DeCock v State of N.Y. Div. of Hous. & Community Renewal
2023 NY Slip Op 30897(U)
March 23, 2023
Supreme Court, New York County
Docket Number: Index No. 160585/2022
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 14

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GERALD DECOCK,

Petitioner,

- v -

STATE OF NEW YORK DIVISION OF HOUSING AND COMMUNITY RENEWAL, CHELSEA HOTEL OWNER LLC

Respondents.

INDEX NO. 160585/2022

MOTION DATE 03/21/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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HON. ARLENE P. BLUTH:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31
were read on this motion to/for Article 78.

The petition to overturn a determination by the State of New York Division of Housing and Community Renewal ("DHCR"), which denied petitioner's petition for administrative review, is denied.

Background

This proceeding arises out of a claim for rent overcharge in violation of the Rent Stabilization Law ("RSL"). Petitioner lives at Apt 1014 in the Chelsea Hotel and moved in on October 1, 1994 with a monthly rent of $2,000. Prior to petitioner's occupancy, respondents contend that the unit was vacant.

In 2007, petitioner filed a complaint with DHCR alleging that "the owner has not been providing certain hotel services as required by law and alleging a rent overcharge," (NYSCEF Doc. No. 29 at 1[the Rent Administrator's Order]). Petitioner further stated he never received a lease or notice of the deregulated status of the unit. At the time of the DHCR complaint, petitioner argued his current rent of $2,700 was inappropriate and insisted that the legal rent

should be set at $2,000 per month, the initial amount he paid. The rent administrator ("RA") found that the apartment unit was not subject to rent stabilization because, pursuant to section 2520.11(r)(2) of the Rent Stabilization Code, the unit "became vacant on or after April 1, 1994 but before April 1, 1997," with an initial rent at or above $2,000 (*id*. at 2). Petitioner appealed the RA's decision, claiming the RA denied petitioner's overcharge complaint "despite the alleged substantial indicia of a fraudulent scheme by the owner to remove the unit from rent regulation," (NYSCEF Doc. No. 30 at 1 [the DHCR Order]). After reviewing the record, the DHCR Commissioner found that the RA's decision was proper in determining that the unit was not subject to Rent Stabilization Law because it became vacant prior to October 1, 1994. The Commissioner supported the RA's decision to look beyond the 4-year statute of limitations period from the point of the filing of the complaint, and properly considered the history of the unit since 1994. Despite this generous lookback period, the Commissioner agreed that the $2,000 rental amount was proper in 1994 pursuant to the Rent Stabilization Code, and that the unit was deregulated.

The petitioner now appeals the Commissioner's decision claiming the decision was arbitrary and capricious because DHCR failed to review documentation prior to 1994 that would demonstrate a fraudulent scheme to deregulate the apartment. Additionally, petitioner contends DHCR should award petitioner rent overcharges, including treble damages, and Chelsea Hotel should be required to offer petitioner a rent-stabilized renewal lease for one or two years at petitioner's option, with a rent of $2,228.66 based on the correct calculation of rent for the unit. According to petitioner, after a proper review of the record, DHCR should have found that the $2,000 rent was inappropriate, and that petitioner was being overcharged when he became the tenant of the unit.

Both respondents oppose petitioner's claims. DHCR contends it properly determined the premises was not subject to the Rent Stabilization Law because the unit became vacant prior to October 1, 1994 with a legal rent of $2,000 thus triggering deregulation status pursuant to the Rent Regulatory Reform Act of 1993 and the Rent Stabilization Code. Additionally, DHCR asserts petitioner is barred from raising the issue of alleged fraud because it was not brought before the RA in petitioner's initial complaint. DHCR indicates this is apparent by petitioner's original complaint requesting that the rent for his apartment unit be rolled back to the initial $2,000 per month. Furthermore, DHCR argues that petitioner's position that rents prior to 1994 should have been reviewed is based on an outdated bulletin that was circulated between the passage of the Rent Regulatory Reform Act of 1993 and the promulgation of regulations in 1994. It is DHCR's position that the regulations spurring from the RRRA are controlling, not the bulletin. In any event, DHCR contends petitioner could not produce evidence requiring the RA to look back *beyond* 1994, thus the RA did not do so. DHCR maintains the order issued by the RA was not arbitrary and capricious and was instead based on controlling law.

