Matter of Gesmundo v New York State Landlord Rental Assistance Program
2024 NY Slip Op 35082(U)
September 19, 2024
Supreme Court, Westchester County
Docket Number: Index No. 61681/2023
Judge: Anne E. Minihan
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To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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In the Matter of an Article 78 Proceeding

MICHAEL GESMUNDO and MASTANDREA 101 SOUTHSIDE LLC,

Petitioners,

DECISION & ORDER & JUDGMENT

Index No.: 61681/2023
Motion Seq.: 1
Motion Date: 11/3/2023

- against -

NEW YORK STATE LANDLORD RENTAL ASSISTANCE PROGRAM, NEW YORK STATE EMERGENCY RENTAL ASSISTANCE PROGRAM and NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE,

Respondents.

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MINIHAN, J.

The following papers, numbered 1 to 18, were read on this Petition to annul, void and vacate the January 26, 2023 decision ("Final Decision") of Respondents New York State Landlord Rental Assistance Program, New York State Emergency Rental Assistance Program, and New York State Office of Temporary and Disability Assistance ("LRAP", "ERAP", and "OTDA", respectively; "Respondents", collectively), which affirmed the denial of Petitioners' application for LRAP.

PAPERS	**NUMBERED**
Notice of Petition/Verified Petition/Exhs. A-F	1-8
Respondents' Verified Answer and Objections in Point of Law/Affidavit of Kyla Marsh/Exhs. 1-7	9-17
Affirmation in Reply	18

Upon the foregoing papers, the Petition determined as follows:

Procedural Background and Party Contentions

Petitioners commenced this special proceeding by filing a Verified Petition on May 26, 2023. Petitioners claim that "Respondents have acted arbitrarily, capriciously and abused their discretion contrary to law by denying Petitioners' application for LRAP," and are seeking an Order annulling, voiding, and vacating Respondents' Final Decision. Petitioners also seek an Order, directing Respondents to immediately approve Petitioners' application for LRAP and awarding attorneys' fees and costs and disbursements.

Petitioner Michael Gesmundo is the managing member and owner of Petitioner Mastandrea LLC, which owns the property located at 101 Southside Avenue, Unit 3A, Hastings on Hudson, New York 10706 (the "Property"). On or about December 1, 2019, Mastandrea LLC entered into a lease ("Lease") with the tenant Navjot Arora ("Tenant") for the Property. The monthly rent for this one-bedroom apartment was $1,650.00, which was below 150% of the Fair Market Rent for Westchester, and the lease term was for 16 months, ending on April 30, 2021 (Exhibits D-E). According to Petitioners, the Tenant failed to pay rent for 13 months – September 2020 through August 2021 (Verified Petition at ¶20; Exh. F). The Tenant vacated the Property without paying their outstanding rental arrears, totaling $19,800.00 (Verified Petition at ¶¶21, 37; Exh. F).

On October 9, 2021, Petitioners submitted LRAP Application #86LWV which included the exhibits and information submitted with this Verified Petition (Verified Petition at ¶22). On January 11, 2022, LRAP Application #86LWV was denied "without basis", and on March 17, 2022, Petitioners initiated an appeal (Verified Petition at ¶¶23-24). On January 26, 2023, the Appeal was denied (Verified Petition at ¶25).

Petitioners now argue that Respondents' Final Decision on their LRAP Application was arbitrary and capricious, in violation of lawful procedure, and an abuse of discretion because it was made without a sound basis and taken without regard to the facts (Verified Petition at ¶32). Petitioners state that Respondents failed to set forth any reason why the LRAP application was denied "aside from generally stating that the Final Decision was based on law governing LRAP" (Verified Petition at ¶40). Petitioners assert that they met the criteria set forth by New York State (Verified Petition at ¶¶33, 41).

In their Verified Answer, Respondents, *inter alia*, deny many of the allegations and assert two objections in points of law. First, Respondents argue that the denial "is rational, reasonable, and in accordance with applicable law based upon Petitioners' inability failure [sic] to demonstrate the LRAP application met program eligibility requirements" (Verified Answer at ¶46). Respondents point to the Marsh Affidavit and its exhibits as proof "that despite multiple opportunities, Petitioners could not establish an association between the tenant – Navjot Arora – and 101 Southside Avenue, Apartment 3A, Hastings-on-Hudson, during the period of September 2020 through August 2021" (Verified Answer at ¶49, citing Marsh Affidavit at ¶¶24, 27, 30, 32). Respondents note that Tenant purportedly also rented Apartment 1C at the same location from October 2020 through January 2021, [1] but there are no public records demonstrating that Tenant

