capricious under CPLR article 78, the test is whether the determination "is without sound basis in reason and . . . without regard to the facts" (*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]; *Matter of Kenton Assoc. v Division of Hous. & Community Renewal*, 225 AD2d 349, 349 [1st Dept 1996]).

The court may not weigh conflicting choices by the administrative agency, if the agency's determination has a basis in reason (*Matter of Partnership 92 LP & Bldg. Mgt. Co., Inc. v State of N.Y. Div. of Hous. & Community Renewal*, 46 AD3d 425, 429 [1st Dept 2007]).

affd 11 NY3d 859 [2008]). If “a rational basis exists [for the agency’s determination], a court may not substitute its judgment for that of the agency . . . ; indeed, an agency’s determination, acting pursuant to legal authority and within its area of expertise, is entitled to deference” (*Matter of Tockwotten Assoc. v New York State Div. of Hous. & Community Renewal*, 7 AD3d 453, 454 [1st Dept 2004]). “[E]ven if different conclusions could be reached . . . , a court may not substitute its judgment for that of the agency [if there is a rational basis for the Determination]” (*Partnership 92 LP*, 46 AD3d at 429; see also *Awl Indus., Inc. v Triborough Bridge & Tunnel Auth.*, 41 AD3d 141, 142 [1st Dept 2007]).

Moreover, it is a “fundamental tenet of CPLR article 78 review . . . that [j]udicial review of administrative determinations is confined to the facts and record adduced before the agency” (*Matter of Featherstone v Franco*, 95 NY2d 550, 554 [2000] [internal quotation marks and citation omitted]; see also *Matter of Kelly v Safir*, 96 NY2d 32, 39 [2001]).

As noted above, the court’s review of the proceedings is limited to whether HPD’s Determination was arbitrary and capricious (see *151 W. 140th*, 160 AD2d at 163; see also *101 W. 141st St. Tenants Assn. v City of New York*, 2019 WL 854591, 2019 NY Slip Op 30404(U) at *2-3 [Sup. Ct., NY County, February 20, 2019]; *Matter of 170 W. 130th St. Tenants Assn. v Torres-Springer*, 2018 WL 2722867, 2018 NY Slip Op 31105 (U) at * 3 [Sup. Ct. NY County, June 6, 2018]). Petitioner has presented evidence that HPD did not follow prior procedures, that its interpretation of petitioner’s by-laws interfered with the holding of the annual election and that a different result could have been reached. HPD has asserted that it acted properly, that the May 2018 Letter gave petitioner a reasonable opportunity to correct the problems, and that there is support in the record for the Determination. In this case, while “different conclusions could [have been] reached[ed] . . . , a court may not substitute its judgment for that of the agency [if


there is a rational basis for the Determination]” (*Partnership 92 LP*, 46 AD3d at 429). Since there was a rational basis for the Determination, the proceeding must be dismissed (*id.*; see also *Tockwotten*, 7 AD3d at 454; 151 W. 140th, 160 AD2d at 163). Accordingly, it is hereby,

ADJUDGED that the application is denied and the petition is dismissed, with costs and disbursements as taxed by the Clerk of the Court, upon submission of an appropriate bill of costs; and it is further

ADJUDGED that respondents, having an address at _____, do recover from petitioner, having an address at _____, costs and disbursements in the amount of \$ _____, as taxed by the Clerk, and that respondent have execution therefor.

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the Court.

12/11/2019
DATE


W. FRANC PERRY, J.S.C.
HON. W. FRANC PERRY, III
J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	OTHER