Stuyvesant Town Peter Cooper Vil. Tenants Assn. v New York State Div. of Hous. & Community Renewal
2025 NY Slip Op 31240(U)
April 7, 2025
Supreme Court, New York County
Docket Number: Index No. 154685/2024
Judge: Verna L. Saunders
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. VERNA L. SAUNDERS, JSC** **PART 36**

Justice

---X

STUYVESANT TOWN PETER COOPER VILLAGE TENANTS ASSOCIATION, and SUSAN STEINBERG,
Plaintiffs,

- v -

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, and BPP ST OWNER, LLC,
Defendants.

---X

INDEX NO. 154685/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

were read on this motion to/for **ARTICLE 78**.

Petitioners, the Stuyvesant Town-Peter Cooper Village Tenants Association, which represents over two thousand rent stabilized tenants at Stuyvesant Town/Peter Cooper Village (the, "complex"), and SUSAN STEINBERG, as president and tenant representative (NSYCEF Doc. No. 1 ¶ 1, *petition*), commenced this Article 78 proceeding against the New York State Division of Housing and Community Renewal ("DHCR"), as well as, BPP St Owner, LLC ("BPP" or "the owner"), the owner of the complex which includes the buildings located at 610 and 620 East 20th Street, New York, NY (*id.* at ¶ 3), seeking to reverse and annul an order by Deputy Commissioner Woody Pascal, on behalf of DHCR, dated March 21, 2024, which denied petitioner's Petition for Administrative Review ("PAR") seeking reversal of the Rent Administrator's order granting the owner's rent increase based on major capital improvement ("MCI") work (NYSCEF Doc. No. 2, *PAR order*).

Respondents interposed answers in this special proceeding (NYSCEF Doc. Nos. 13, *BBP answer*; 18, *DHCR answer*).

The relevant facts as set forth in the petition are as follows. Between in or about April 2019 and June 2019, BPP allegedly performed replacement of the buildings' gas piping system, including the removal of the existing system and the installation of a new gas distribution system throughout the buildings, which included installation of new overhead piping and valves in basements, new gas risers up through every apartment line into each kitchen, and necessary connections to each stove. On or about January 8, 2021, BBP filed an application with DHCR for a MCI rent increase related to the installation of gas piping in the buildings located at 610 and 620 East 20th Street, as well as, removal of millwork in the buildings (NYSCEF Doc. No. 1 ¶ 11). Petitioners opposed the application, arguing that the method employed by DHCR to calculate the commercial offset was inconsistent with the plain language of the Rent Stabilization Code as codified in 9 NYCRR § 2522.4(a)(16). Specifically, they contend that said method improperly "calculates the commercial offset by allocating the costs between 'benefitting'

commercial square feet (i.e., the *Usable* Square Footage) and the square feet of the *entire building* (i.e., the *Rentable* Square Footage) without regard to the fact that the entire building is not comprised of 'residential rental space' but instead is a mixture of residential space, non-benefitting commercial rental space, and common areas used by commercial and/or residential tenants." Petitioner claims that DHCR employed two separate standards of measurements: rentable square footage, used to calculate residential portion of the MCI, included all common areas, whereas usable square footage, used to calculate the commercial portion of the MCI only, included the actual square footage used by the tenant. The discrepancy in this method of calculation resulted in a higher allocation of costs on tenants in the MCI granted by DHCR.

Respondents reason that the Rent Administrator properly calculated the commercial deduction based on the ratio of the total square footage of the building's floor area to the total square footage of the commercial space that benefitted from the MCI installations, in accordance with 2522.4(a)(16) of the Rent Stabilization Code. In rejecting petitioner's contention that the common areas within the building did not constitute residential rent space, DHCR articulated that the common areas are an integral part of the building and, therefore, were properly included in the total square footage of the floor area of the building. The deputy commissioner also noted that Section 2522.4(a)(16) does not expressly exclude non-rental common areas from the total floor area of the building or the addition of non-benefiting commercial space to the total area of the commercial space benefiting from the improvement (NYSCEF Doc. No. 2, *Order denying PAR*).

