Matter of 225 Cent. Park N. LLC v New York State Div. of Hous. & Community Renewal
2023 NY Slip Op 34472(U)
December 20, 2023
Supreme Court, New York County
Docket Number: Index No. 155440/2023
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

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IN THE MATTER OF THE APPLICATION OF 225 CENTRAL PARK NORTH LLC

Petitioner,

- v -

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL,

Respondent.

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INDEX NO. 155440/2023

MOTION DATE 12/13/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 30 were read on this motion to/for ARTICLE 78.

The petition to remand a determination back to respondent is granted as described below.

Background

Petitioner owns a building located at 225 West 110th Street in Manhattan. On May 13, *2016*, it filed a petition to deregulate apartment 28 in its building based on a high rent/high-income during the 2016 filing period. It explains that respondent affirmed a rent administrator's ("RA") order that dismissed this luxury deregulation petition. Petitioner complains that respondent improperly relied upon a retroactive application of the Housing Stability and Tenant Protection Act of 2019 ("HSTPA").

It insists that if respondent had acted within the deadlines prescribed by the formerly effective Rent Stabilization Law § 26-504.3(c), then it would have issued a decision long before the HSTPA went into effect on June 14, 2019. Petitioner observes that as an owner of an apartment where the rent exceeded the deregulation threshold, it was permitted to send an

income certification form on or before May 1st of a given year and that the tenant was required to respond within 30 days. It argues that it properly served the tenant of record in 2016 and the tenant never returned the income certification form.

After it filed the petition for luxury deregulation, petitioner argues that respondent was required to notify the tenant within 20 days that he had to provide respondent with information about his household income. Petitioner insists that there is no evidence that respondent ever did this. It claims that it did not hear anything from respondent until the RA's decision dated November 13, 2019 that denied the petition based on the HSTPA.

Petitioner explains that it filed a petition for administrative review ("PAR") on December 4, 2019. On May 15, 2023, respondent issued a decision affirming the RA's order. It complains that respondent's order cited cases (including ones from the Appellate Division, First Department and the Supreme Court) that were issued well after the RA's order and therefore could not have formed the basis of the RA's order.

In opposition, respondent claims that petitioner did not make a showing that respondent deliberately or negligently delayed the processing of the deregulation petition. It observes that the RA mailed a notice to the tenant to provide information about household income on October 23, 2017 and again on December 12, 2018. Respondent insists that the instant part of the HSTPA, Part D (high rent deregulation), took effect immediately and that petitioner's efforts to cite to a Court of Appeals case (*Regina*) about part F (rent overcharges) is misplaced.

In reply, petitioner focuses on respondent's admissions that it ignored the Rent Stabilization Law deadlines. It observes that respondent admits it waited a year and a half to serve the required notice when it was statutorily required to serve it within 20 days of May 13,

2016. Petitioner concludes that these admissions demonstrate that respondent was, at a minimum, negligent in performing its obligations.

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 observes that in 2020, the Court of Appeals struck certain portions of Part F of the HSTPA, the provisions about overcharge calculations, on the ground that they were impermissibly retroactive (*Regina Metro. Co., LLC v New York State Div. of Hous. and Community Renewal,* 35 NY3d 332, 370, 130 NYS3d 759 [2020]). "Because the overcharge calculation provisions, if applied to past conduct, would impact substantive rights and have retroactive effect, the presumption against retroactivity is triggered" (*id.*). However, the Court of Appeals stressed that "Each of the HSTPA's fifteen parts contains its own effective date provision, indicating the Legislature considered the issue of temporal scope for each. The legislation is almost entirely forward-looking – only Part F's effective date provision contains language referring to prior claims. In contrast, many of the HSTPA's other effective date provisions . . . state only that the parts of the legislation to which they apply 'shall take effect

immediately'" (*id.* at 373). It observed that "we have no occasion to address the prospective application of any portion of the HSTPA, including Part F" (*id.* at 363).

In this Court's view, this means that the section in dispute in this proceeding, Part D, is unaffected by *Regina*. This part of the HSTPA went into effect on June 14, 2019. This Court's inquiry is whether the facts in this proceeding, nearly all of which are undisputed, evince a rational determination by respondent.

