Manela v New York State Div. of Hous. & Community Renewal
2022 NY Slip Op 33128(U)
September 16, 2022
Supreme Court, New York County
Docket Number: Index No. 156222/2022
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH**, ***Justice***	**PART** **14**
DORI MANELA, Petitioner,	**INDEX NO.** 156222/2022
- v -	**MOTION DATE** N/A
THE NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, Respondent.	**MOTION SEQ. NO.** 001
	DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1 - 9, 10, 11, 12, 13, 14

were read on this motion to/for Article 78.

The petition to overturn a determination by respondent is denied.

Background

Petitioner moved into a rent-stabilized apartment in 2006. She claimed that the owner, who is not a party to this proceeding, overcharged her. Petitioner commenced the appropriate proceeding in 2009 before the Rent Administrator ("RA"). The RA agreed that there was an overcharge, set a base date of August 1, 2003 and found that petitioner was entitled to $2,951.46. The RA noted that the owner collected $1,695 per month for the 2007 to 2008 lease term (petitioner's second year in the apartment) but the legal rent permitted was only $1,558.54.

The owner asserted that the previous tenant, who had lived in the apartment since 1984, passed away in 2001 and that the apartment was vacant until petitioner signed her lease. The owner argued that it was entitled to raise the rent from the amount registered prior to the vacancy ($274.21) based on a variety of factors including, a vacancy increase, a longevity increase, a low

rent supplement and an increase based on the improvements it made to the apartment (the owner claimed that it had expended $35,305.00 for these improvements).

Petitioner filed a petition for administrative review ("PAR") in which she asserted that the owner had a history of filing fraudulent apartment registrations for the subject building and the RA should have applied the default formula to establish the base date rent. She insisted that the apartment was not vacant on the base date, contrary to the finding of the RA.

The default formula, used to compute the rent where the base date rent is the product of a fraudulent scheme to deregulate, permits the rent to be set at the lowest registered rent for a comparable unit in the building on the date petitioner first lived in her unit (*see* 9 NYCRR 2522.6). Here, the RA declined to find that there was a fraudulent scheme to deregulate and did not use the default formula. Obviously, petitioner (like many tenants) wanted respondent to apply the default formula to increase the damages the owner had to pay and to lower her monthly rent.

The Commissioner (in a decision dated February 4, 2010) then remanded the proceeding back to the RA for the application of the default formula. On October 4, 2018, the RA re-affirmed its initial findings and declined to apply the default formula when calculating the rent and the damages. Petitioner brought a second PAR and the Commissioner determined it was moot given that the RA had re-opened the underlying action. Then, in March 2021, the RA issued another order affirming its previous determination. After another PAR filed by petitioner, the Commissioner upheld the RA's findings.

After petitioner filed a subsequent Article 78 proceeding, the matter was, once again, remanded back to respondent (pursuant to a stipulation between the parties). The Commissioner upheld its finding yet again and petitioner then commenced this proceeding.

In the most recent decision, respondent observed that "the owner had contemporaneously registered the apartment as vacant in 2002, one year before the base date of this proceeding, as well as in 2004, one year after" (NYSCEF Doc. No. 11 at 6-7). "[T]he Commissioner now finds that the vacancy registration of 2003 supports the prior RA determinations and is consistent with the owner's contention that the subject apartment was vacant on the base date" (*id.* at 7).

Respondent observed that records about electrical usage form Con-Ed did not support a finding that someone was actually living in the apartment during the time when the apartment was purportedly vacant (*id.*). "Such intermittent intervals of electric usage cannot be evidence of actual tenants living in the apartment" (*id.*). Respondent also concluded that "the contemporaneous 2003 vacancy registration coupled with the Con-Edison records is more probative evidence that that which was produced by the tenants" (*id.*). It discounted affidavits of three tenants living in different units in the building that claim that the apartment was occupied on the base date and noted that these three tenants "also had housing court proceedings brought against them by the owner" (*id.*). Respondent added that these tenants "do not affirm that they were actually in the subject apartment in 2003 or 2004 and personally observed it was occupied" (*id.*).

Respondent also rejected petitioner's claim that there was a fraudulent scheme by the owner to deregulate the apartment. It asserted that "the owner has always registered the apartment as rent stabilized with the exception of one filing of vacancy deregulation in 2006. However, such regulation appears as an anomaly given that [petitioner's] initial rent was registered as rent stabilized and has been throughout [the] tenancy" (*id.* at 8). Respondent acknowledged that the initial lease was labeled a "market" lease but stressed that the amount charged was well below the threshold for vacancy deregulation at the time (*id.*).

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]).

The Court denies the petition. Petitioner asks this Court to essentially overturn respondent's determination that there was no fraudulent scheme by making a credibility determination. That is not this Court's role in an Article 78 proceeding. The determination by respondent was rational and this Court may not substitute its own judgment for that of respondent.

To be sure, petitioner highlighted various issues to support her claim that there was a fraudulent scheme to deregulate. But respondent tackled each of these issues before rejecting this argument. The fact is that the owner demonstrated that on the base date, August 1, 2003, the apartment was vacant and respondent correctly relied upon the Con-Ed bills and the 2003 vacancy registration. Respondent was entitled to rely on those documents rather than on the affidavits submitted by tenants in the building who had a history of litigation with the owner and never claimed they actually saw anyone in the subject apartment. In other words, respondent had to make a determination about what the record showed and the Court finds that respondent made a rational and reasoned decision. Respondent's conclusion that the legal regulated rent was the

initial rent charged to petitioner (who was the first rent stabilized tenant following the vacancy) was a justified position.

Moreover, respondent rationally found that there was no fraudulent scheme to deregulate because the rent charged was well below the high rent deregulation threshold and so it discounted the apparent error by the owner in giving petitioner a market lease. And respondent established that there were no due process issues because it did, in fact, turn over all of the files for the underlying administrative proceedings on March 3, 2022.

Summary

The Court recognizes that there is no dispute in this proceeding that there was an overcharge. The question is whether petitioner is entitled to have the base date rent set by using the default formula, a finding that requires that the owner engaged in a fraudulent scheme to deregulate the apartment. Respondent offered numerous reasons for why it should not and this Court declines to overturn that decision.

Accordingly, it is hereby

ORDERED that the petition is denied, this proceeding is dismissed and the Clerk is directed to enter judgment in favor of respondent and against petitioner along with costs and disbursements upon presentation of proper papers therefor.