Petitioners also argue that respondents improperly denied their request to participate in an inspection of the claimed work (NYSCEF Doc. No. 5, *e-mail denying inspection*). As reflected in e-mail exchanges between the parties on July 14, 2021, a DHCR inspector was scheduled to inspect the public areas of 245 Avenue C and 635/645 East 14th Street on July 15, 2021. In response to petitioners' e-mail indicating that they would be attending the inspection, DHCR stated: "Thank you for reaching out about tomorrow's DHCR inspection. As with any building wide inspections, we do not allow residents to join for health, safety and liability reasons." (NYSCEF Doc. No. 5, *e-mails regarding inspection*). Addressing petitioner's claim that that Rent Administrator improperly denied petitioners' request to have their representative participate in the inspection of the MCI work, the commissioner found that inspections are conducted at the Rent Administrator's discretion on a case-by-case basis when warranted. Since the purpose of the inspection in this case was for the DHCR inspector to independently, impartially, and objectively assess and verify the facts at issue, to report said findings to the Rent Administrator, the denial of the request to attend the inspection does not mandate warrant denial of the MCI rent increase. Petitioners now argue that tenant's request to inspect the claimed MCI work should have been granted because, as reflected in a DHCR letter dated July 28, 2005, issued on an unrelated matter, DHCR acknowledged that tenants have a right to have their experts inspect installations for which MCI rent increases are being sought (NYSCEF Doc. No. 5, *DHCR's 2005 letter*).

Lastly, petitioners argue that respondents erroneously considered costs not expressly included on the Reasonable Cost Schedule (see NYSCEF Doc. No. 7, *Reasonable Cost Schedule*), which are not MCI eligible (*id.* at ¶ 12). Specifically, petitioners objected to costs related to "millwork", arguing that millwork is not listed in the Reasonable Cost Schedule related

to gas piping. Furthermore, they claim that millwork was not performed building-wide, as required by the Rent Stabilization Law. Respondents determined that Section 2522.4(a)(2)(ii) of the Rent Stabilization Code permits a rent increase for work not included in the Reasonable Cost Schedule if the work is performed in conjunction with a qualifying MCI. DHCR determined, based on its review of the work contract and the report of DHCR's inspection in this case, that the additional work was directly related to completion and performance of the MCI gas re-piping. However, petitioners maintain that DHCR improperly approved an additional $51,790.40 for millwork on the ground that it was directly related to work performed for the MCI gas re-piping.

In addressing the argument about the commercial offset provision, DHCR argues that its interpretation of its own regulation is neither irrational nor unreasonable. Moreover, it insists that DHCR's reading of the commercial offset provision is in accord with the body of DHCR's own precedent and, thus, that that branch of petitioners' arguments premised on said provision must be rejected. As to petitioners' claim that DHCR improperly considered costs beyond those enumerated in the reasonable cost schedule, DHCR argues that, although the reasonable cost schedule establishes a "ceiling " of recoverable costs for Individual Apartment Improvements ("IAI"), DHCR is not precluded under the statute to approve other necessary and related costs not explicitly listed on the Reasonable Cost Schedule if they were completed subsequent to or contemporaneous with the MCI work (NYSCEF Doc. No. 21, *DHCR's memo in opp*).

Like DHCR, BBP argues that DHCR's method of calculating the commercial costs allocation is consistent with the applicable regulation; that DHCR was not required to allow petitioners to observe the inspection since the inspection was an impartial inspection that was to be reported to the RA; and that DHCR properly included the millwork in the authorized MCI expenditures as other necessary work directly related to and performed in connection and contemporaneously with the re-piping (NYSCEF Doc. No. 17, *memo in opp*).

In reply, petitioners reiterate the arguments raised in their moving papers and they distinguish the present facts from the authority raised by respondents in opposition.

A judicial review of an administrative determination is limited to whether said determination was arbitrary and capricious or made without a rational basis in the administrative record (see *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County,* 34 NY2d 222, 231 [1974]). It is well-settled that, in reviewing an agency determination, the court may not substitute its own view of the evidence for that of the agency, even if the court would have reached a different result (see *Matter of Peckham v Calogero,* 12 NY3d 424, 431 [2009]).

