

Riverton Sq., LLC v New York State Div. of Hous. & Community Renewal

2023 NY Slip Op 34475(U)

December 20, 2023

Supreme Court, New York County

Docket Number: Index No. 159806/2022

Judge: Arlene P. Bluth

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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RIVERTON SQUARE, LLC

Petitioner,

- v -

NEW YORK STATE DIVISION OF HOUSING AND
COMMUNITY RENEWAL,

Respondent.

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INDEX NO. 159806/2022

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- 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 25, 26, 27, 28, 29, 30

were read on this motion to/for ARTICLE 78.

The petition to reverse a determination by respondent is denied.

Background

This proceeding relates to a rent reduction order issued by respondent concerning an intercom system at a building complex owned by petitioner. In October 2020, certain tenants filed a complaint of a decrease in building-wide services. On June 29, 2021, the Rent Administrator (“RA”) issued a decision in which it noted that an inspection was completed on March 1, 2021 (NYSCEF Doc. No. 4). The inspector concluded that most of the services were maintained, including the entrance door/gate as well as security cameras and security guards.

The RA noted that the inspection revealed that the intercom system remained operable but that it was as new system that operated with the tenants’ personal phones (*id.* at 2). The RA stressed that “The owner must be granted permission by this Agency to change from a traditional to a telephone base intercom system. There is no evidence on record to indicate that the owner

filed an ‘Application to Modify Service’ with this Agency prior to the installation of a new intercom system. Therefore, a rent reduction is warranted for the intercom system” (*id.*).

Petitioner then filed a petition for administrative review (“PAR”). Separately, some of the tenants filed their own PAR. On September 16, 2022, respondent issued a decision denying the PAR from both the petitioner and the tenants, as well as affirming the RA’s order. Respondent observed that “Pursuant to Policy Statement 90-2, where there is a dispute as to whether required services have been provided or properly being maintained, the Rent Administrator may rely on the result of an Agency inspection by the Agency's impartial inspector who is not a party to the proceeding” (NYSCEF Doc. No. 3 at 2).

Respondent observed that “The Agency conducted an inspection of the subject premises on March 1, 2021. The Agency inspector reported that at the time of the inspection, the intercom system was found operable, but that it was a wireless intercom connected to the phone. The impartial inspector also found that there were no defects to the main entrance door/gate as the door/gate properly opened/closed/locked; the security guards were on duty and the security supervisor advised the inspector concerning the security protocols and how they were enforced; and there were no defects to the security cameras provided throughout the premises that were monitored 24/7 by guards in the booth and monitor room” (*id.* at 3). However, after complaints from the tenants and petitioner, “A reinspection of the premises was conducted on June 21, 2022 by the Division's impartial inspector” (*id.*).

“The inspection report reveals in specific detail: (1) there is no evidence of defects to the subject gate as the gate door opens and closes properly, is secure and can only be accessed through a key fob; and (2) there is one intercom located outside the front gate, and the other intercom located in vestibule of building (there are two separate buildings; 2225 and 2235 were

noted); that both intercoms appear to be the type that contact cellular phones; that the intercom system is not available to apartment 1 H (the outermost entrance system reaches the "husbands" voicemail, but there was no answer); the intercom system inside of the building vestibule for apartment 1 H does not contact anyone; and that the doors are secure. The inspector substantiated their report with time and date-stamped photographs depicting the conditions of the subject gate and intercom system" (*id.* at 3-4).

Petitioner insists that this decision is irrational because it is not factually accurate. It argues that the rent stabilized apartments all have access to an intercom system that links from an intercom located in the vestibule of the building directly to a panel inside the rent stabilized apartment. Petitioner maintains that respondent's inspector improperly assumed that the intercom system is connected to a cell phone and that must be why the inspector thought the intercom system does not contact anyone. Petitioner demands that, at the very least, there should be a follow-up inspection to properly evaluate the intercom system.

In opposition, respondent contends that its decision was rational. Respondent observes that an owner may only terminate a service by first filing an application to respondent to decrease, modify or substitute the required service. It claims that petitioner did not do that before updating the intercom system. Respondent points to the second inspector, who noted that when he tried to reach one of the apartments using the intercom, the call went to the tenant's husband's voicemail. It insists that this would not be possible under the old bell and buzzer system that would ring directly into the apartments.

Respondent also emphasizes the second inspector's photographs at the outer entry gate of the complex that displays a Door King System intercom, which is a replacement of the Sentrex intercom system used for most of the tenants in the complex according to the contractor invoices

submitted by petitioner. It observes that petitioner can apply for a permanent modification of services and, if one is granted, petitioner can then apply to restore the rents.

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 denies the petition. The fact is that “DHCR has broad discretion in ascertaining whether a required service is not being properly provided” and “In making such a determination, the DHCR is entitled to rely upon the reports of its inspectors” (*113-117 Realty, LLC v Div. of Hous. and Community Renewal*, 199 AD3d 506 [1st Dept 2021] [internal quotations and citations omitted]). Here, respondent relied upon two detailed inspections for its conclusion that petitioner upgraded the intercom system without first obtaining the required approval and that the intercom was not working for at least one of the apartments.

Although petitioner disagrees with the findings of this inspection, it did not submit anything to demonstrate that the respondent's conclusions were irrational. For instance, petitioner did not submit a reply to specifically explain why it thinks the inspector's reports are without merit or why respondent is not entitled to rely upon the inspector's findings. In fact, petitioner did not submit a reply at all. And while petitioner insists that there should be yet

another inspection of the premises, it did not adequately explain what that inspection would show.

In an Article 78 proceeding, this Court’s task is only to assess whether an agency’s determination was rational, not whether the Court would have reached the same conclusion. Here, respondent cited ample evidence for its conclusion and petitioner’s papers only evince a disagreement with respondent’s factual determination. Simply put, petitioner did not meet its burden to show that respondent’s conclusion was irrational.

Accordingly, it is hereby

ADJUDGED that the application is denied and the petition is dismissed, without costs and disbursements to respondent.

12/20/2023

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE