SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR F. ENGORON** **PART** **37**

Justice

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INDEX NO. 150504/2023

101 EAST 16TH STREET REALTY LLC, OVERLOOK TERRACE LLC, 670 FORT WASHINGTON AVENUE, INC., 386 FORT WASHINGTON REALTY LLC,

MOTION DATE 02/02/2023

MOTION SEQ. NO. 001

Petitioners,

- v -

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL,

DECISION + ORDER ON MOTION

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21

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

Upon the forgoing documents, and for the reasons stated hereinbelow, the petition is granted.

Background

Between November 2018 and March 2019 petitioners, 101 East 16th Street Realty LLC, Overlook Terrace LLC, 570 Fort Washington Avenue Inc., and 386 Fort Washington Realty LLC (collectively, "Owners"), as owners of residential buildings in New York City with apartments subject to various rent-regulatory laws, including the Rent Stabilization Law of 1969 and the City Rent and Rehabilitation Law, filed applications for Major Capital Improvement ("MCI") rent increases with respondent, New York State Division of Housing and Community Renewal ("DHCR"). NYSCEF Doc. No. 1

On June 14, 2019, while Owners' MCI applications were pending before DHCR, the New York State Legislature enacted the Housing Stability and Tenant Protection Act of 2019 ("HSTPA"), which dramatically changed many of New York's housing laws. See L 2019, ch. 36. At issue here, Part K of the HSTPA reformed the way that MCI rent increases were to be awarded and, pursuant to Part K § 18, the Legislature directed that those changes "shall take effect immediately." Id., Pt. K. Section 18 was silent as to the application of the HSTPA's changes on pending determinations.

Pursuant to the Legislature's "immediately" language, DHCR implemented the HSTPA's changes in affirming the Owners' MCI Rent Increase orders. NYSCEF Doc. No. 10.

Subsequent to DHCR's affirmations, between November 2019 and February 2021, Owners filed Petitions for Administrative Review ("PARs") with respondent, arguing that the MCI provisions

of the HSTPA had been incorrectly applied "retroactively," as all the Owner's MCI applications, and the work they represented, predated the HSTPA. Owners argued that DHCR's retroactive implementation of the new provisions violated their right to due process.

Between November and December 2022, DHCR issued Orders and Opinions denying the owners' PARs, finding that DHCR did not retroactively make its determinations because the MCI provisions dealt with prospective relief (i.e. Owners ability to collect rents in the future), noting that "a statute that affects only 'the propriety of prospective relief' or the nonsubstantive provisions governing the procedure for adjudication of a claim going forward has no potentially problematic retroactive effect." NYSCEF Doc. No. 9, citing Bldg. and Realty Inst. Of Westchester & Putnum Counties, Inc. (BRI) v New York, 2021 US Dist LEXIS 174535, and Regina Metro. Co. LLC v DHRC, 35 NY3d 332 (2020),

On January 17, 2023, petitioners commenced this Article 78 special proceeding by filing the instant petition asking this Court to set aside DHCR Admin. Review Docket Nos. HV-410015-RO, HV-430085-RO, JN430007-RO and HW-410013-RO, solely to the extent that they implemented the HSTPA's changes to calculate any MCI rent increases. NYSCEF Doc. No. 1.

On March 23, 2023, DHCR answered with general denials, an affirmative defense of failure to state a cause of action, and a further answer that the relevant PARs "were not arbitrary, capricious, erroneous, or contrary to law, and were in accordance with the Rent Stabilization Law and Code and [are] fully entitled to judicial affirmance." NYSCEF Doc. No. 17.

Petitioners argue that the DHCR's PARs were arbitrary and capricious because, inter alia, the Legislature did not intend the HSTPA's MCI provisions to be applied retroactively. To show this, petitioners note that the "effective date" portion of Part K says it "shall take effect immediately" but does not include any language about ongoing matters, whereas the same portion of other parts of the HSTPA do include qualifications. For example, Part F, which relates to overcharge claims, says "[t]his act shall take effect immediately and shall apply to any claims pending or filed on and after such date." NYSCEF Doc. No. 1.

