601 W. Realty LLC v New York State Div. of Hous. & Community Renewal
2024 NY Slip Op 30681(U)
March 5, 2024
Supreme Court, New York County
Docket Number: Index No. 151752/2021
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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601 WEST REALTY LLC,

Petitioner,

- v -

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL,

Respondent.

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INDEX NO. 151752/2021

MOTION DATE 03/04/2024,[1]

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 6, 7, 16, 27, 28, 29, 30, 32, 33

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

The following e-filed documents, listed by NYSCEF document number (Motion 002) 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 31

were read on this motion to/for PARTIES - ADD/SUBSTITUTE/INTERVENE.

Motion Sequence Numbers 001 and 002 are consolidated for disposition. The petition (MS001) to annul a determination by respondent is denied. The motion (MS002) by non-party Efrain Marquez to intervene is granted.

Background

The instant dispute concerns a determination issued by respondent about a rent overcharge complaint. The Rent Administrator ("RA") issued a determination on August 7, 2020 finding that petitioner had overcharged the subject tenant (NYSCEF Doc. No. 4).

[1] The Court observes that this proceeding was transferred to the undersigned on March 4, 2024 and the Court will issue a decision for both MS001 and 002 although MS002 (which was marked fully submitted on February 10, 2022) is technically pending before the judge previously assigned to this proceeding. The Court has requested the clerk to transfer MS002 to the undersigned and that should be done shortly. In any event, the Court apologizes, on behalf of the court system, for the lengthy delay in the resolution of this dispute.

Petitioner filed a petition for administrative review ("PAR") and respondent upheld the RA's determination (NYSCEF Doc. No. 3 at 2). The decision also included a PAR filed by a tenant (Elizabeth Marquez, the proposed intervenor's cousin)—respondent denied that requested relief (which involved the time period covered by the rent overcharge).

Respondent's decision detailed that, essentially, petitioner never submitted anything before the RA. It observed that petitioner was granted four separate adjournment requests starting on November 7, 2019 and continuing until February 2020 (*id*.). Respondent granted a February 6, 2020 request for an adjournment and provided an additional 21 days but noted that "no additional extension requests from the owner may be granted for this proceeding" (*id*. at 3). "On February 11, 2020, the Agency sent another letter to both the owner and the owner's attorney, advising them that the extension granted by the prior Agency letter, issued on February 6, 2020, had already granted the owner a final 21 days in which to make any submissions in this matter; said February 11, 2020 letter also advised the owner and its attorney that no additional requests for extensions of time to make any submissions would be granted in this matter" (*id*.).

Respondent concluded that "The fact that there were public health issues that may have prevented the owner from making submissions after late March 2020 did not extend the owner's time to make submissions past the February 27, 2020 date allowed by the final grant of the owner's fourth request for such an extension. Issuance of the Order in August of 2020, without giving the owner further opportunity to make any submissions in this case was, under these circumstances, correct, and the owner has been full due process of law in this case" (*id*.).

Petitioner complains that a disgruntled former employee vandalized its office and so it was unable to locate documents concerning key issues, such as those related to Individual Apartment Improvements ("IAI"). It claims it should not have been punished for not having

records that it was under no obligation to retain. Petitioner claims that respondent should not have issued the rent overcharge order simply because it could not produce the IAI records due to the aforementioned vandalism. Petitioner also complains that the final determination, issued on August 7, 2020 was premature as it had another 28 days to file its answer.

Respondent contends that the instant dispute arises out of a routine investigation by the respondent's tenant protection unit, which noticed a large increase after a vacancy period. When petitioner failed to respond to the tenant protection unit's notice (from September 2016), an overcharge complaint was initiated. Respondent emphasizes that petitioner simply failed to respond or submit documentation to establish that the rent was legally increased.

Respondent insists that the deadline for petitioner to respond was February 27, 2020 and that petitioner's reliance on COVID-19 extensions is misplaced as those only came into effect in the following weeks. It observes that petitioner does not point to any evidence it now has that could justify remanding the dispute back to the agency. Respondent also argues that petitioner's arguments about retaining records should be ignored as it was not raised before the agency and cannot be considered for the first time here.

In reply, petitioner complains that respondent did not acknowledge the hardship imposed by COVID-19 restrictions.

Discussion

In an Article 78 proceeding, "the issue is whether the action taken had a rational basis and was not arbitrary and capricious" (*Ward v City of Long Beach*, 20 NY3d 1042, 1043, 962 NYS2d 587 [2013] [internal quotations and citation omitted]). "An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts" (*id.*). "If the determination has a rational basis, it will be sustained, even if a different result would not be

unreasonable" (*id.*). "Arbitrary action is without sound basis in reason and is generally taken without regard to the facts" (*Matter of Pell v Board of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231, 356 NYS2d 833 [1974]).

The Court denies the petition. Respondent gave petitioner four adjournments spanning almost four months and petitioner did not submit anything to justify the rent increase at issue in the rent overcharge matter. Respondent correctly pointed out that petitioner's time to respond ended on February 27, 2020, well before there were any shutdowns or government-imposed restrictions due to the pandemic. And so petitioner cannot now seek relief based on the pandemic. Respondent's determination was entirely rational.

Even if the Court could somehow view the pandemic as a basis to give petitioner more time, petitioner did not submit anything here to justify remanding this dispute back to respondent for further consideration. Instead, petitioner appears to admit that it has no documents to support the IAIs and therefore cannot support the large rent increase at the heart of this proceeding. Petitioner's assertion that it did not have to keep these records for that length of time was not raised before respondent and cannot be raised here for the first time. Moreover, the Court questions why petitioner would think that it need not keep records where it has rent-stabilized tenants. Setting aside whether or not the retention of these records was required (and the Court makes no finding on that issue), it would behoove a landlord to keep records that could justify a rent increase in case a tenant complains about a rent overcharge.

The Court understands that petitioner alleges that an unnamed employee destroyed key documents. Unfortunately, that is not a basis to overturn the PAR decision here.

Intervention Motion

In motion sequence 002, Efrain Marquez (a tenant in the apartment) seeks to intervene. His proposed answer (NYSCEF Doc. No. 31) merely asks the Court to deny the petition.

The Court observes that another tenant Elizabeth Marquez (Efrain's cousin) filed an unsuccessful PAR although Efrain filed a submission in connection with Ms. Marquez's requested relief (NYSCEF Doc. No. 3 at 2). Because Efrain contends that he is still a tenant in the apartment and that Ms. Marquez has since left the unit, the Court grants the motion as Efrain clearly has an interest in the outcome in this proceeding as a tenant.

Accordingly, it is hereby

ADJUDGED that the petition (MS001) is denied and this proceeding is dismissed without costs or disbursements to any party; and it is further

ORDERED that non-party Efrain Marquez's motion to intervene is granted.

3/5/2024
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED		DENIED	GRANTED IN PART	X	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE