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Great Harmony Realty Corp. v. New York State Div. of Hous. & Community Renewal

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Great Harmony Realty Corp. v New York State Div. of Hous. & Community Renewal
2022 NY Slip Op 30097(U)
January 12, 2022
Supreme Court, New York County
Docket Number: Index No. 159615/2021
Judge: Arlene P. Bluth
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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE BLUTH** ***Justice*** **PART** **14**

---X

GREAT HARMONY REALTY CORP.,

Petitioner,

- v -

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL, RUTHANNE VISNAUSKAS

Respondents.

---X

INDEX NO. 159615/2021

MOTION DATE 01/11/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23

were read on this motion to/for ARTICLE 78 .

The cross-motion by the New York State Division of Housing and Community Renewal ("HCR") to dismiss this matter on the ground that petitioner failed to exhaust its administrative remedies is granted.

Background

In this proceeding, petitioner alleges that it owns a property in Manhattan and three tenants filed overcharge complaints concerning the rent stabilization status of their apartments. It claims that the Rent Administrator denied the tenant's claims and found that the building was not subject to rent stabilization laws. Petitioner argues that 3 new complaints were filed and again the Rent Administrator found the building was not subject to rent stabilization laws. This time, PARs were filed and the HCR Deputy Commissioner granted the tenants' requests with respect to the rent stabilization status of the units and revoked the Rent Administrator's orders.

The key issue in the HCR order was whether the building at issue had less than 6 residential units (which would remove it from rent stabilization laws) and how it should be viewed in connection with an adjoining property. The order noted that "DHCR conducted a physical inspection of 467 West 125th Street and found 4 residential units and one store" (NYSCEF Doc. No. 11). HCR then conducted an inspection of both 467 West 125th Street and 469 West 125th Street (which has 2 residential units) and found that "the main flue (from central boiler/heating) serves both buildings and is located in the basement of 467 West 125th Street; the buildings share a common boiler in the basement of 467; the main water line serves both buildings and is located in the basement of 467; the main sewage line serves both buildings and is located in the basement of 467; the main electrical line serves both buildings and is located in the basement of 467; there are 9 electrical meters for both buildings and a main electric breaker . . . all located in the basement of 467; the basement of the buildings are divided by a foundation wall with holes for common piping and wiring; and six residential unit mailboxes are located in 467 West 125th Street. The inspector also observed that the buildings did not share a roof, had separate entrances, and did not have identical/adjacent fronts" (NYSCEF Doc. No. 11).

The order concluded that based on these circumstances the matter should be remanded to the Rent Administrator and that the units should be considered rent stabilized as a Horizontal Multiple Dwelling (*id.*). In other words, the order found that two addresses should be considered as a single building for purposes of the rent stabilization laws.

Petitioner seeks to annul this order and reinstate the Rent Administrator's orders terminating the tenants' complaints on the ground that the HCR's order was arbitrary and capricious.

HCR seeks to dismiss on the ground that its order remanded the matter to the Rent Administrator and, therefore, petitioner has not exhausted the administrative remedies. It claims it is a non-final order and the subject order inflicts no injury on petitioner. HCR points out that petitioner will have the chance to seek judicial review of all issues from the now-pending proceeding.

In opposition to the cross-motion, petitioner argues that HCR manufactured the outcome and that there is no guidance about what petitioner is supposed to do next. Petitioner claims it "is not going to wait around for a 'final order' that states the building is rent regulated before appealing" and the only remaining issue is the "rental amount" (NYSCEF Doc. No. 23, ¶ 6).

Discussion

"It is hornbook law that one who objects to the act of an administrative agency must exhaust available administrative remedies before being permitted to litigate in a court of law. This doctrine furthers the salutary goals of relieving the courts of the burden of deciding questions entrusted to an agency" (*Watergate II Apartments v Buffalo Sewer Auth.*, 46 NY2d 52, 57, 412 NYS2d 821 [1978] [citations omitted]).

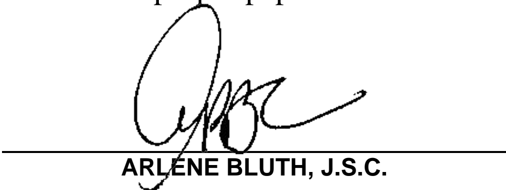
Here, it is clear that petitioner has not exhausted its administrative remedies. Petitioner even admits in its opposition to the cross-motion that it doesn't want to wait for a 'final order.' That is, of course, what it must do. The current procedural posture of this dispute is that the Rent Administrator is now tasked with reviewing the tenants' overcharge complaint in light of the finding that the units are subject to rent stabilization laws. But there has been no final order that would entitle petitioner to bring the instant proceeding. In fact, the HCR's order specifically remands the proceeding to the Rent Administrator for additional findings. There is no other rational interpretation of the submissions before this Court—petitioner failed to exhaust its

administrative remedies as the dispute it seeks to challenge is *currently pending* before an agency.

To be clear, respondents have taken the position that the finding that the units are subject to rent stabilization laws is not a final order. This Court agrees, and petitioner may challenge that finding, and any other findings, after a final order is made by the agency.

Accordingly, it is hereby

ORDERED that the cross-motion by respondent New York State Division of Housing and Community Renewal to dismiss the petition is granted, this proceeding is dismissed and the Clerk is directed to enter judgment accordingly upon presentation of proper papers therefor.



1/12/2022
DATE

ARLENE 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**