Matter of 680 Ft. Wash. Ave. Realty, LLC v New York State Div. of Hous. & Community Renewal
2023 NY Slip Op 34037(U)
November 14, 2023
Supreme Court, New York County
Docket Number: Index No. 151680/2023
Judge: Erika M. Edwards
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ERIKA M. EDWARDS** **PART 10M**

Justice

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In the Matter of the Application of

680 FT. WASHINGTON AVE. REALTY, LLC, LENOX HILL DEVELOPMENT CORP., and LENOX HILL APARTMENTS INC.,

Petitioners,

- v -

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL,

Respondent.

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INDEX NO. 151680/2023

MOTION DATE 02/21/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTIONS

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40

were read on this motion to/for ARTICLE 78 & CROSS-MTN TO DISMISS.

Upon the foregoing documents, the court denies Petitioners 680 Ft. Washington Ave. Realty, LLC's ("680 Ft. Washington Ave."), Lenox Hill Development Corp.'s ("LHDC") and Lenox Hill Apartments Inc.'s ("LHA") (collectively, "Petitioners") Verified Petition, the court dismisses the Verified Petition, and the court grants Respondent New York State Division of Housing and Community Renewal's ("Respondent") cross-motion to dismiss the Verified Petition.

Petitioners brought this Article 78 Petition against Respondent seeking an order reversing, annulling and setting aside as arbitrary and capricious and in violation of law, three Orders and Opinions Denying Petitions for Administrative Review ("PAR Orders") issued by Respondent's Deputy Commissioner, to the extent they affirmed Respondent's retroactive application of the Housing Stability and Tenant Protection Act of 2019 ("HSTPA") in their

determination of Petitioners' Major Capital Improvement ("MCI") rent increase applications. Petitioners are owners of residential apartment buildings located in Manhattan which contain apartments that are subject to Respondent's authority under the New York State rent-regulatory laws, including the Rent Stabilization Law of 1969 ("RSL"), and the New York City Rent and Rehabilitation Law ("Rent Control Law" or "RRL").

The HSTPA amendments to the MCI rent increase program took effect immediately on June 14, 2019 (Laws of 2019, Chapter 36, Part K). The amendments were enacted to prevent abuse of the program which resulted in unwarranted and excessive rent increases and improper rent calculations in leases. The amendment to Part K of the HSTPA revamped the MCI rent increase program. The most relevant change is the "35% Rule," which prohibits MCI rent increases for buildings with 35% or fewer rent-regulated units.

Petitioner 680 Ft. Washington Ave. filed its MCI application on November 21, 2018, and Respondent's Rent Administrator ("RA") denied it on November 13, 2019. Petitioner LHDC filed its MCI application for its building located at 330 East 71st Street, New York, New York on May 23, 2019, and the RA denied it on January 10, 2020. Petitioner LHA filed its MCI application for its building located at 331 East 71st Street, New York, New York on May 3, 2019, and the RA denied it on March 10, 2020. The basis for the denials was that the HSTPA prohibits MCI increases for buildings with 35% or fewer rent-regulated units. Petitioners filed three separate PARs challenging the RA's denial Orders with most of the arguments set forth in Petitioners' Verified Petition.

Respondent's Deputy Commissioner denied all three PARs and affirmed the RA's Orders on December 20, 2022, December 29, 2022, and December 21, 2022, respectively. The Deputy Commissioner determined that the Part K MCI amendment was effective immediately as of June

14, 2019, so they applied to Petitioners' pending MCI rent increase applications. It was determined that Petitioners' buildings had less than 35% rent-regulated apartments, so the HSTPA prohibited the MCI rent increases. The Order also rejected Petitioners' arguments.

Petitioners argue in substance that they all filed MCI applications for rent increases because of the performance of building-wide elevator upgrades (and additional work as to one of the Petitioners), prior to the enactment of the 35% Rule. Petitioners further argue that Respondent's RA improperly denied each application based solely on the retroactive application of the 35% Rule.

They further argue in substance that the Deputy Commissioner improperly upheld Respondent's RA's retroactive application of the 35% Rule, even though the MCI applications were filed prior to the effective date of the statute. Petitioners further argue in substance that the determination to apply the 35% Rule retroactively was arbitrary and capricious and in violation of applicable law because it violated the clear and unequivocal intent of the legislature not to apply it retroactively. They argue that the retroactive application of the 35% Rule was unconstitutional because it violated Petitioners' due process rights under the State and United States Constitutions. Petitioners further argue that the 35% Rule is unconstitutional on its face because it violates their equal protection rights under the United States Constitution because there is no rational basis for the 35% Rule. It also violates the intent of the legislature in their enactment of the MCI provisions of the rent regulatory laws.

