Matter of 8 Ave Holdings LLC v New York State Div. of Hous. & Community Renewal
2023 NY Slip Op 32588(U)
July 27, 2023
Supreme Court, New York County
Docket Number: Index No. 153005/2023
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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IN THE MATTER OF THE APPLICATION OF

8 AVE HOLDINGS LLC

Petitioner,

- v -

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL,

Respondent.

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INDEX NO. 153005/2023

MOTION DATE 07/26/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for ARTICLE 78.

The petition to reverse the denial of petitioner's petition for administrative review ("PAR") is denied.

Background

Petitioner owns a building in Manhattan and sought, through respondent, an order exempting the building from rent regulation based on a substantial rehabilitation. Under this statutory scheme (found under the Emergency Tenant Protection Act of 1974 and the Rent Stabilization Code), an owner can obtain an exemption for its building from rent stabilization by meeting certain requirements that constitute a "substantial rehabilitation." Petitioner argues that it satisfied the required elements and so the building should have been deemed exempt.

Petitioner maintains it filed the proper application for exempt status from rent stabilization in June 2017 with respondent and that it submitted sufficient proof to show it met the requirements to qualify for the exemption. It insists that when it purchased the building 2010, it was vacant and that it subsequently made significant changes to the premises including, but not limited to, replacing the plumbing, heating, electrical wiring, windows, roof, kitchens, and bathrooms. It emphasizes that respondent does not deny that petitioner made substantial changes to the building and claims the decision to deny the application for the exemption was arbitrary and capricious.

Petitioner acknowledges that its application was denied because it did not provide leases, lease renewals or preferential rent riders for the current tenants but insists that it did not have to do so. It claims that it never gave the tenants rent stabilized leases and so that should have been enough for respondent.

In opposition, respondent emphasizes that it was not provided with requested documentation necessary to assess whether or not the building should be exempt from rent stabilization. It points out that petitioner was not obligated to seek an order from respondent in order to obtain the exemption, but that once it did, petitioner was obligated to provide the requested documentation. Respondent claims that petitioner continuously refused to provide the documents it requested and to instead improperly limit the scope of respondent's inquiry. It also claims that relief in the form of a mandamus to compel is not applicable here because the relief sought by petitioner is not ministerial.

In reply, petitioner observes the respondent did not deny that the renovations were done or question the scope of the rehabilitation project. It claims that respondent had no basis to

request leases for current tenants as it already produced leases for the tenants that occupied the building right after the renovation was completed.

Discussion

"In reviewing an administrative agency determination, [courts] must ascertain whether there is a rational basis for the action in question or whether it is arbitrary and capricious. An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts. If the court finds that the determination is supported by a rational basis, it must sustain the determination even if the court concludes that it would have reached a different result than the one reached by the agency. Further, courts must defer to an administrative agency's rational interpretation of its own regulations in its area of expertise" (*Matter of Peckham v Calogero*, 12 NY3d 424, 431, 883 NYS2d 751 [2009] [internal quotations and citations omitted]).

The Court's analysis begins with the Rent Administrator's ("RA") order. The RA noted that "the premises have been occupied subject to rent stabilized leases since at least 2011. The premises have been registered subsequently up to 2021 as also subject to rent stabilization but with preferential rents as part of the registration. Although requested, the owner will not provide same for review and claimed it to be irrelevant. The DOB plans indicate plans filed but show a series of approvals, preliminary plans and examinations commencing in 2010 and possibly 2011 but ending in 2019" (NYSCEF Doc. No. 27 at 2).

She added that she wanted to see the leases because:

> "(1) They may actually provide information as to the status of the work over this period if a reason is articulated for the rationale for preferential rents.
>
> (2) Given the owner itself has treated these residents as rent stabilized, any additional information seeking to articulate those reasons for providing those representations should be examined.

> (3) The actual date of completion of any alleged substantial rehabilitation is important to:
>
> (a) Ascertain whether the work was actually part of a single action or plan rather than a series of upgrades, and
>
> (b) Ascertain whether these residents then in place before the completion of the substantial rehabilitation, or its actually legally recognized completion, are entitled to continued rent stabilization protection. Although the owner may believe that the future tenant status is irrelevant to its application, in reality that is the crux of this application. Certainly, under the unclear and ambiguous circumstances attendant here, created by the owner, the residents are entitled to know the impact of any DHCR determination, just as the owners assert they want to know by virtue of having made this application." (*id*.).

In the PAR, respondent concluded that "The Commissioner agrees with the RA's finding that the petitioner's application may not be granted because the requested leases and lease riders were not submitted as requested by the RA" (NYSCEF Doc. No. 26 at 3).

The Court denies the petition because respondent identified a rational justification for denying petitioner's request for an exemption from rent stabilization. The only issue in this proceeding is petitioner's refusal to comply with respondent's request to provide leases and riders. Petitioner does not deny that it received this request or that it declined to produce these records. Instead, it asserts that it does not have to provide these records because it is irrelevant. But respondent—the agency tasked with making the instant determination—disagreed and identified a legitimate reason for asking for the records. It wanted to explore why the premises were registered until 2021 and why there were rent stabilized leases dating back to 2011.

Petitioner cannot simply assert in this proceeding that there were no such rent stabilized leases without providing the requested documentation (the leases themselves) to respondent.

A review of the underlying record reveals that respondent asked for the leases because "DHCR rent registrations indicate that the tenants residing in the building from 2012 to 2021

were given rent stabilized leases with preferential rents" (NYSCEF Doc. No. 29 at 350). Respondent was entitled to ask for these records under these circumstances and, when petitioner refused, it rationally denied the application. In an Article 78 proceeding, "the Court may not substitute its own judgment for that of the agency, particularly with respect to matters within its expertise" (*City Services, Inc. v Neiman*, 77 AD3d 505, 507, 909 NYS2d 703 [1st Dept 2010]). The Court cannot instruct respondent how to conduct its inquiry particularly where, as here, it clearly identified a rational reason for its document demand. Petitioner's refusal to comply risked the outcome that occurred here—the denial of its application.

Accordingly, it is hereby

ADJUDGED that the petition is denied and this proceeding is dismissed without costs or disbursements.

7/27/2023
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