197 Madison Holdings LLC v NYS Div. of Hous. & Community Renewal
2022 NY Slip Op 34158(U)
December 8, 2022
Supreme Court, New York County
Docket Number: Index No. 154462/2022
Judge: William Perry

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. WILLIAM PERRY** **PART** **23**

Justice

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197 MADISON HOLDINGS LLC

Petitioner,

- v -

NYS DIVISION OF HOUSING AND COMMUNITY RENEWAL,

Respondent.

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INDEX NO. 154462/2022

MOTION DATE 05/24/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

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

In this Article 78 proceeding, petitioner 197 Madison Holdings LLC (landlord) seeks a judgment to overturn an order of the respondent New York State Division of Housing and Community Renewal (DHCR) as arbitrary and capricious (motion sequence number 001).

FACTS

Landlord is the owner of a residential, rent-stabilized apartment building located at 197 Madison Street in the County, City and State of New York (the building). *See* verified petition, ¶ 1 (NYSCEF document 1). The DHCR is the New York State agency charged with overseeing rent- stabilized housing accommodations located inside of New York City. *Id.*, ¶ 2. This proceeding concerns apartment 11 in the building which was the subject of a rent overcharge proceeding commenced against landlord by the DHCR's tenant protection unit (TPU). *Id.*, ¶ 3.

The TPU conducted an audit of the building's rents and finances in 2017 which resulted in the decision to commence the overcharge proceeding against landlord on June 29, 2017. *See* amended verified petition, exhibit A (PAR order); Shaw reply affirmation, exhibit A (TPU letter)

(NYSCEF documents 11, 26). On November 5, 2021, a DHCR rent administrator issued a decision that upheld the overcharge complaint (the RA's order). *Id.*, amended verified petition, exhibit B. Landlord then filed a petition for administrative review (PAR) of the RA's order, and the DHCR Deputy Commissioner's office issued a decision on April 26, 2022 that upheld the RA's order and dismissed the PAR (the PAR order). *Id.*, exhibit A. The relevant portion of the PAR order found as follows:

> "The Commissioner, having reviewed the entire evidentiary record, finds that the PAR is denied.
>
> "The record evidence indicates that the overcharge occurred before the petitioner purchased the property in August of 2017. Pursuant RSC §2526.1 (f) (2) (i), current owners are responsible for overcharge penalties, including those collected by a prior owner. While there is an exception to this responsibility for owners who obtain a property pursuant to, or after, a judicial sale, such exception is not applicable in this case. It was therefore the current owner's responsibility to obtain information on current DHCR actions as well as rent records dating back at least four years prior to the purchase date, and four years prior to the filing of any pending overcharge complaint, from the former owner at the time of sale. It is not a defense to a rent overcharge complaint that the current owner is not able to obtain rent records that are within these four-year review periods from the former owner.
>
> "In the instant case, it is uncontested that service reduction order Docket Number O1430018B was in effect at the time that the property was purchased and at the time that overcharges were collected. Under *Cintron v Calogero*, 15 NY 3d 347 (2010), rent reduction orders place a continuing obligation upon owners to reduce and freeze rent and are part of the rental history that DHCR must consider if the orders remain in effect within the four-year lookback period. The RA correctly explained that the Court of Appeals has stated that a DHCR rent reduction order issued prior to the base date imposes a duty on the owner not to increase the rent until an order is issued restoring the rent.
>
> "Pursuant to its investigation, TPU found that the tenant paid excess rental amounts and the petitioner has offered no evidence to rebut TPU's finding. Because the collectible rent remained frozen during the overcharge period from December 15, 2014 through December 31, 2015 and the tenant paid rental amounts above such frozen rent during this period, as explained above, and because the petitioner has not shown that these overcharges were not paid, also as explained above, the RA properly found that the petitioner is liable to the tenant for all monies collected over the collectible rental amounts as set forth in the RA's order for that period, and overcharges, treble damages, and interest were properly calculated thereon.
>
> "It is noted that the owner cannot claim that it did not have an opportunity to fully participate in this proceeding, as it did in fact make several submissions, as outlined above, and all of these submissions were fully considered by the RA.

> "THEREFORE, in accordance with the applicable provisions of the Rent Stabilization Law and Code, it is
>
> "ORDERED that the petition be, and the same hereby is, denied, and the RA's order is affirmed."

Id., exhibit C4.

Landlord originally commenced this Article 78 proceeding to vacate the PAR order on April 24, 2022 and later filed an amended verified petition on May 27, 2022. *See* verified petition; RJI (NYSCEF documents 1, 9, 10). After seeking and receiving several extensions of time to respond, the DHCR eventually filed an answer on August 3, 2020. *See* verified answer (NYSCEF document 19). This matter is fully submitted (motion sequence number 001).

