

Matter of 80 Cranberry St. LLC v New York State Div. of Hous. & Community Renewal
2021 NY Slip Op 30433(U)
February 16, 2021
Supreme Court, Kings County
Docket Number: 500440/2020
Judge: Loren Baily-Schiffman
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At an IAS Part 65 of the Supreme Court of the State of New York, County of Kings at a Courthouse Located at 360 Adams Street, Brooklyn, New York on the 16th day of February, 2021.

PRESENT: HON. LOREN BAILY-SCHIFFMAN
JUSTICE

In the Matter of the Application of
80 CRANBERRY STREET LLC,
Petitioner,

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

- against -

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, and
CRANLYN TENANTS ASSOCIATION,
Respondents.

Index No.: 500440/2020
Motion Seq. # 1-4
DECISION & ORDER

As required by CPLR 2219(a), the following papers were considered in the review of this motion:

	<u>PAPERS NUMBERED</u>
Notice of Petition, Affidavits, Affirmation and Exhibits	1
NYS DHCR's Affirmation in Opposition	2
NYS DHCR's Memorandum of Law	3
Cranlyn Tenants Association's Affidavit in Opposition	4
Petitioner's Reply Affirmation	5
Cranlyn Tenants Association's Notice Motion, Affidavit, Affirmation and Exhibits	6
DHCR's Notice of Cross-Motion, Affidavit, Affirmation and Exhibits	7
Reply Affirmation	8
Petitioner's Notice of Cross-Motion, Affidavit, Affirmation and Exhibits	9

Upon the foregoing papers, 80 Cranberry Street LLC ("Petitioner") petitions this Court for an Order pursuant to Article 78 of the CPLR: (i) directing the Respondent, New York State Division of Housing and Community Renewal ("DHCR"), to modify its MCI Order to the extent of granting a MCI rent increase for apartments 4N, 7M, 8M and 11F and authorizing Petitioner to increase rent for these apartments in connection with the exterior consultant; (ii) revoking

and/or annulling the Order and Opinion Granting In Part Petition for Administrative Review issued by the Deputy Commissioner on November 7, 2019; (iii) together with such other and further relief as this Court deems just and proper. Respondent Cranlyn Tenants Association ("Tenants Association") moves this Court for an Order compelling compliance with the rules and regulations promulgated by DHCR and vacating and annulling the Order and Opinion issued by DHCR dated November 7, 2019. DHCR cross-moves this Court for an Order, pursuant to CPLR 3211 (a)(5), dismissing Tenants Association's motion to vacate and annul DHCR's Order on the ground that it was filed after the statute of limitations had expired. Petitioner moves this Court for an Order, pursuant to CPLR 3211(a)(5) and (8), denying and/or dismissing Tenants Association's motion dated August 6, 2020 seeking to vacate and annul DHCR's Order and Opinion.

Background

On or about May 31, 2006, Petitioner made major capital improvements ("MCI") to 80 Cranberry Street, Brooklyn, NY, including exterior restoration, exterior consultant and terrace and roof replacements. Based upon said MCIs, DCHR's Rent Administrator issued an Order on September 9, 2013, granting Petitioner's application for a rent increase. Tenants Association then petitioned for administrative review. By Order dated November 7, 2019, the Deputy Commissioner of DHCR modified the September 9, 2013 Order and ruled that four apartments—4N, 7M, 8M and 11F—were permanently exempt from the MCI rent increase. In his ruling, the Deputy Commissioner noted that on November 18, 2011, DHCR's inspector found that nine apartments—including the four in question—showed signs of current or passed leaks, including cracked and crumbling plaster, water blisters, water stains or leaks.

On January 6, 2012, DHCR requested Petitioner resolve the defects. Thereafter, Petitioner claimed that repairs were completed to the nine apartments. Tenants Association replied that four apartments subject to DHCR's ruling still had leaks and provided photos to substantiate this. Petitioner again claimed to have repaired the leaks and other defects. The Deputy Commissioner ruled that the MCI work in question was not done in a workmanlike manner and, therefore, permanently exempted apartments 4N, 7M, 8M and 11F from the MCI rent increase.