Chelsea Hotel asserts similar arguments as DHCR. Chelsea Hotel contends the DHCR decision was not arbitrary and capricious as it was based on a sound administrative record that included relevant and controlling law. Additionally, Chelsea Hotel argues petitioner's claims of a fraudulent scheme are meritless as petitioner did not allege a fraudulent scheme in his original rent overcharge complaint; however, to the extent petitioner did allege a fraudulent scheme, DHCR considered them and properly rejected them. Furthermore, petitioner admitted the appropriate rental amount was $2,000. Finally, Chelsea Hotel argues petitioner's request for attorneys' fees and costs should be dismissed because there is no basis for an award of attorneys' fees in this proceeding, instead the issues are remanded to DHCR for review.

In reply to respondents, petitioner argues there is nothing in the administrative record demonstrating that petitioner was served the required notices as to what the last rent was for his unit when he began his occupancy in October 1994. Petitioner contends that according to RSC § 2522.5(c)(1)(i), incoming tenants following a vacancy are entitled to notice of the prior legal regulated rent and an explanation of how the rental amount has been computed. Because of this, petitioner argues vacancy deregulation never took place. Furthermore, petitioner asserts the issue of a fraudulent scheme to evade rent stabilization was properly alleged in the initial complaint, but even if the first allegation was made to the commissioner on review, this was only because the caselaw on which the "fraudulent scheme" doctrine is based were decided well after petitioner first filed his complaint in 2007. Petitioner continues by arguing that there is no rational basis for DHCR to find that the *legal* rent in October 1994 was $2,000, and instead the record shows that by 1994 the owner of the unit failed to register any rent for the apartment as part of a lengthy scheme of fraudulent conduct.

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. There is no dispute that the unit was vacant on or after April 1, 1994 but before April 1, 1997. When petitioner occupied the premises, he paid $2,000 per month. The Commissioner was satisfied that these two elements meant that the unit "is not subject to the RSL," (NYSCEF Doc. No. 30 at 3). Petitioner contends DHCR should have looked at the rental history prior to October 1994 to ascertain whether $2,000 was the legal rent, not just the rent he was charged at the time. The record also suggests, however, that petitioner's initial complaint filed in 2007 requested that his rent be reduced to $2,000 per month from $2,700 (NYSCEF Doc. No. 29 at 1). Petitioner's initial filing requested that his rent "be rolled back from $2,700 per month to the initial rent of $2,000 per month," (NYSCEF Doc. No. 24 at 8). Ten years later, in his PAR, petitioner argued the apartment was never registered and there was no evidence of a "lawful vacancy increase to bring petitioner's vacancy rent to $2,000 per month," (*Id*. at 129). Evidently, petitioner changed his stance on how his rent should be calculated.

Furthermore, petitioner's contention that the RA failed to properly assess an alleged fraudulent scheme is without merit. Based on the record, petitioner alleged the unit was never registered, but submitted no additional evidence to support this claim as part of a fraudulent scheme to deregulate the apartment. In any event, a conclusory allegation of fraud is not sufficient to require DHCR to go back even further (*see Grimm v State Div. of Hous. & Cmty. Renewal Off. of Rent Admin.*, 15 NY3d 358, 367, 912 NYS2d 491 [2010]).

Here, petitioner filed his complaint over 13 years after moving into the unit and well beyond the four-year limitations period. DHCR went beyond the four year period, all the way back to 1994, and still found that the apartment is not subject to rent stabilization laws based upon the monthly rent at the time petitioner moved in and the fact that the apartment was vacant. In other words, DHCR decided to look back all the way to 1994 even though it did not have to

do so and DHCR still found that there was no basis to find that the subject apartment is subject to rent stabilization laws. In a footnote, the Commissioner noted the initial rent paid by petitioner upon commencement of his occupancy was appropriately determined to be the base rent for RSL purposes given the absence of prior rent records (NYSCEF Doc. No. 30 at 4).

The record yields only one conclusion—that DHCR's decision was rational and that there is no basis to disturb its findings. Simply because petitioner may disagree with the decision is not a basis for this Court to annul DHCR's determination. In an Article 78 proceeding, this Court may not substitute its own judgment for that of an agency. It can only assess whether the decision was rational and the conclusions by DHCR here were entirely rational.

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 respondents and against petitioner along with costs and disbursements upon presentation of proper papers therefor.

3/23/2023
DATE

ARLENE P. BLUTH, 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