2022-10-25

Cantor v. New York State Div. of Hous. & Community Renewal

Cantor v New York State Div. of Hous. & Community Renewal
2022 NY Slip Op 33659(U)
October 25, 2022
Supreme Court, New York County
Docket Number: Index No. 152408/2022
Judge: Laurence L. Love
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. LAURENCE L. LOVE** **PART** **63M**

Justice

----------X

JEFFREY CANTOR,

Plaintiff,

- v -

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, 72 ORCHARD STREET CORP.

Defendant.

----------X

INDEX NO. 152408/2022

MOTION DATE 07/22/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49

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

Upon the foregoing documents, it is

An Article 78 Petition, per the CPLR 7803(3) – arbitrary and capricious standard, seeks an Order to annul, reverse, modify, and/or remand a Decision and Order of Respondent – New York State Division of Housing and Community Renewal ("Division of Housing"), whereby Petitioner's claims of rent stabilization status and rent overcharged were denied and rejected.

Respondent – Division of Housing submits an answer (see NYSCEF Doc. No. 27) as does 72 Orchard Street Corp. (see NYSCEF Doc. No. 32).

An affirmation in opposition affirms:

> "The Commissioner's Order and Opinion denied the Petition for Administrative Review ("PAR") filed by the Petitioner, the tenant of Apartment 3 (the "subject apartment") in 72 Orchard Street, New York, New York 10002 (the "subject building"), which is owned by the Respondent 72 Orchard Street Corp. (the "Owner"). The Petitioner's PAR requested that the Commissioner revoke an Order issued by [Division of Housing]'s Rent Administrator ("RA") on September 16, 2021, which had, on reconsideration, affirmed the RA's previous Order issued on April 8, 2021 denying his complaint of a rent overcharge. The RA determined that the subject apartment

> was exempted from rent stabilization because it had previously been deregulated based on high – rent vacancy. The Commissioner affirmed the RA Order, finding that the Petitioner had failed to allege a colorable claim of a fraudulent deregulation scheme that would have warranted an examination of the subject apartment's rental history preceding the applicable base date (four years before the filing of the complaint) and it had been lawfully deregulated based on high – rent vacancy as a result of lawful rent increases at the inception of the tenancy preceding the Petitioner's tenancy" (see NYSCEF Doc. No. 28 Par. 3).

RSL Sec. 26 – 511(c) authorizes the Commissioner of Division of Housing to adopt a Rent Stabilization Code.

New York City Rent Stabilization Law ("RSL") Sec. 26 – 516(a) (Administrative Code of the City of New York, Title 26, Chapter 4, Sections 26 – 501 through 26 – 520) provides " any owner of housing … to have collected an overcharge … shall be liable to a tenant for a penalty."

Petitioner's memorandum of law in support states, "[Division of Housing]'s handling of this proceeding was flawed and inaccurate, and did not comply with the requirements of the law. As such, the fact that the alleged deregulation of the apartment took place in October 2005, twelve years prior to the filing of petitioner's complaint with the [Division of Housing] in January 2018, is of no consequence. [Division of Housing] was under as much of a legal duty to review all the available evidence in this case as it would have been had the complaint been filed sooner after the alleged deregulation. However, the record reflects that the [Division of Housing] did not treat petitioner's complaint with the respect and attention that was legally required" (see NSYCEF Doc. No. 3 P. 10 – 11).

Respondent – 72 Orchard Street affirmation in opposition affirms, "[c]ontrary to Petitioner's contentions, at no point had he met his burden of establishing that Respondent engaged in a fraudulent scheme to deregulate the subject apartment which would warrant a

review of rental events beyond the lookback period established by the Four – Year Rule. It must be noted that pursuant (sic) the Rent Stabilization Law and Code, as applicable to all times relevant to this proceeding, a review of the rental events is limited to four years prior to the date that a tenant claims overcharge. This is known as the 'base date' for such review. The limits of review to the base date is referred to the 'Four – Year Rule.' Being that Petitioner filed his complaint alleging overcharge on January 31, 2018, the base date for the present and the underlying proceedings is January 31, 2014 (the "Base Date"). Notwithstanding that the Base Date is January 31, 2014, the Respondent, without waiving its rights, provided [Division of Housing] with the rental history going back to before the Unit was deregulated in 2005. Thus, long before the Base Date, the Unit became permanently exempt from rent regulation due to high rent vacancy deregulation" (see NSYCEF Doc. No. 33 Pars. 7, 13, 25)

The "Order and Opinion Denying Petition for Administrative Review" has been submitted (see NSYCEF Doc. No. 29). Said Order and Opinion reviewed all the relevant facts and applied them to the pertinent case law and statutes. The Administrative Review included *Matter of Hargrove*, where "the RA reviewed records dating back to 2005 to determine whether the subject apartment was deregulated in that year" (see NSYCEF Doc. No. 29 P. 5).

A review of *Grimm* also occurred. "Generally, an increase in the rent alone will not be sufficient to establish a 'colorable claim of fraud,' and a mere allegation of fraud alone, without more, will not be sufficient to require [Division of Housing] to inquire further. What is required is evidence of a landlord's fraudulent deregulation scheme to remove an apartment from the protections of rent stabilization" (see *Grimm v. State of New York Division of Housing and Community Renewal Office of Rent Administration,* 15 NY3d 367 [2010]).

The Deputy Commissioner concluded, "[i]n sum, the tenant has produced no evidence of fraud and the deregulation in 2005 was lawfully established on this record" (see NYSCEF Doc. No. 29 P. 6).

This Court has reviewed all the submissions and affirmations presented in this litigation. There remains no "colorable claim of fraud" and the Order denying Administrative Review was not arbitrary and capricious.

ORDERED that the Petition to annul, reverse, modify, and/or remand a Decision and Order of Respondent – New York State Division of Housing and Community Renewal is DENIED in its entirety.

10/25/2022
DATE

LA RENCE L. LOVE, 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