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**Matter of Parkside Equities, LLC v New York State
Div. of Hous. & Community Renewal**

2020 NY Slip Op 32710(U)

August 17, 2020

Supreme Court, Kings County

Docket Number: 511858/19

Judge: Karen B. Rothenberg

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: TRIAL TERM PART 35 x

In the Matter of the Application of

PARKSIDE EQUITIES, LLC,

Petitioner,

Index No: 511858/19

For a Judgment Pursuant to Article 78 of the Civil
Practice Law and Rules,

DECISION AND ORDER

-against-

NEW YORK STATE DIVISION OF HOUSING AND
COMMUNITY RENEWAL,

Respondent.

x

Recitation as required by CPLR 2219(a), of the papers considered in this Art. 78 proceeding.

Papers	Numbered
Order to Show Cause/Motion and Affidavits Annexed.	1; 2
Cross-motion and affidavits annexed.....	
Answering Affidavits.....	3
Reply Papers.....	4
Memorandum of law.....	5

Upon the foregoing cited papers, the Decision/Order on motion and cross-motion:

In this proceeding pursuant to CPLR article 78, petitioner Parkside Equities LLC [Parkside] seeks judicial review of 13 determinations of the New York State Division of Housing and Community Renewal [DHCR], which denied its petitions for administrative review [PAR] and affirmed the various Rent Administrator’s orders dated April 4, 2019 and April 15, 2019.

This matter arises out of several tenant complaints received by DHCR beginning on June 17, 2017 through its online portal with respect to the apartment building located at 1 Saint Pauls Ct., Brooklyn. On the dates these complaints were filed, the subject building was owned by Parkside and the apartments contained therein were subject to the Rent Stabilization Law of 1969, as amended, and the implementing Rent Stabilization Code. The tenant complaints sought a rent reduction due to decreased services in each of

the individual tenant apartments. All of the tenant complaints were filed by Flatbush Tenant Coalition [FTC], a tenant advocacy organization, as the tenants' authorized representative.

Petitioner through its verified amended petition seeks to reverse or annul the challenged orders insofar as they deny Parkside's PARs and affirm the Rent Administrator's orders contrary to DHCR's stated policies and despite the Rent Administrator's failure to make findings as to whether FTC was authorized by the individual tenants to file the complaints for decreased services. Parkside argues that the challenged orders are arbitrary and capricious and without a rational basis such that they must be annulled.

In a prior CPLR article 78 proceeding filed in in this court in December 2017, *Parkside Equities, LLC v DHCR*, Index No. 3402/17, Parkside sought to permanently enjoin DHCR from processing any of the individual apartment complaints filed by FTC absent a finding that the filings were authorized and directing DHCR to conduct a full and fair investigation of the FTC filings. The petition was filed together with an order to show which sought a temporary restraining order and a preliminary injunction enjoining DHCR from conducting any apartment inspections. A temporary stay was issued enjoining DHCR from conducting any apartment inspections pending the hearing of the order to show cause.

In January 2018, DHCR sent Requests for Additional Information/ Evidence to the 22 tenants (one complaint was filed by both tenants residing in the apartment) who filed the decreased service complaints. The additional information requests inquired of each tenant whether they had authorized FTC to file the complaints on their behalf. Only one tenant responded to the request for additional information. FTC, through their counsel Brooklyn Legal Services, responded to DHCR's request for additional information by submitting tenant authorizations signed by 21 of the complaining tenants variously dated in April or May 2017 which essentially stated that the tenant authorized FTC to submit an application for a rent reduction due to decreased services to DHCR. FTC also submitted affidavits from 13 of the complaining tenants confirming that each had authorized FTC to file a complaint on their behalf.

On April 19, 2018, this court issued a preliminary order which terminated the temporary stay and permitted DHCR to process the decreased services complaints, if DHCR found the complaints, on a case by case basis, were authorized. DHCR ultimately processed the complaints and performed apartment inspections. The Rent Administrator then issued orders in 13 of the tenant complaints, granting 2 tenants a rent reduction and directing the restoration of services in their respective apartments (Docket nos. -FR210087S [2K] and FR210078S [3F]) and terminating the 11 remaining tenants' complaints (Docket Nos. -FR210124S [Apt. 1G], FR210106S [2L], FR210126S [Apt. 3L], FR210109S [Apt. 3K], FR210079S [Apt. 4G], FR210077S [Apt. 6G], FR210111S

[Apt. 2G], FR210121S [Apt. 4J], FR210110S [Apt. 6K], FR210123S and FR210075S [Apt. 4H])

Parkside subsequently filed PARs challenging the Rent Administrator's orders. In April 2019, DHCR's Deputy Commissioner issued orders deciding the PARs.

In 2 of the PAR orders, the Deputy Commissioner denied the petitions and affirmed the Rent Administrator's award of a rent reduction for Apt. 2K and Apt. 3F(Adm. Rev. Docket Nos. GS-210033-RO [Apt. 2K] and GR-210029-RO [Apt. 3F]). The Deputy Commissioner, in addressing the FTC authorization issue, stated the following in each order:

"On June 17, 2017, the tenant, through a representative, the FTC, commenced the proceeding below by filing of a complaint wherein the tenant alleged a decrease in various services..."

...

"By correspondence dated June 27, 2017, the owner answered the tenant's complaint, essentially, that the owner received the tenant's complaint, *inter alia*, through the FTC filing with the DHCR; and that to proceed with the Docket, the owner needed proof that the tenant of record filed the complaint himself or authorized the FTC, a 3rd party, to file on his behalf."

...