The RA's order found that "Effective June 14, 2019, the Housing Stability and Tenant Protection Act of 2019, as amended, repealed the provisions which provided for the issuance of orders authorizing High-Rent/High Income Deregulation pursuant to the RSL, ETPA and Rent Control laws. Therefore, this proceeding initiated by the owner for such an order is dismissed" (NYSCEF Doc. No. 25). Respondent then affirmed the RA's order and concluded that "The fact that this 2016 petition would have been determined based on the tenant's income in 2014-2015, events that occurred before the passage of HSTPA, is of no matter given that this apartment could not have been deregulated after June 14, 2019" (NYSCEF Doc. No. 20 at 3).

The Court observes that the parties do not dispute that petitioner filed a proper luxury deregulation petition on May 13, 2016. Respondent's answer includes an exhibit demonstrating that it first mailed a notice to the tenant on October 23, 2017 (NYSCEF Doc. No. 23) and then mailed a final notice on December 12, 2018 (NYSCEF Doc. No. 24).

No party disputes the fact that these mailings flagrantly violate the requirements of the formerly effective Rent Stabilization Law § 26-504.3(c)(1), which required that respondent send these notices within 20 days after the filing of the deregulation petition. That same provision requires that the notice contain a warning that the failure by the tenant to respond within 60 days will result in the deregulation of the apartment (*id.*). Nothing is submitted to explain the why

respondent waited more than *eighteen months* to send the first notice despite the fact that the law required it to send the notice within 20 days. Nor is there an explanation as to why respondent then waited another year to send a final notice even though the law and the first notice in October 2017 only gave the tenant 60 days to respond. In other words, respondent ignored not only the Rent Stabilization Law but its own notice by waiting until December 2018 to send another warning to the tenant. Moreover, no explanation is provided for why the RA failed to issue its determination until November 2019; respondent's final notice is dated December 12, 2018 which means that the tenant had until February 2019 to respond (even assuming that these deadlines were valid).

The Court observes that respondent did not attach anything from someone with personal knowledge to justify respondent's belated mailings; only an attorney's affirmation is submitted and counsel for respondent does not claim that she sent these mailings herself.

Clearly, respondent's decision to ignore statutory deadlines is the **only** reason why the deregulation petition was not decided prior to the effective date of Part D of the HSTPA. For petitioner to have a claim but lose only because the government agency charged with administering the law egregiously ignored its responsibilities defies logic and fairness. Respondent let a luxury deregulation petition remain pending for more than three years and then didn't even bother to issue a decision on the merits; it simply stated that the HSTPA no longer permitted luxury deregulation. The Court cannot overlook the fact that respondent, essentially, "ran out the clock" by waiting so long. This is not a situation in which petitioner did something to delay the decision (such as by filling out an incomplete or deficient petition) or the tenant actively participated in the dispute, thereby legitimately delaying a final determination. Here, the

petitioner did everything timely and correctly, the tenant ignored the respondent's belated letter(s) and the respondent did nothing.

In a bizarre tactic, respondent attempts to blame petitioner by arguing that petitioner "did not take any action such as filing of a mandamus to compel issuance of deregulation order at any time during the proceeding before the Rent Administrator" (NYSCEF Doc. No. 19 at 5-6). This argument strains credulity. Respondent is effectively arguing that petitioner cannot complain that it took so long for respondent to issue a decision because respondent did not commence a proceeding to demand that respondent do its job. Such an argument is both unpersuasive and baseless.

The Court observes that, recently, the Appellate Division, First Department found that a delay by respondent in issuing a deregulation order could be overlooked because "Petitioner failed to make a showing that DHCR's delay in issuing the deregulation orders was caused by DHCR's negligence or willfulness" (*160 E. 84th St. Assoc. LLC v New York State Div. of Hous. and Community Renewal*, 209 AD3d 517, 517 [1st Dept 2022], *lv to appeal dismissed sub nom.* 160 *E. 84th St. v New York State Div. of Hous. and Community Renewal*, 39 NY3d 938 [2022], rearg denied, 39 NY3d 1068 [2023], *and lv to appeal granted in part, dismissed in part*, 40 NY3d 972 [2023]).