[1] Petitioners commenced a second action as it relates to Unit 1C at the same address with

was associated with either apartment from October 2020 through January 2021 (Verified Answer at ¶50). According to Respondents, "public records establish that Arora purchased 12 Big Ramapo Road, Saddle River, New Jersey, in August 2020," and that "this was Arora's residence as of October 2020" (Verified Answer at ¶51). "Further, in response to a Request for Information, Petitioners could not offer proof Apartment 3A was Arora's primary residence during the arrears period" (Verified Answer at ¶52). Petitioners provided no basis upon which OTDA could determine that either of these apartments was the Tenant's primary residence during the period for which arrears were sought; yet, "Petitioners request an order from this Court directing that the application be granted and rental arrears for Apartment 3A be paid, while simultaneously seeking a similar order with regard to Apartment 1C…which are inherently inconsistent." Accordingly, Respondents assert that OTDA's determination should be confirmed, and the Petition should be denied (Verified Answer at ¶52).

Second, Respondents argue that the only remedy, if the Court does find that the challenged determination is arbitrary and capricious, is an annulment of the determination and remand back to OTDA, not a directive for OTDA to approve the LRAP application in the amount of $19,800.00 (Verified Answer at ¶¶53-54).

In reply, Petitioners argue that they met the criteria for LRAP and that "Respondents failed to provide evidentiary proof in admissible form as to the alleged 'public records document' they submitted to the Court in their Answer" (Reply Affirmation at ¶¶11, 15). Petitioners also argue that the "primary residence" requirement is for ERAP, not LRAP (Reply Affirmation at ¶¶19-20). Petitioners state that they submitted proof of prior rental payment for Apartment 3A (Reply Affirmation at ¶23; Exhibit 7 at 008).

During the Covid-19 pandemic, New York established ERAP as part of the 2021 State budget. That statute was subsequently amended on September 2, 2021 (Marsh Affidavit at ¶3; Exhs. 1-2). In addition to amending ERAP, the State also created and funded LRAP through Aid to Localities 2021-22 Budget Legislation (see L. 2021, ch. 418; Exh. 3). "The LRAP Statute appropriated $250 million in State funds '[f]or supplemental costs associated with an emergency rental assistance program pursuant to a plan approved by [OTDA] and director of the budget.' See Ex. 3. Among other things, this appropriation funded LRAP, which is an economic relief program developed to provide assistance to landlords for rental arrears they accumulated during the COVID-19 eviction moratorium if the landlords' tenants were unwilling to apply for ERAP, including in circumstances where the tenant vacated the rental property" (Marsh Affidavit at ¶6; *see* https://otda.ny.gov/programs/landlord-rental-assistance/faq.asp).

"Landlords who rent out unit(s) located in New York State are eligible for LRAP if they meet the following criteria (*see* https://otda.ny.gov/programs/landlord-rental-assistance/#overview):

- The landlord has a tenant who has left an apartment in New York State with unpaid rental arrears, or the landlord has a tenant who is residing in an apartment

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the same Tenant (*see Gesmundo v NYS Landlord Rental Assistance Program*, Westchester County Index No. 61678/2023).

in New York State who refuses to apply for ERAP and the landlord has reached out to the tenant to encourage participation in ERAP at least 3 times, including 2 in writing.

- Unit rental amount is at or below 150 percent of the Fair Market rent (FMR) for their location. These limits are based on county and number of bedrooms of the rental unit. If the monthly rental amount exceeds 150 percent of the FMR, the landlord will be ineligible for assistance.

- The landlord has documented rental arrears owed for the tenant at their residence for rent costs accrued on or after March 1, 2020."

At the time of their LRAP application, landlords and property owners shall provide the following when applying (*id.*):

1. W-9 tax form
2. Proof of Ownership
3. Executed lease with tenant, or if there is no written lease a cancelled check, evidence of funds transfer or other documentation of the last full monthly rent payment.
4. Documentation of unpaid rent due from tenant by uploading a monthly rent confirmation form or ledger identifying the amount due by month.
5. Banking information
6. If applicable, an owner affidavit or signed agreement designating the property management company/agent as authorized recipient of LRAP funds.
7. The property owner or an authorized property management company will be required to sign the application form and associated certifications agreeing that the information provided, including the amount of rental arrears owed, is accurate and does not duplicate a payment received from another program. Dates on which the landlord contacted the tenant to seek participation in ERAP must also be provided, if the application is for a tenant that still resides in the unit.

The property owner must also agree that as a condition of accepting rental arrears payment, *inter alia*, "[t]hat they have contacted a current tenant household at least three times, two in writing, to encourage participation in ERAP," and [i]f the household is currently residing in the unit, not evict the household on behalf of whom the LRAP payment is made for reason of expired lease or holdover tenancy for one year from the receipt of the LRAP payment" (*id.*).