Under the Housing Stability and Tenant Protection Act of 2019 ("HSTPA"), DHCR is tasked with promulgating rules and regulations that "that shall . . . establish a schedule of reasonable costs for major capital improvements, which shall set a ceiling for what can be recovered through a temporary major capital improvement increase, based on the type of improvement and its rate of depreciation" (Administrative Code of the City of NY § 26-511.1[a][1]). The Appellate Division, First Department has recently held that "'related expenses that are not specified" in the DHCR's Reasonable Cost Schedule but which the landlord claims

are 'necessary' for the claimed improvement are 'out of harmony with the statute, and thus *ultra vires*" since the DHCR's schedule sets the 'ceiling for what can be recovered'" (*Matter of Stuyvesant Town-Peter Cooper Vil. Tenants Assn. v New York State Div. of Hous. & Community Renewal*, 232 AD3d 484, 486 [1st Dept 2024]). Thus, insofar as expenses for millwork, allegedly related to the gas re-piping performed at the premises, do not appear on the Reasonable Cost Schedule as a major capital improvement, the court, in accordance with the Appellate Division's recent decision, grants that branch of the motion seeking to annul DHCR's award of expenses not reflected in the Reasonable Cost Schedule.

That branch of the petition seeking to annul DHCR's determination on the ground that petitioners were denied an opportunity to attend DHCR's independent inspection of the premises is denied. Although petitioner submits a 2005 letter, wherein DHCR states that tenants have a right to have their expert inspect the installations for which capital improvement rent increases are being sought, here, there is no indication that petitioners were denied the opportunity to have their *own* expert inspect the subject installations. Rather, petitioners sought an opportunity to attend DHCR's independent inspection. In denying petitioner's request to have a representative present at said inspection, DHCR indicated: "we do not allow residents to join for health, safety and liability reasons", and said procedure shall not be disturbed here. Despite petitioners' contention that exclusion of their representative from the independent inspection was arbitrary and capricious, the case here relied upon is not binding and is nevertheless inapposite because petitioners have failed to challenge the independence and fairness of the inspection conducted or that here the purpose of the inspection was other than routine assessment and verification of the facts at issue. (compare *Matter of Sherwood 34 Associates v New York State Division of Housing and Community Renewal*, 2008 NY Slip Op 33135[U], **11 n 4 [Sup Ct, NY County 2008]).

The court also declines to disturb that portion of DHCR's determination seeking to annul the allocation of rent increases between commercial and residential spaces within the complex. RSC § 2522.4(a)(16) provides that:"[w]hen determining the adjustment of legal regulated rents pursuant to paragraph (2) of this subdivision, where the subject building contains commercial rental space in addition to residential rental space, and the DHCR determines that such commercial space benefits from the improvement, DHCR shall allocate the approved costs between the commercial rental space and the residential rental space based upon the relative square feet of each rental area." To the extent petitioners argue that respondents improperly included common spaces in its calculation of residential rent space, the argument is rejected, for said allocation is neither arbitrary nor capricious (see *Stuyvesant Town-Peter Cooper Village Tenants Association and Susan Steinberg v. New York State Division of Housing and Community Renewal*, 2023 NY Slip Op 30034[U], **14-15 [Sup Ct, NY County 2023] ["attributing the square footage of [common] areas to the residential units is rational and supported by the record"]; see RSC § 2522.4[a][16]). Accordingly, it is hereby

ORDERED and ADJUDGED that the petition is granted solely to the extent of annulling that portion of the Order awarding additional expenses not included in the Reasonable Cost Schedule; and it is further

ORDERED that the PAR Order dated March 21, 2024 is reversed and remanded to DHCR for a determination consistent with this decision and order; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for petitioners shall serve a copy of this decision and order, with notice of entry, upon respondents.

This constitutes the decision and order of this court.

April 7, 2025

HON. VERNA L. SAUNDERS, JSC

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