"The Agency's record indicates that when the owner raised the issue of FTC authorization below, regarding the subject apartment, *inter alia*, the Rent Administrator halted the processing of this case and other Services cases involving the subject building, initiated by the FTC, and made a Request for Additional Information/Evidence to the FTC, for evidence of authorization by the tenant herein, *inter alia*, for the FTC's filing of the tenant's/tenants' complaint(s). In response to the Agency's request, the FTC, represented by the Brooklyn Legal Services, by letter dated February 27, 2018, forwarded documents by various tenants, acknowledging the tenants' authorization of the FTC, which included the subject tenant herein. Thus, the Rent Administrator concluded the processing of the case by requesting an Agency inspection of the conditions that the tenant complained about."

...

"The Commissioner notes for the purpose of serving in representative capacity for the filing of a service complaint such as in the case herein below, the tenant's signed acknowledgment noted above was an adequate proof of authorization. Thus, although not stated in the Rent Administrator's order, the Commissioner finds, based on the record below, that the Rent Administrator did address the issue of the tenant's representative's authorization prior to the issuance of the Rent Administrator's order."

Petitioner argues that the Deputy Commissioner erred in making his determination as to Apt. 2K as the only document contained in the file was the authorization form filed by the tenant. There was no record that the tenant responded to DHCR's further information/evidence request and no submission by FTC of an affidavit from the tenant evidencing authorization. Petitioner further argues that the authorization form itself is

insufficient because FTC's tenant organizer, Aga Trojniak, indicated in her February 13, 2018 affidavit, submitted in the prior action, that FTC was unable to confirm with every tenant whether repairs were completed before the filings were made. As to Apt. 3F, Parkside simply argues that the record before the Rent Administrator clearly indicates that DHCR did not perform an investigation on a case by case basis to determine whether FTC was authorized to file the complaint on behalf of this tenant.

In the 11 remaining PAR orders, the Deputy Commissioner dismissed the petitions as moot because the Rent Administrator's orders terminated the tenants' complaints (Adm. Rev. Docket Nos. – GT-210011-RO [Apt. 2L], GS-210036-RO [Apt. 3L], GS-210043-RO [Apt. 3K], GR0210027-RO [Apt. 4G], GR-2100280 [Apt. 6G], GS-210039-RO [Apt. 2G], GS-210038-RO [Apt. 4J], GS-210040-RO [Apt. 6K], and GS-210037-RO [Apt. 5J] . Parkside argues that nowhere in the any of the April 15, 2019 PAR orders did the Deputy Commissioner address the FTC authorization issue and therefore the determination that the PARs are moot disregarded the court's April 18, 2018 order that DHCR make a case by case determination as to which complaints FTC was authorized to file.

In a CPLR article 78 proceeding to review a determination made by an administrative agency such as the DHCR, "the court's inquiry is limited to whether the determination is arbitrary and capricious, or without a rational basis in the record and a reasonable basis in law" (*Matter of ATM One, LLC v New York State Div. of Hous. & Community Renewal*, 37 AD3d 714, 714 [2d Dept 2007]). "The court may not substitute its judgment for that of DHCR" (*Buchanan v New York State Div. of Hous. & Community Renewal*, 163 AD3d 961, 961 [2d Dept 2018]). DHCR's interpretation of the statutes, regulations and polices it administers, if reasonable, must be upheld (*see 85 Eastern Parkway Corp., New York State Div. of Hous. and Community Renewal*, 297 AD2d 675 [2d Dept 2002]).

Pursuant to the New York City Rent Stabilization Code (9 NYCRR) § 2523.4, DHCR is authorized to order a rent reduction, upon application by a tenant, where it is found that an owner has failed to maintain required or essential services. DHCR's Assistant Commissioner at the Office of Rent Administration, Anthony Tatano, states in an affidavit filed in this matter that DHCR maintains a website where a tenant or a tenant's authorized representative may file a complaint for processing by DHCR. Mr. Tatano further states that when an online complaint is filed by an authorized representative of the tenant, DHCR requests proof of the authorization, and that a letter signed by a tenant stating that the filing entity has the tenant's authority, is generally sufficient. If the owner/landlord opposes the authorization, then the opposing party has an opportunity to challenge the authorization before DHCR's Rent Administrator in a written submission, and DHCR may investigate further into whether the authorization was proper.

DHCR's PAR orders with respect to Apt. 2K and 3F (Adm. Rev. Docket Nos. GS-210033-RO and GR-210029-RO) indicate that in response to the owner's request for proof that FTC was an authorized representative of these tenants, inspections were halted and DHCR sent a request for additional information/evidence to the tenants with respect to the authorization issue. DHCR received from Brooklyn Legal Services, counsel for FTC, documents signed by these tenants acknowledging that FTC was authorized to file the complaints for them in this matter. DHCR's determination that the Rent Administrator considered the FTC authorization issue and that the submitted authorization forms and/or tenant affidavits were sufficient evidence of FTC's authority to file complaints for these tenants, was not arbitrary and capricious, or an abuse of discretion (*see Manko v New York State Div. of Hous. and Community Renewal*, 88 AD3d 719 [2d Dept. 2011]). Despite Parkside's argument otherwise, there is no indication that DHCR failed to follow its own policies or procedures in this matter.

Further, to the extent that Parkside is arguing that an evidentiary hearing was required, the argument is without merit (*see DeSilva v New York State Div. of Hous. and Community Renewal Office of Rent Admin.*, 34 AD3d 673 [2d Dept 2006]).

Finally, despite Parkside's contentions, because the 11 other PAR orders were dismissed by DHCR as moot because of the Rent Administrator's denial of the tenants' complaints, judicial review of those PAR orders with respect to the FTC authorization issue is unnecessary.

Accordingly, the petition is denied and the proceeding is dismissed.

This constitutes the decision/order of the court.

Dated: August 17, 2020

Enter,



Karen B. Rothenberg
J.S.C