On a CPLR Article 78 challenge to an administrative agency's determination made without an adjudicatory hearing, judicial review is limited to whether the challenged determination was arbitrary and capricious, an abuse of discretion, or affected by an error of law (*see Matter of Peckham v Calogero*, 12 NY3d 424, 431 [2009]; *Matter of Razzano v Remsenburg-Speonck UFSD*, 162 AD3d 1043, 1045 [2d Dept 2018]; *Matter of Failing v Fiala*, 111 AD3d 723 [2d Dept 2013]; CPLR 7803[3]). Whether such a government determination is "arbitrary and capricious" under CPLR § 7803(3) "chiefly relates to whether a particular

[agency] action should have been taken or is justified ... and whether [such] action is without foundation in fact" (*Matter of Pell v Board of Educ. of Union Free School Dist. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974], *quoting* 1 NY Jur, Administrative Law, § 184 at 609 [internal quotation marks omitted]). A reviewing court can overturn an agency determination as arbitrary and capricious only upon a finding that such determination lacked "sound basis in reason" or was "taken without regard to the facts" (*Matter of Natasha W. v New York State Off. of Children & Family Servs.*, 32 NY3d 982, 984 [2018]; *Matter of Wooley v New York State Dept. of Correctional Servs.*, 15 NY3d 275, 280 [2010]; *Matter of Pell v Board of Educ. of Union Free School Dist. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231; *see Matter of Peckham v Calogero*, 12 NY3d at 431). Otherwise, as long as the agency determination "'is supported by a rational basis, [the court] must sustain the determination'" even if the court "'would have reached a different result than the one reached by the agency'" (*Matter of Wooley*, 15 NY3d at 280, quoting *Matter of Peckham v Calogero*, 12 NY3d at 431, citing *Matter of Pell*, 34 NY2d at 231; *see Matter of Riverkeeper, Inc. v Planning Bd. of Town of Southeast,* 9 NY3d 219, 232 [2007]).

Here, there is nothing before this Court to establish that Respondents' decision was irrational or arbitrary and capricious. Respondents were not presented with conclusive proof that the Unit 3A was the Tenant's primary residence pursuant to ERAP, especially because Petitioners were also seeking arrears for Unit 1C for the same Tenant. Petitioners argue that the provisions in ERAP do not apply in an LRAP application. However, the two programs are not mutually exclusive (*see* https://nysrenthelp.otda.ny.gov/en/Pages/17/lrap-overview-and-eligibility [LRAP provides rental assistance for landlords whose tenants are unwilling to apply for ERAP, including where the tenant has vacated the property]; *see* https://otda.ny.gov/programs/emergency-rental-assistance/faq.asp#faq-benefits-q1 [ERAP developed to help eligible households residing at their primary residence]; *see* https://otda.ny.gov/programs/emergency-rental-assistance/faq.asp#faq-benefits-q3 [LRAP created to provide rental assistance for landlords where tenants vacated or unwilling to apply for ERAP]).

To the extent Petitioners are seeking mandamus relief in the form of an order, compelling Respondents to approve their application, "'[m]andamus lies to compel the performance of a purely ministerial act where there is a clear legal right to the relief sought'" (*Lee v Office of Temporary Disability Assistance [Emergency Rental Assistance Program]*, 2024 WL 1624787, *3 [Sup Ct, NY County 2024], quoting *Legal Aid Soc. of Sullivan County, Inc. v Scheinman*, 53 NY2d 12, 16 [1981]). "Further, 'to the extent that [petitioners] can establish that [respondents] are not satisfying nondiscretionary obligations to perform certain functions, they are entitled to orders directing [respondents] to discharge those duties'" (*Lee v Office of Temporary Disability Assistance [Emergency Rental Assistance Program]*, 2024 WL 1624787 at *3, quoting *Klostermann v Cuomo*, 61 NY2d 525, 541 [1984]). Here, there is nothing before the Court to establish that Respondents' decision was anything but discretionary. Thus, mandamus relief does not lie.

Accordingly, it is hereby

ORDERED that for the reasons stated herein, the Petition is denied, and this special proceeding is dismissed; and it is further

ORDERED that any issue not directly addressed herein is denied; and it is further

ORDERED that within 10 days of the Court's filing of this instrument in the Office of the Westchester County Clerk, Respondent's counsel shall serve this instrument, with Notice of Entry, on Petitioners, and file in the Office of the Westchester County Clerk an affirmation of such service.

The foregoing constitutes the Decision, Order, and Judgment of this Court.

Dated: White Plains, New York
September 4, 2024

HON. ANNE E. MINIHAN, J.S.C.

To: Counsel of Record via NYSCEF