Chelsea Hotel Owner LLC v New York State Div. of Hous. & Community Renewal
2023 NY Slip Op 31889(U)
June 5, 2023
Supreme Court, New York County
Docket Number: Index No. 160643/2022
Judge: Arlene P. Bluth

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

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CHELSEA HOTEL OWNER LLC,

Petitioner,

- v -

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, ROBERT MILLER

Respondent.

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INDEX NO. 160643/2022

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001)1- 9, 10, 11, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 36

were read on this motion to/for ARTICLE 78.

The petition to annul a decision by respondent the New York State Division of Housing and Community Renewal ("DHCR") is denied.

Background

This proceeding arises out of respondent Miller's tenancy in a building owned by petitioner. Miller brought an overcharge proceeding in 2009 and the parties proceeded to litigate the issue before DHCR.

The Rent Administrator concluded in an initial order and an amended order (to correct the tenant's mailing address) that the unit was subject to permanent deregulation from rent stabilization on the ground that the rent on the base date was $2,500 (NYSCEF Doc. No. 3). This amount exceeded the high rent vacancy deregulation threshold then in effect. Miller brought a petition for administrative review (a "PAR") and the Commissioner reversed.

He concluded that the apartment was subject to rent stabilization (NYSCEF Doc. No. 4 at 2). The Commissioner found "that the record does not support the owner's claim that the subject apartment was exempt from regulation on the base date. Instead, the Commissioner finds that it is undisputed that the former tenant, Richard Reich, in 1993 entered into a fifteen (15) year residential lease for the subject apartment at an initial rent of $1,500.00. Furthermore, it is undisputed that the former tenant's rent was increased to $4,000.00 per month at certain times (the first instance in the record provided to the Agency was in 2002), and that on the base date, the rent charged and paid by the former tenant was $2,500.00 per month. The owner failed to offer any explanation for any increase in rent for any period in time, and the owner has not offered any evidence to support that that the subject housing accommodation was properly deregulated pursuant to the former Section 26-504.2 of the RSL" (*id*. at 4). He emphasized that "Apartment Registrations, leases, and/or any possible rationale for the significant rent increases are absent from the record and were not supplied by the owner" (*id*.).

Petitioner emphasizes that there is no dispute that the rent charged to Miller exceeded the high rent deregulation threshold on the base date and questions how DHCR could have ignored this fact. It also vigorously disputes the affidavit from the former tenant, Mr. Reich, and notes the absurdity of his claim that he had a *15-year* residential lease. Petitioner maintains that DHCR should not have credited that affidavit or used to find that the apartment was subject to rent stabilization laws. It argues that no copy of that 15-year lease was ever provided and points to "folio records" that show the former tenant was paying $4,000 per month in January 2003 and that the rent was reduced in 2004 (to $2,500).

In opposition, DHCR insists that the Commissioner's decision was rational and claims that petitioner failed to substantiate that it charged legal rent at any time through the rental

history. It claims that it properly looked beyond the four-year state of limitations (i.e., beyond the base date) to determine the apartment's regulatory status. DCHR emphasizes that petitioner failed to provide any leases to establish a proper rent and that it was not the former tenant's burden to produce a 15-year lease.

Miller also offers opposition in which he reiterates many of the points raised by DHCR and insists petitioner engaged in a long-running fraudulent scheme to evade rent stabilization.

In reply, petitioner disputes that there was a fraudulent scheme to evade rent stabilization and that DHCR was not entitled to rely solely on the affidavit of the former tenant. It argues that an owner need not maintain records indefinitely. Petitioner also argues that landlords are not required to keep full rental histories and that he failure to register an apartment does not affect its status with respect to rent stabilization laws.

Discussion

"In article 78 proceedings, the doctrine is well settled, that neither the Appellate Division nor the Court of Appeals has power to upset the determination of an administrative tribunal on a question of fact; the courts have no right to review the facts generally as to weight of evidence, beyond seeing to it that there is 'substantial evidence. . . . The courts cannot interfere unless there is no rational basis for the exercise of discretion or the action complained of is arbitrary and capricious. The arbitrary or capricious test chiefly relates to whether a particular action should have been taken or is justified and whether the administrative action is without foundation in fact. Arbitrary action is without sound basis in reason and is generally taken without regard to the facts" (*Pell v Bd. of Ed. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 NY2d 222, 230-31, 356 NYS2d 833 [1974]).

The Court denies the petition. The decision by the Commissioner was entirely rational. While the Court acknowledges that the former tenant's claim of a 15-year lease is, at best, a suspicious assertion, the fact is that petitioner did not submit something to dispute those assertions. Nothing was apparently submitted in the proceedings below, such as an affidavit from someone involved in managing the building, that contradicted the former tenant's assertions. And, as noted above, it is not this Court's role to second-guess factual findings of an agency in Article 78 proceeding.

Moreover, DHCR's decision was not solely based on this affidavit. The conclusion emphasized that petitioner did not submit apartment registrations, leases, or any rationale for various rent increases. Instead, "folio records" of certain increases were included. While petitioner is correct that perfect and indefinite record keeping is not required, the fact is that the lack of so many records permitted DHCR to explore the rent history more than four years beyond base date, particularly due to the failure to include any leases.

The Court also observes that the amount charged for rent does not, by itself, entitle a landlord to seek deregulation of an apartment. The Appellate Division, First Department has found that where an "apartment was never properly treated by any owner as rent-stabilized, it could not have been removed from rent-stabilization based on high-rent vacancy deregulation" (*AEJ 534 E. 88th, LLC v New York State Div. of Hous. & Community Renewal*, 194 AD3d 464, 471, 150 NYS3d 92 [1st Dept 2021]). That is exactly the situation here. Petitioner points to no evidence that there was a rent-stabilized lease for this unit (for either Miller or the former tenant), that it properly registered the apartment as rent-stabilized or that it took the appropriate steps to deregulate the apartment.

A "high-rent vacancy increase of an apartment was never automatic, even before the HTSPA. An owner had to comply with the requirements of RSL § 26-504.2 (a), among them providing the new vacancy tenant with written notice disclosing what the last regulated rent was, the reason the apartment was no longer rent regulated, and a calculation of how the rent had reached the applicable deregulation threshold in effect" (*id*.). That is, petitioner is not entitled to reverse DHCR's decision solely on the ground that the rent exceeded the threshold, at least according to the binding case cited above.

Summary

The Court recognizes that it may be that petitioner simply lacks the records or never got the records from the previous owner (at oral argument, there was discussion about ownership changes). Petitioner still decided to take ownership of the building despite the apparent track record of the previous owner. Although petitioner is absolutely correct that a landlord need not keep every file imaginable for years on end, this is not a situation in which a landlord is unable to locate certain records or forgot to register the apartment for a few years. Here, there is, at least according to DHCR's decision, a complete lack of any records. That lack of any records provided a rational basis for the conclusion reached here. The Court cannot reverse DHCR's decision because petitioner disagrees with it or would prefer that DHCR have ignored the affidavit from the former tenant.

Accordingly, it is hereby

ADJUDGED that the petition is denied, this proceeding is dismissed with costs and disbursements to be awarded to respondents in the amount of $ _____ , as taxed by the Clerk upon presentation of proper papers therefor, and that respondents have execution therefor.

6/5/2023
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