The facts of the dispute in *160 E. 84th St.* are found in the underlying Supreme Court decision, which reveals that respondent issued a deregulation order in May 2018 stating that the apartment in question would be deregulated when the tenant's lease would have next expired on August 31, 2019 (*160 E. 84th St. Assoc., LLC v New York State Div. of Hous.*, 2021 WL 2525176 [Sup Ct, NY County 2021]). Because the HSTPA went into effect, at least with respect to Part D,

on June 14, 2019, which was before the lease expired, the Court concluded that the apartment's deregulation order never went into effect (*id.*).

This same factual scenario is evident in *Clermont York Assoc., LLC v New York State Div. Hous. and Community Renewal*, 209 AD3d 484, 485 [1st Dept 2022], *lv to appeal granted sub nom. Clermont York Assoc., LLC v New York State Div. of Hous. and Community Renewal*, 40 NY3d 903 [2023]). Again, the facts are found in the Supreme Court's decision, which noted that respondent issued a deregulation order that went into effect on July 31, 2019 (the expiration date of the tenant's lease) and, therefore, the effective date of the HSTPA rendered this date as moot (*Clermont York Assoc., LLC v New York State Div. Hous. and Community Renewal*, 2021 WL 2787705 [Sup Ct, NY County 2021]).

Those cases are easily distinguishable because here, respondent never issued a deregulation order or any order on the merits. And, here, unlike in *160 E. 84th St.* or *Clermont York Assoc.*,[1] the Court finds that respondent negligently failed to issue a decision in the more than three years that passed between the initial deregulation petition and the effective date of the HSTPA. Petitioner met its burden by arguing in its moving papers that respondent cited no proof in the RA order or in the denial of its PAR that it had complied with the initial mailing requirements to the tenant. And respondent's answer solidifies the conclusion that respondent blatantly ignored these deadlines. Most critically, respondent did not cite a reasonable excuse for the delay in mailing that could yield the conclusion that it was not negligent.

Summary

The Court observes that the deadlines under the formerly effective Rent Stabilization Law were designed to strike a balance between a landlord that insisted an apartment was no

[1] The Court observes that the Court of Appeals will hear appeals related to both cases.

longer subject to rent stabilization and permitting a tenant the opportunity to challenge those assertions. Respondent's role was to facilitate a prompt determination on the merits by ensuring that the tenant got adequate and timely notice.

Here, respondent completely abdicated its responsibilities. Without explanation, it waited more than a year and a half to send the first notice to the tenant and then, again without explanation, it waited another year to send what it called a "final notice" to the tenant. These mailings violated the Rent Stabilization Law and the second notice ignored respondent's first mailing (which warned that there would be a deregulation order within 60 days of October 23, 2017). Respondent's actions are the definition of irrational and negligence. Petitioner, the landlord, was entitled to a prompt decision on the merits and so was the tenant. The second and "final" notice sent to the tenant dated December 2018 directed the tenant to produce tax returns for 2014 and 2015. That is, respondent's unexplained and irrational delay would have required the tenant to preserve records for years on end because respondent failed to comply with the law.

The Court emphasizes that this decision is not a finding that respondent impermissibly imposed a retroactive application of the HSTPA. Part D, in this Court's view, has only prospective application. The issue for this Court is whether it was irrational for respondent to do nothing for so long that a law was passed and became effective that foreclosed the relief sought by petitioner. A wait of three and a half years (May 2016 to the RA's order in November 2019) is simply too long and compels the Court to find that this unexplained delay was irrational. The Court finds that petitioner is entitled to a review of its petition and a decision on the merits under the statutory scheme in effect when the tenant's time to respond had expired in 2016. In this way, the Court is merely holding that the statutory scheme in place when the *statutorily prescribed* deadlines passed should apply.

The Court grants petitioner costs and disbursements but denies the request for legal fees as it did not cite a basis to recover those fees.

Accordingly, it is hereby

ADJUDGED that the petition is granted and this dispute is remanded to respondent, who shall issue a decision on the merits under the statutory scheme present when the tenant's time to respond to the deregulation petition expired; and it is further

ORDERED that petitioner is entitled to recover costs and disbursements upon presentation of proper papers to the Clerk.

12/20/2023			ARLENE P. BLUTH, J.S.C.		
DATE					
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	