DISCUSSION

The court's role in an Article 78 proceeding is to determine, upon the facts before the administrative agency, whether the determination had a rational basis in the record or was arbitrary and capricious. CPLR 7803 (3); *see, e.g.*, *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222 (1974); *Matter of E.G.A. Assoc. v New York State Div. of Hous. & Community Renewal*, 232 AD2d 302 (1st Dept 1996). A determination will only be found arbitrary and capricious if it is "without sound basis in reason, and in disregard of . . . the facts." *See Matter of Century Operating Corp. v Popolizio*, 60 NY2d 483, 488 (1983), *citing Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231. However, if there is a rational basis for the administrative determination, there can be no judicial interference. *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231-232.

Here, landlord's sole argument is that "the order granting an overcharge is not supported by substantial evidence." *See* amended verified petition, ¶¶ 16-48 (NYSCEF document 10).

However, as the DHCR properly points out in its response, that standard of review is inapplicable in this case. *See* respondent's mem of law at 4-7 (NYSCEF document 23). Landlord mistakenly characterizes the DHCR litigation that gave to the RA's order and the PAR order as "adjudicatory proceedings" as that term is defined in State Administrative Procedure Act (SAPA) § 102 (3). While appeals from "adjudicatory proceedings" are governed by the "substantial evidence" standards, landlord ignores CPLR 7803, the statute that governs Article 78 proceedings to challenge PAR orders. It provides as follows:

"The only questions that may be raised in a proceeding under this article are:

* * *

> "4. whether a determination made *as a result of a hearing held, and at which evidence was taken*, pursuant to direction by law is, on the entire record, supported by substantial evidence."

CPLR 7803 (4) (emphasis added).

Here, neither the RA nor the DHCR Deputy Commissioner held a hearing regarding the TPU's rent overcharge petition at which evidence was taken. *See* amended verified petition, exhibits A, B (NYSCEF documents 11, 12). Because no such evidentiary hearing was held, the "substantial evidence" standard set forth in CPLR 7803 (4) does not apply in this Article 78 proceeding. Instead, as noted *supra*., this matter is governed by the "arbitrary and capricious" standard of review that is set forth in CPLR 7803 (3). However, none of the arguments in landlord's petition address that standard of review, but instead assert that the PAR order was not supported by substantial evidence. The court must disregard those arguments as inapposite and reject them for that reason.

For its part, the DHCR argues that the PAR order "was neither arbitrary nor capricious and had a rational basis in the administrative record." *See* respondent's mem of law at 4-19 (NYSCEF document 23). The text of the PAR order and the contents of the administrative

record bear out the DHCR's contention. The PAR order notes that the RA reviewed documents possessed by the DHCR itself regarding apartment 11, including a 2015 rent reduction order and the unit's registration and lease records. *See* verified petition, exhibit A (NYSCEF document 11). The order also noted that the RA requested landlord to submit certain records of its own, but that landlord failed to do so, and the RA consequently chose to rely exclusively on the agency's records instead. *Id*. The court agrees with the Deputy Commissioner's finding that it was reasonable for the RA to conclude from those documents that landlord had imposed a rent overcharge on the tenant of apartment 11 by collecting the rent specified on his lease rather than the amount that had been frozen by the 2015 rent reduction order. Landlord's inapposite arguments did not include any discussion of why that finding might have been unreasonable. The court also agrees that the case law which landlord cited in its petition and reply papers is factually distinguishable. It is evident that those cases did not involve agency-initiated actions and did not rule on the issue of the significance of a landlord's failure to produce evidence of rent payments. *Id*.; *see* amended verified petition, ¶¶ 16-48; Shaw reply affirmation, ¶¶ 7-20 (NYSCEF documents 10, 25). Finally, the court credits the Deputy Commissioner's observation that "the owner cannot claim that it did not have an opportunity to fully participate in this proceeding, as it did in fact make several submissions, . . . and all of these submissions were fully considered by the RA." *See* amended verified petition, exhibit A (NYSCEF document 11). The court concludes that the PAR order did have a rational basis in the administrative record and that it was not arbitrary and capricious.

Accordingly, having rejected landlord's argument as inapposite and determined that the PAR order was rationally based, the court concludes that landlord's Article 78 petition should be denied and that this proceeding should be dismissed.

ACCORDINGLY, for the foregoing reasons it is hereby

ADJUDGED that the application (motion sequence number 001) is denied, and the petition is dismissed, with costs and disbursements to respondent; and it is further

ADJUDGED that respondent, recover from petitioner, 197 Madison Holdings LLC, costs and disbursements in the amount as taxed by the Clerk, and that respondent have execution therefor.

12/8/2022
DATE

WILLIAM PERRY, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED	X	DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE