2020-09-25

113-117 Realty LLC v. Division of Hous. & Community Renewal

113-117 Realty LLC v Division of Hous. & Community Renewal
2020 NY Slip Op 33126(U)
September 25, 2020
Supreme Court, New York County
Docket Number: 150738/2020
Judge: Carol R. Edmead
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. CAROL R. EDMEAD **PART** IAS MOTION 35EFM

Justice

----------X

113-117 REALTY LLC,

Plaintiff,

- v -

DIVISION OF HOUSING AND COMMUNITY RENEWAL, NANCY WILLIAMS

Defendant.

----------X

INDEX NO. 150738/2020

MOTION DATE 11/01/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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

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

Upon the foregoing documents, it is

ORDERED that the petition for relief, pursuant to CPLR Article 78, of petitioner 113-117 Realty LLC (motion sequence number 001) is denied and this proceeding is dismissed; and it is further

ORDERED that the Clerk of the Court is to enter judgment accordingly; and it is further

ORDERED that the counsel for petitioner shall serve a copy of this Order with Notice of Entry within twenty (20) days of entry on counsel for all parties.

CASE DIPOSED

MEMORANDUM DECISION

In this Article 78 proceeding, petitioner 113-117 Realty LLC (landlord) seeks a judgment to overturn an order of the respondent New York State Division of Housing and Community Renewal (DHCR) as arbitrary and capricious (motion sequence number 001). For the following reasons, the petition is denied and this proceeding is dismissed.

BACKGROUND

Landlord is the owner of a residential, rent-stabilized apartment building located at 546 West 146th Street in the County, City and State of New York (the building). *See* verified petition, ¶ 1. Co-respondent Nancy Williams (Williams) is the tenant of apartment 55 in the building. *Id.*, ¶ 3. The DHCR is the New York State agency charged with overseeing rent-stabilized housing accommodations located inside of New York City. *Id.*, ¶ 2.

On March 12, 2018, Williams commenced an administrative "diminution of services" proceeding against landlord before the DHCR, in which she alleges that landlord had failed to maintain certain services or to perform certain renovation/repair work. *See* verified petition, exhibit B. The DHCR inspected apartment 55 on September 18, 2018, and thereafter a DHCR rent administrator issued Williams a rent reduction order against landlord on October 18, 2018 that found that the inspection had yielded evidence of decreased services in apartment 55 (the RA's order). *Id.*, exhibit H. Landlord then filed a petition for administrative review (PAR) of the RA's order, and the DHCR deputy commissioner's office issued its decision on November 22, 2019 that upheld the RA's order and dismissed the PAR (the PAR order). *Id.*, exhibit J. The relevant portion of the PAR order found as follows:

> "[Williams] commenced the proceeding below on March 12, 2018, alleging a diminution in a plethora of services in the subject apartment. [Landlord] was served with [Williams]'s complaint on March 15, 2018. On September 18, 2018, a [DHCR]

> inspection conducted in the subject apartment confirmed a decrease in various services. Thus, the [RA] granted [Williams] a rent reduction and directed the restoration of services.
>
> "At the outset, the [DHCR] Commissioner notes that [landlord]'s contention that [Williams] and/or her guests damaged the subject apartment was not substantiated. Even though [landlord] alleged that in the past, the prior owner had to renovate the subject apartment due to [Williams] purportedly damaging the subject apartment, the Commissioner notes that that is insufficient to substantiate [landlord]'s present claim.
>
> "The Commissioner notes that the essence of adjudicating [a tenant's] services complaint, by the DHCR, is to ensure that services are maintained in rent regulated apartments. Factually confirmed in the instant case, through the [DHCR]'s inspection, the evidence indicates that various services were not maintained. Thus, the Commissioner finds that the [RA] correctly found services not maintained and properly issued a rent reduction order. Based on the foregoing, the Commissioner finds that there is no basis to disturb the [RA]'s determination."

Id., exhibit J.

Landlord's Article 78 petition also contains the above allegation that Williams has a history of damaging apartment 55, and notes that it is currently prosecuting a residential "nuisance holdover" petition against her in the Civil Court of the City of New York, Housing Part, under Index No L&T 83589/17 to evict her on that ground (the Housing Court proceeding). *See* verified petition, ¶¶ 6-7.

Landlord commenced this Article 78 proceeding to vacate the PAR order on January 21, 2020. *See* verified petition. After the Covid-19 national pandemic had caused the court to suspend its operations for several months, the DHCR filed an answer on July 20, 2020. *See* verified answer. At this time, the matter is fully submitted and ready for disposition (motion sequence number 001).

DISCUSSION

The court's role in an Article 78 proceeding is to determine, upon the facts before the administrative agency, whether the determination had a rational basis in the record or was arbitrary and capricious. *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 (1974); *Matter of*

E.G.A. Assoc. v New York State Div. of Hous. & Community Renewal, 232 AD2d 302 (1st Dept 1996). A determination will only be found arbitrary and capricious if it is "without sound basis in reason, and in disregard of the facts." *See Matter of Century Operating Corp. v Popolizio*, 60 NY2d 483, 488 (1983), *citing Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231. However, if there is a rational basis for the administrative determination, there can be no judicial interference. *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231-232.

Here, landlord argues that the PAR order was an arbitrary and capricious ruling because it was "not supported by substantial evidence," and because "the courts are not to serve as the [DHCR]'s rubber stamp." *See* verified petition, ¶¶ 42-48. Landlord failed to explain these assertions, however, but then argued that the DHCR "failed to adhere to its own prior precedent." *Id*. The court notes that landlord did not attach copies of the three prior administrative decisions with which the PAR order is inconsistent, or present any legal analysis as to how the PAR order was inconsistent with them. Landlord's reply papers, however, clarified that the missing administrative decisions involved situations where the DHCR denied "reduction of services" complaints by tenants who it found had caused damage in their own apartments. *See* Marinos reply affirmation, ¶¶ 4-10. It is true that the courts will find an administrative agency's determination to be arbitrary and capricious "when it 'neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts.'" *Matter of 20 Fifth Ave., LLC v New York State Div. Of Housing & Community Renewal*, 109 AD3d 159, 163 (1st Dept 2013), *quoting Matter of Lantry v State of New York*, 6 NY3d 49, 58 (2005). However, the operative fact in this case is the PAR order's finding that landlord "failed to

substantiate" its assertion that Williams or her guests had caused the damage in apartment 55. *See* verified petition, exhibit J. As a result, the administrative decisions that landlord cited to are inapposite to the facts of this case. Therefore, the court rejects landlord's argument that the PAR order was arbitrary and capricious because it did not "adhere to prior agency precedent."

Landlord also argues that Williams "is not entitled to a rent reduction since the conditions were caused by [her] or her guests." *See* verified petition, ¶¶ 36-41. This argument plainly challenges deputy commissioner's factual finding that landlord "failed to substantiate" its claim that Williams had caused the damage in apartment 55 by presenting failing to present proof. Indeed, the DHCR's answer now argues that the deputy commissioner's determination was based on (a) the results of the September 18, 2018 inspection report; and (b) landlord's failure to present the agency "with any evidence that Tenant vandalized the Apartment." *See* verified answer, Huss affirmation, ¶¶ 12-25. The court finds that the presence (and absence) of this evidence in the DHCR's administrative record affords a "rational basis" for the deputy director's finding that landlord "failed to substantiate" its allegations about Williams. The court further notes that landlord's petition and reply papers are similarly devoid of said proof. Instead, they appear to consist solely of the same unsupported allegations and inferences that the agency discounted twice. Finally, the court finds that landlord's insistence that Williams disprove its claim that she damaged apartment 55 is unjustified. Landlord cites no law holding that places the burden on Williams to "prove a negative." Therefore, the court rejects landlord's argument, and finds that the PAR order was supported by "substantial evidence." As a result, the court concludes that landlord's challenge to the PAR order fails, as a matter of law.

Finally, landlord argues that this "proceeding should have been stayed pending the Housing Court action." *See* verified petition, ¶¶ 49-52. However, this contention is rendered

moot by the court's determination that landlord has failed to sustain its Article 78 petition. Therefore, the court rejects landlord's final opposition argument.

Accordingly, having rejected all of landlord's arguments and determined that the PAR order was supported by substantial evidence, the court concludes that landlord's Article 78 petition should be denied as meritless, and that this proceeding should be dismissed.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED that the petition for relief, pursuant to CPLR Article 78, of petitioner 113-117 Realty LLC (motion sequence number 001) is denied and this proceeding is dismissed; and it is further

ORDERED that the Clerk of the Court is to enter judgment accordingly; and it is further

ORDERED that the counsel for petitioner shall serve a copy of this Order with Notice of Entry within twenty (20) days of entry on counsel for all parties.

9/25/2020
DATE

CAROL R. EDMEAD, J.S.C.

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