In opposition respondent argues, inter alia: that the PARs were neither arbitrary nor capricious as the HSTPA was applied to petitioners' MCI applications prospectively, not retroactively, because they dealt with future rent increases; that Article 78 proceedings are not the place for constitutional arguments; and that petitioners have no vested right to any particular iteration of the MCI program favorable to it in perpetuity. NYSCEF Doc. No. 7. Respondent also points out that § 29 of Part M of the HSTPA, which, deals with, inter alia, amendments to leases as well as harassment of, and retaliation against, tenants, says that it "takes effect immediately and shall apply to actions and proceedings commenced on or after such effective date," essentially using the language that petitioners now ask this Court to read into Part K.

In reply, petitioners argue that this Court need not defer to the DHCR on a pure question of law, citing Roberts v Tishman Speyer Props., L.P., 13 NY3d 270, 285 (2009), quoting Kurcics v Merchants Mut. Ins. Co., 47 NY2d 451, 459 (1980), for the proposition that where:

> the question is one of pure statutory reading and analysis, dependent only on accurate apprehension of legislative intent, there is little basis to rely on any special competence or expertise of the administrative agency and its interpretive regulations . . . And, of course, if the regulation runs counter to the clear wording of a statutory provision, it should not be accorded any weight.

Petitioners also reply, inter alia, that their constitutional arguments are not inappropriate for an Article 78 proceeding; that despite DHCRs protestations their determinations utilized the HSTPA retroactively, not prospectively, as the underlying construction work had been completed and the MCI applications fully submitted before the enactment of the HSTPA; and that petitioners were entitled to rely on the law in effect at the time of their applications.

Finally, petitioners note that the Court of Appeals in Regina, when interpreting Part F of the HSTPA's mandatory effective date language, specifically found that the "application of these amendments to past conduct would not comport with our retroactivity jurisprudence or the requirements of due process" and therefore the "newly-enacted overcharge calculation provisions may not be applied retroactively." Regina, 35 NY3d at 349 and 388.

Discussion

In a CPLR Article 78 proceeding the scope of judicial review is limited to the issue of whether the administrative action is rationally based. Matter of Pell v Board of Educ., 34 NY2d 222, 230-31 (1974). It is well settled that "a court may not substitute its judgment for that of the board or body it reviews unless the decision under review is arbitrary and unreasonable and constitutes an abuse of discretion." Id., at 232 (internal citation omitted).

DHCR's argument that because Part K of the HSTPA went into effect "immediately" its provisions must be applied to then pending applications, as the benefits awarded are prospective, not retroactive, is unavailing. While petitioners may not have a right to any particular iteration of the MCI program in perpetuity, in this instance DHCR's "immediate" implementation of the HSTPA's MCI provisions were retroactive, as they "impair rights [petitioners] possessed when [they] acted, increase [petitioners'] liability for past conduct, or imposes new duties with respect to transactions already completed." Regina at 365 citing Landgraf v USI Film Products, 511 US 244, 280 (1994).

Here, petitioners made major capital improvements to their buildings and completed and submitted all of the necessary paperwork before the HSTPA went into effect and are entitled to not have the rules their applications are reviewed under be changed retroactively.

Therefore, as DHCR's utilization of the HTPA's MCI provisions were retroactive, not prospective, they were inappropriately used here and should be set aside.

This Court has considered the parties' other arguments and finds them to be unavailing and/or non-dispositive.

Conclusion

For the reasons stated hereinabove, the petition is hereby granted, and this Court, pursuant to CPLR 7806, reverses, annuls, and sets aside those four orders issued by respondent, New York State Division of Housing and Community Renewal, under DHCR Admin. Review Docket Nos. HV-410015-RO, HV-430085-RO, JN430007-RO and HW-410013-RO, solely to the extent that those orders affirmed DHCR's prior retroactive application of the "Housing Stability and Tenant Protection Act of 2019" in its determination of petitioners' Major Capital Improvement Rent Increase Applications. Respondent is hereby ordered to evaluate petitioners' MCI applications pursuant to the pre-HSTPA rules.

6/5/2023
DATE

ARTHUR F. ENGORON, J.S.C.

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