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Matter of 15 Humboldt LLC v. New York State Div. of Hous. & Community Renewal

Matter of 15 Humboldt LLC v New York State Div. of Hous. & Community Renewal
2022 NY Slip Op 33628(U)
October 6, 2022
Supreme Court, Kings County
Docket Number: Index No. 528939/2021
Judge: Carolyn E. Wade
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: HON. CAROLYN E. WADE

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In the Matter of the Application of
15 HUMBOLDT LLC,

Petitioner,

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

- against -

NEW YORK STATE DIVISION OF HOUSING
AND COMMUNITY RENEWAL,

Respondent.

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Index No. 528939/2021

DECISION AND ORDER

MS # 1

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KINGS COUNTY CLERK
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Recitation, as required by CPLR § 2219(a), of the papers considered in the review of Petitioner's Application:

Papers	Numbered
Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed.....NYSCEF #'s	**2, 8, 6**
Cross-Motion and Affidavits/Affirmations.....	
Answering Affidavits/Affirmations.....	**23, 25**
Reply Affidavits/Affirmations.....	
Defendant's Memorandum of Law.....	

Upon the foregoing cited papers, Petitioner, 15 Humboldt, LLC ("15 Humboldt") moves this Court pursuant to CPLR Article 78, directing the New York State Division of Housing and Community Renewal ("DHCR" or "Respondent") to issue an Order, reversing the Deputy Commissioner's Order ("Commissioner's Order"), dated September 14, 2021; or in the alternative, remanding to the agency for a further proceeding, is decided as follows:

The underlying Article 78 proceeding was commenced by 15 Humboldt, current owner of 15 Humboldt Street, Brooklyn, New York ("subject premises") to challenge the Deputy Commissioner, Woody Pascal's ("Commissioner") Order, dated September 14, 2021, on the grounds that he acted in

an arbitrary and capricious manner, and abused his discretion by denying its Petitions for Administrative Review ("PAR").

On November 29, 2016, the prior owners and managers of the subject premises, Salmor Realty, LLC ("Salmor"), Joel Israel ("Joel"), Amrom Israel ("Amrom"), and JBI Management Inc. ("JBI") (collectively "prior owners"), pled guilty to one count of Scheme to Defraud in the First Degree, an E felony; and two counts of Unlawful Eviction (hereinafter, "fraudulent deregulation scheme"). The Kings County District Attorney found that the prior owners had engaged in a campaign to harass tenants, and replaced rent stabilized tenants with market rate ones, dating back to 2010.

As part of their plea agreement, on June 14, 2017, JBI and DHCR's Tenant Protection Unit ("TPU") entered into a settlement agreement ("settlement agreement"), which stated that all rents for 15 Humboldt Street would be subject to review due to the prior owners' guilty plea (Petitioner's Exhibit "F"). The settlement agreement also provided JBI with the opportunity to submit documentation to DHCR, as to improvements they made to their property in support of their request to increase the rents.

On June 20, 2017, the Tenant Protection Unit (TPU), an enforcement wing of DHCR, directed Salmor to reset the rents of Apartments #1R and #3F (collectively, "apartments") to the last registered rents from 2010, as the past rent increase was permeated with fraud.

On July 27, 2017, 15 Humboldt, LLC acquired title to subject premises. Thereafter, on October 18, 2017, TPU filed two rent overcharge complaints with the Office of Rent Administration ("ORA") regarding apartments #1R and #3F on the subject premises.

Petitioner interposed answers to the rent overcharge complaints. In both answers, Petitioner contended that the subject premises were reconfigured; therefore, it was permitted to charge market

rate rents. In support, Petitioner submitted rent ledgers and other documents to establish the base date rents[1].

On February 8, 2021, and February 11, 2021, DHCR Rent Administrator Raj Shivgulam issued Orders Finding Rent Overcharge ("RA Orders") in both Apartments #1R and #3F.

The RA Orders indicated that the rent overcharge totaled $34,399.07 for Apartment #1R with treble damages in the amount of $54,726.44, for a grand total of $89,125.51. With regard to Apartment #3F, the rent overcharge totaled $9,866.71, and treble damages were awarded in the amount of $19,733.42, for a grand total of $29,600.13. The overcharges were calculated using a default formula derived from the New York City Rent Stabilization Code, Title 9 NYCRR, Subtitle S, Chapter VIII, Subchapter B, Parts 2520 through 2531, §§2520.1 through 2531.9 ("RSC"). The default formula uses the average rent for the same-sized apartments in the same zip code to establish the base date of the legal regulated rents. Here, the ORA used the pre-reconfiguration size of the apartments rather than post-reconfiguration sizes to determine the base date of the legal regulated rent. Moreover, in assessing rent overcharges, the RSC provides that there is a presumption of willfulness on rent overcharges and authorizes treble damages to be imposed. 15 Humboldt subsequently filed two PARS for administrative review to challenge the RA orders.

