Anderson v New York State Div. of Hous. & Community Renewal

2023 NY Slip Op 31970(U)

June 12, 2023

Supreme Court, Kings County

Docket Number: Index No. 500086/2021

Judge: Wayne P. Saitta

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 29 of the Supreme Court of the State of New York, held in and for the County of Kings, at 360 Adams Street, Brooklyn, New York, on the 12th day of June, 2023.

P R E S E N T:

Hon. Wayne P. Saitta, Justice.

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CHERYL ANDERSON,

Petitioner,

Index No. 500086/2021

In a Proceeding Pursuant to Article 78 of the CPLR

-against-

DECISION AND ORDER
MS #1 and MS #2

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL and 192 BSD REALTY LLC,

Respondent.

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The following papers numbered on this motion:

	NYSCEF Doc Numbers
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	1-3, 35, 31
Answering Affidavit (Affirmation)	22, 37
Reply Affidavit (Affirmation)	38, 48
Supplemental Affidavit (Affirmation)	
Pleadings –Exhibits	4-16, 26-27, 32-33, 39-40
Stipulations – Minutes	
Filed Papers	

Petitioner, CHERYL ANDERSON, brings this CPLR Article 78 Petition challenging a New York State Division of Housing and Community Renewal's ("DHCR") Order and Opinion Granting Petition for Administrative Review ("PAR") issued November 6, 2020, revoking the Rent Administrator's Order, issued October 10, 2018, which found a rent overcharge. Petitioner seeks an Order vacating DHCR's PAR Order and restoring the

Rent Administrator's Order. At issue is whether DHCR's PAR decision to revoke the Rent Administrator's Order Finding Rent Overcharge and finding that the subject apartment is not subject to rent stabilization was arbitrary or capricious.

Respondent DHCR cross-moves to remand the Article 78 proceeding to DHCR for further review and processing of the PAR.

Respondent 192 BSD REALTY LLC (Respondent Landlord) is the owner and landlord of the subject building, 192 Jefferson Street, Brooklyn, NY 11206. Petitioner is the current tenant of Apartment 2R ("the Apartment") in the subject building. Petitioner moved into the Apartment in March of 2014 as the roommate of the prior tenant, Lawrence Quintana. Respondent DHCR is the New York State Administrative Agency responsible for enforcing the Rent Stabilization Law and Code.

On May 31, 2013, Mr. Quintana filed a rent overcharge complaint with DHCR. On October 4, 2018, DHCR's Rent Administrator issued an Order Finding Rent Overcharge determining that the subject apartment was subject to Rent Stabilization, that the collectible rent was $1,675.00 per month, and that Mr. Quintana was owed $6,150.00 which includes $4,100.00 in treble damages.

On November 2, 2018, Respondent Landlord filed a PAR challenging the Rent Administrator's Order. The Petition argued that DHCR properly found that the subject apartment was exempt from rent stabilization because, pursuant to Section 2526.1(a)(3)(iii) of the post-2014 Rent Stabilization Code ("RSC"), the apartment was vacant on the base date and the first tenant thereafter signed a lease with a preferential rent of $1,650.00 and a rider claiming that the legal regulated rent had exceeded the $2,000.00 vacancy deregulation threshold. On February 12, 2020, DHCR's Deputy Commissioner issued an Order remanding the proceeding to the Rent Administrator.

On November 6, 2020, DHCR's Deputy Commissioner issued an Order granting Respondent's PAR and determined that the subject apartment is not subject to Rent Stabilization and therefore DHCR does not have jurisdiction to consider the rent overcharge complaint or the tenant's subsequent Affirmation of Non-Compliance.

Petitioner then commenced this CPLR Article 78 proceeding challenging the November 6, 2020, PAR Order. It is well settled that an entity subject to an administrative decision may challenge such determination pursuant to Article 78 of the CPLR. Under Article 78, this Court has the power to grant Petitioner the relief it is entitled to (CPLR § 7806). However, this Court cannot vacate an administrative decision if the decision was rational and not arbitrary and capricious (*Pell v. Board of Education of Union Free School,* 34 NY2d 222 [1974]). If the reviewing court finds that the agency determination has a rational basis, the determination must be sustained (*Matter of Navaretta v. Town of Oyster Bay*, 72 AD3d 823 [2d Dept 2010]). Additionally, an agency's interpretation of the statutes and regulations that it administers is entitled to deference and must be upheld if reasonable (*508 Realty Assocs., LLC v. New York State Div. of Hous. & Cmty. Renewal,* 61 AD3d 753, 755 [2d Dept 2009]).