Respondent opposes the Verified Petition and cross-moves to dismiss it. Petitioners oppose Respondent's cross-motion to dismiss their Verified Petition.

Respondent argues in substance that the court must dismiss the Verified Petition as Part K of the HSTPA was not applied retroactively, but prospectively, since it applied to Petitioners'

pending and unadjudicated MCI rent increase applications. The amendment, including the 35% Rule, was effective immediately, which was as of June 14, 2019. Respondent argues in substance that Petitioners should have been on notice that the law regarding MCI rent increases would change, as it was a controversial issue with much discussion and publicity. Additionally, since the applications requested rent increases in the future for work already completed prior to the filing of the application, it was correctly applied prospectively, and not retroactively, to Petitioners' pending, unadjudicated MCI rent increase applications. Respondent further argues that Petitioners have no right to any particular iteration of the MCI rent increase program which would be favorable to Petitioners for all eternity, without expecting any changes to the program. Respondent also argues in substance that even if the court were to find that the application of the HSTPA to Petitioners' pending MCI rent increase applications was retroactive, then it was still permissible as it was consistent with the goals of the legislature. Additionally, Respondent argues that it was rationally related to furthering a legitimate state interest to prevent further abusive practices and improper and excessive MCI rent increases, which resulted in a decrease in affordable housing. Respondent further argues that Petitioners' unconstitutional arguments are without merit.

In an Article 78 proceeding, the scope of judicial review is limited to whether a governmental agency's determination was made in violation of lawful procedures, whether it was arbitrary or capricious, or whether it was affected by an error of law (*see* CPLR § 7803[3]; *Matter of Pell v Board of Educ.*, 34 NY2d 222, 230 [1974]; and *Scherbyn v BOCES*, 77 N.Y.2d 753, 757-758 [1991]). In reviewing an administrative agency's determination, courts must ascertain whether there is a rational basis for the agency's action or whether it is arbitrary and capricious in that it was without sound basis in reason or regard to the facts (*Matter of Stahl York*

Ave. Co., LLC v City of New York, 162 AD3d 103, 109 [1st Dept 2018]; *Matter of Pell*, 34 NY2d at 231). Where the agency's determination involves factual evaluation within an area of the agency's expertise and is amply supported by the record, the determination must be accorded great weight and judicial deference (*Testwell, Inc. v New York City Dept. of Bldgs*., 80 AD3d 266, 276 [1st Dept 2010]). When a court reviews an agency's determination it may not substitute its judgment for that of the agency and the court must confine itself to deciding whether the agency's determination was rationally based (*Matter of Medical Malpractice Ins. Assn. v Superintendent of Ins. of State of N.Y.*, 72 NY2d 753, 763 [1st Dept 1988]).

Furthermore, an agency is to be afforded wide deference in the interpretation of its regulations and, to a lesser extent, in its construction of the governing statutory law, however an agency cannot engraft additional requirements or assume additional powers not contained in the enabling legislation (*see Vink v New York State Div. of Hous. and Community Renewal*, 285 AD2d 203, 210 [1st Dept 2001]).

Here, the court agrees with Respondent that its application of the HSTPA's Part K MCI amendments was prospective and consistent with the statute and controlling law. The amendment became effective immediately as of June 14, 2019. Therefore, since Petitioners application was still pending at the time of the enactment, the amendment, including the 35% Rule applied to Petitioners' MCI rent increase applications and prohibited Petitioners from getting the MCI rent increases because their buildings had less than 35% rent-regulated apartments.

The court finds that the PAR Orders were not arbitrary and capricious, nor an error in law, and that they were reasonable and rationally based. The court is persuaded by the numerous cases relied upon by Respondent in support of Respondent's application of the 35% Rule to

pending MCI rent increase applications and the growing number of cases decided since this Verified Petition was filed.

The court is not persuaded by Petitioners' arguments to the contrary.

Therefore, the court denies the Verified Petition and grants Respondent's cross-motion to dismiss it.

The court has considered any additional argument raised by the parties which was not specifically discussed herein and the court denies any additional requests for relief, not expressly granted herein.

As such, it is hereby

ORDERED and ADJUDGED that the court denies Petitioners 680 Ft. Washington Ave. Realty, LLC's, Lenox Hill Development Corp.'s and Lenox Hill Apartments Inc.'s Verified Petition; the court grants Respondent New York State Division of Housing and Community Renewal's cross-motion to dismiss the Verified Petition; and the court dismisses the Verified Petition as against Respondent, without costs to any party.

This constitutes the decision and order of the court.

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11/14/2023
DATE

ERIKA M. EDWARDS, 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**