On September 14, 2021, the Commissioner issued an Order, the subject of the underlying petition, which denied 15 Humboldt's PAR of the RA Orders. Petitioner argued that they should not be liable for the prior owners' actions; and asserted that the use of a default formula to determine the rental rates for the apartments was improper. 15 Humboldt also contended that DHCR did not have jurisdiction over the apartments, as they were deregulated once they were renovated and reconfigured,

[1] RSC 9 NYCRR 2520.6 provides that, "[f]or the purpose of proceedings pursuant to sections 2522.3 and 2526.1 of this Title, base date shall mean the date which is the most recent of:
(1) The date four years prior to the date of the filing of such appeal or complaint;
(2) The date on which the housing accommodation first became subject to the RSL; or
(3) April 1, 1984, for complaints filed on or before March 31, 1988 for housing accommodations for which initial registrations were required to be filed by June 30, 1984, and for which a timely challenge was not filed."

and the first rent had been charged. Petitioner further argued that the imposition of treble damages was unfounded since they inherited the apartments prior to the filing of the rent overcharge complaints; and that DHCR ignored the terms of the TPU settlement agreement.

The Commissioner disagreed and found that DHCR had jurisdiction over the subject premises; and that the use of the default formula was proper here, since the ORA could not rely upon any records submitted by JBI to prove the base date rent. Specifically, the Commissioner's Order found that the prior owners' guilty plea tainted the renovations with fraud.

In support of the instant application, Petitioner contends that the Commissioner acted in an arbitrary and capricious manner and exhibited an abuse of discretion by denying their PARs. Petitioner argues that DHCR lacks jurisdiction over the subject apartments; the imposition of treble damages is unjustified; it should not be held responsible for the actions of the prior owners; and that the use of the default formula violates the settlement agreement.

In opposition, Respondent asserts that the Commissioner correctly found that the apartments were within DHCR's regulatory jurisdiction, and that the use of the default formula was proper because the alterations and rents offered by the Petitioner were tainted by the fraudulent deregulation scheme. Moreover, it argues that the imposition of treble damages was justified since Petitioners inherited the willfulness of the prior owners in real property matters and failed to convincingly rebut the statutory presumption of willfulness.

A court reviewing an administrative agency determination, "must ascertain whether there is a rational basis for the action in question or whether it is arbitrary and capricious" (*Matter of Brookford, LLC v NY State Div. of Hous. & Community Renewal*, 31 NY3d 679, 684 [2018]). "Arbitrary action is without sound basis in reason and is generally taken without regard to the facts" (*Pell v Bd. of Educ.*, 34 NY2d 222, 231 [1974]). "The DHCR's interpretation of the statutes and regulations it administers, if reasonable, must be upheld" (*Matter of Riverside Tenants Assn. v NY State Div. of Hous. &*

Community Renewal, 133 AD3d 764, 766-767 [2d Dept 2015] [internal citations and quotations omitted]). "Applications to reduce or modify services are fact-specific, and the DHCR has broad discretion in evaluating and interpreting the facts presented to it." *Id.*

Here, the Commissioner found that DHCR had regulatory jurisdiction over the subject apartments, as their deregulation was premised on an admitted fraudulent scheme to unlawfully evict tenants and charge market rate rent. DHCR's determination that the renovations were tainted with fraud and precluded any of Petitioner's deregulation claim was a reasonable interpretation of RSC §2526.2(d), which bars rent increases arising from owner harassment and fraud. Therefore, the application of the default formula was neither arbitrary and capricious nor an abuse of discretion.

RSL §26-516 (a) provides that if any owner of housing is found to have collected an overcharge, they shall be liable to a tenant for penalty equal to three times the amount of such overcharge. If the owner establishes by a preponderance of the evidence that the overcharge was not willful, DHCR would establish the penalty as the amount of overcharge rent plus interest.

Here, the Commissioner found that the Petitioner failed to rebut the statutory presumption of willfulness, which justified DHCR's imposition of treble damages, and held it responsible for overcharges collected by the prior owners.

Rent Stabilization Code, 9 NYCRR § 2526.1 (f)(2), provides that the current owner is responsible for its rent overcharges as well as those of the prior owner (*Matter of DiMaggio v Division of Hous. & Community Renewal*, 248 AD2d 533, 535 [2d Dept 1998]). Petitioner as the purchaser of the subject premises "stands in the shoes" of the prior owners and takes title to the property's pre-existing legal rights and liabilities (*Goldstein v Gold*, 106 AD2d 100, 102 [2d Dept 1984]). This carry-over liability applies equally to the penalty of treble damages, as the Code expressly includes "overcharge penalties" (*Choice Assoc. LLC v NY State Div. of Hous. & Community Renewal*, 62 Misc. 3d 852, 858 [Sup Ct, NY County 2018]). To contest the presumption of willfulness, Petitioner

submitted the rental history of the apartments, which DHCR disregarded because it found that it was tainted by fraud. Thus, DHCR's determination that Petitioner had not met its burden to rebut the presumption of willfulness was rationally based.

Lastly, the Commissioner correctly found that DHCR did not violate the settlement agreement, and had a reasonable basis for disregarding the documents submitted by Petitioner to challenge the application of the default formula. The settlement agreement provided Petitioner "the opportunity to submit appropriate documentation to support its investment in the improvements." Petitioner submitted documentation as to its improvements and challenged DHCR's application of the default formula to calculate the rent. However, as the trier of fact, DHCR exercised its discretion, and disregarded the Petitioner's submissions to calculate the base rent, as being tainted by the fraudulent deregulation scheme. This determination cannot be characterized as unreasonable or taken without regard to facts.

Accordingly, for the foregoing reasons, the Petitioner's Article 78 Petition is DENIED, and the proceeding is hereby DISMISSED.

DATED: 10/6, 2022

HON. CAROLYN E. WADE, J.S.C.

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