The decision dated November 6, 2020, granting the PAR, must be reversed because it is based on an erroneous interpretation of the Rent Stabilization Law and the Court of Appeals holding in *Altman v. 285 West Fourth LLC*, 31 NY3d 178 [2018].

The Deputy Commissioner stated that the apartment was deregulated because the first rent agreed to after the vacancy exceeded $2,000.00. However, the Rent Stabilization Law provides that an apartment becomes deregulated after a vacancy when the legal stabilized rent was $2,000.00 or higher at the time of the vacancy, or when an apartment becomes vacant and the available statutory increases applicable to the

apartment after the tenant's vacancy raise the rent to $2,000.00 or more (*Altman v. 285 West Fourth LLC*, 31 NY3d 178).

"Rent Stabilization Law § 26–504.2(a) provides that deregulation will apply to:

> any housing accommodation which becomes vacant on or after [April 1, 1997] and before the effective date of the rent act of 2011 and where at the time the tenant vacated such housing accommodation the legal regulated rent was two thousand dollars or more per month; *or,* for any housing accommodation which is or becomes vacant on or after the effective date of the rent regulation reform act of 1997 and before the effective date of the rent act of 2011, with a legal regulated rent of two thousand dollars or more per month (Rent Stabilization Law § 26–504.2[a] [emphasis added])" (*id*. at 184-185).

Thus, it is the legal stabilized rent at the time of the vacancy plus any legally applicable increases, not the first post vacancy rent agreed to, that determines whether the apartment is deregulated.

Here, as in *Altman*, the vacancy increase should be considered in determining the legal regulated rent at the time of the vacancy if applicable. The base date is May 31, 2009. Respondent Landlord claims that the apartment was vacant on this date and therefore is entitled to a vacancy increase of 16% which was the vacancy increase percentage for a one-year lease at the time of the alleged vacancy in May of 2009. Petitioner argues that there is no proof in the record that the apartment was vacant on the base date. Respondent Landlord submitted a one-year lease beginning August 15, 2009 as proof that the apartment was vacant on the base date since a lease did not begin until August of 2009. However, Respondent Landlord did not file a rent registration for the year 2008 and then filed as "Exempt" in 2009. As there is no rent history for 2008, it cannot be determined whether the apartment was in fact vacant on the base date.

Even assuming the apartment was vacant on the base date and Respondent Landlord is entitled to the vacancy increase of 16%, the last recorded rent history was $1,266.00 in 2007. Applying the 16% vacancy increase to the last recorded rent would bring the rent to $1,468.56 which does not bring the legal regulated rent over the $2,000.00 threshold to deregulate the apartment and Respondent Landlord never demonstrated that the legal regulated rent went over the $2,000.00 threshold to deregulate the apartment.

Further, Respondent Landlord did not file rent registration in 2008 to demonstrate that the legal regulated rent went over the $2,000.00 threshold to deregulate the apartment. Instead, Respondent Landlord filed the apartment as "Exempt" in 2009 without demonstrating how it became exempt. Therefore, the legal regulated rent is frozen at $1,266.00 which was the last recorded rent registration in 2007.

"[A]partments [are] not automatically deregulated when the tenant was paying over $2000 a month" (*Tribeca M. Corp. v. Haller,* 2003 NY Slip Op 51271(U), (Civ Ct, NY County 2003). "The courts required the landlords to file the appropriate documents with the DHCR, serve notice on the tenant, or obtain a DHCR determination that the apartments are not subject to rent regulation" (*id.)*.

Owners of rent-stabilized buildings must file an annual registration containing "the current rent for each housing accommodation not otherwise exempt [from rent stabilization], a certification of services, and such other information as may be required by the DHCR" (RSC [9 NYCRR] § 2528.3[a]). The failure to "properly and timely" comply with the registration requirement results in the rent being frozen at the amount of the

legal regulated rent in effect on the date of the last preceding registration statement (*id.* at § 2528.4).

By reason of the foregoing, this Court finds that the apartment is still subject to Rent Stabilization, that DHCR's determination was arbitrary and capricious, and that the legal regulated rent remains the last registered rent of $1,266.00.

WHEREFORE, it is ORDERED that Petitioner' Petition is granted; and it is further

ORDERED, that Respondent DHCR's November 6, 2020, order (Administrative Review Docket No. IS210034RK) is vacated; and it is further

ORDERED, Respondent DHCR's dismissal of Petitioner's December 3, 2018, rent overcharge complaint is reversed and remanded to DHCR for determination; and it is further

ORDERED, that Respondent DHCR's cross-motion is denied.

This constitutes the decision and order of the Court.

ENTER,

J.S.C.