Discussion

It is well settled that an entity subject to an administrative decision may challenge such determination pursuant to Article 78 of the CPLR. Moreover, under Article 78 this Court has the power to grant Petitioner the relief it is entitled to. CPLR § 7806. However, this Court cannot vacate an administrative decision if the decision was rational and not arbitrary and capricious. *Pell v. Board of Education of Union Free School*, 34 N.Y. 2d 222 (1974). If the reviewing court finds that the agency determination has a rational basis, the determination must be sustained. *Matter of Navaretta v. Town of Oyster Bay*, 72 A.D.3d 823 (2d Dep't 2010). Additionally, an agency's interpretation of the statutes and regulations that it administers is entitled to deference and must be upheld if reasonable. *508 Realty Assocs., LLC v. New York State Div. of Hous. & Cmty. Renewal*, 61 A.D.3d 753, 755 (2d Dep't 2009). An owner of a rent stabilized building is entitled to a rent increase, when its building has sustained a major capital improvement. NY Rent Stabilization Code § 2522.4. DHCR is empowered to "grant a major capital improvement rent increase while at the same time permanently exempting particular

apartments from the obligation to pay additional rent when circumstances warrant." *Matter of Terrace Ct., LLC v. New York State Div. of Hous. & Cmty. Renewal*, 18 N.Y.3d 446 (2012).

80 Cranberry Street LLC's Petition

Petitioner, the owner of the subject building, argues that the four exempt apartments should be subject to the increased rent because Petitioner remediated the leaks and water damage in those apartments after the initial inspection. Petitioner maintains it made subsequent submissions that address the leaks and water damage and that DHCR's Deputy Commissioner failed to consider this in his Order. However, DHCR maintains that Petitioner did not raise issues regarding the adequacy of the evidence DHCR relied on during the Administrative Review procedure. It is well settled that an argument may not be raised for the first time before the courts in an Article 78 proceeding. *Matter of Peckham v. Calogero*, 12 N.Y.3d 424, 430 (2009).

In the instant case, the Court finds that DHCR's determination was not arbitrary and capricious. Petitioner does not detail what these submissions that address the leaks and water damage consisted of, or even if they prove the defects were repaired. As stated earlier, the DHCR's Deputy Commissioner considered photos of water damage in making its determination. DHCR's determination falls squarely within its statutory powers and applicable case law. Accordingly, the Petition to modify or vacate the Deputy Commissioner's Order is denied.

Tenants Association's Motion

Tenants Association moves to vacate and annul the Deputy Commissioner's Order in its entirety. Tenants Association contends that because the building in question was subject to 14 New York City Department of Buildings violations, 11 New York City Department of Housing

Preservation and Development violations, and 27 building code violations, these defects preclude the building from receiving an MCI. Specifically, Tenants Association argues that Petitioner failed to meet the requirement that capital improvement must be "building-wide." See, *Garden Bay Manor Associates v. New York State Division of Housing and Community Renewal*, 150 A.D.2d 378 (2d Dep't 1989) and *NY Rent Stabilization Code § 2522.4(a)(2)(1)(c)*.

DHCR opposes this motion on the ground that judicial challenges to DHCR's Orders are subject to a 60-day statute of limitations. See, *NY Rent Stabilization Code § 2530.1*. Tenants Association claims that it was never mailed the Deputy Commissioner's Order, and as the 60 window begins on the date the Order was mailed, the statute of limitations should not apply. DHCR notes even if Tenants Association was never mailed the original Order, it received a copy when it was served with the Petition on January 9, 2020. This motion was filed on August 6, 2020, significantly more than 60 days after January 9, 2020.

The Court finds that Tenants Association's motion is procedurally defective as it was brought after the statute of limitations had expired. The Court additionally finds that Tenants Association's motion lacks merit. A DHCR inspector found that nine apartments were defective. Petitioner claimed that these defects were repaired. Tenants Association only provided evidence of remaining defects in four apartments. Furthermore, Tenants Association does not explain how alleged Department of Buildings, Department of Housing Preservation and Development and municipal code violation render MCI rent increases inapplicable. Accordingly, the Deputy Commissioner's Order was not arbitrary and capricious and was supported by facts. Moreover, DHCR is authorized to exclude certain apartments from MCI rent increases, while granting MCI rent increases for the rest of the building. See, *Matter of Terrace Ct., LLC v. New*

York State Div. of Hous. & Cmty. Renewal, 18 N.Y.3d 446 (2012). Tenant Association's motion to vacate and annul the Deputy Commissioner's Order is, therefore, denied.

DHCR and Petitioner's Cross-Motions to Dismiss

DHCR and Petitioner cross-move separately to dismiss Tenants Association's motion to vacate and annul the Deputy Commissioner's Order. As stated above, Tenants Association's motion was procedurally defective and meritless. Accordingly, these cross-motions are granted. For the foregoing reasons, it is HEREBY

ORDERED that 80 Cranberry Street LLC's Petition is DENIED in its entirety; and it is further

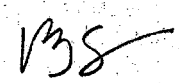
ORDERED that Cranlyn Tenants Association's motion is DENIED; and it is further

ORDERED that DHCR's cross-motion to dismiss is GRANTED; and it is further

ORDERED that 80 Cranberry Street LLC's cross-motion to dismiss is GRANTED.

This is the Decision and Order of the Court.

ENTER



HON. LOREN BAILY-SCHIFFMAN