2022-11-10

# 206 W. 120th St. Tenant Assn. v. New York City Dept. of Hous. Preserv. & Dev.

| **206 W. 120th St. Tenant Assn. v New York City Dept. of Hous. Preserv. & Dev.** |
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| 2022 NY Slip Op 33825(U) |
| November 10, 2022 |
| Supreme Court, New York County |
| Docket Number: Index No. 451439/2022 |
| Judge: Frank E. Lyle |
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# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

**PRESENT:** **HON. LYLE E. FRANK** **PART** **11M**

***Justice***

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206 WEST 120TH STREET TENANT ASSOCIATION, IRETI BOBB, MILDRED GONZALEZ, JAMAL KILKENNY, SHAKISH SIMON, GABRIEL VALENTIN

Petitioner,

- v -

NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, ADOLFO CARRION,

Respondent.

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**INDEX NO.** 451439/2022

**MOTION DATE** 05/05/2022

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

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

This petition arises out of petitioners' application for reinstatement denial by respondents, New York City Department of Housing Preservation and Development and its Commissioner Adolfo Carrion, referred to collectively as HPD. Petitioners allege that HPD's denial was arbitrary and capricious and its document requests, pursuant to a stipulation between the parties, were not made in good faith. Respondents oppose the instant petition and cross-move to dismiss. For the reasons, set forth below the petition is denied.

*Background*

Petitioners are members of 206 West 120th Street Tenant Association and tenants of record at 206 West 120th Street. The subject building entered in the Tenant Interim Lease Program ("TIL program") in 2003. In 2018, HPD terminated the building from the TIL program for its failure to comply with monthly financial reporting, among other things. As a result of the

termination in 2018, petitioners commenced an Article 78 proceeding challenging respondents' determination to terminate the Tenant Association from the TIL program.

In 2020, the parties entered into a stipulation of settlement which resolved the 2018 Article 78 proceeding, with prejudice. Pursuant to the stipulation, HPD agreed to reinstate the subject building into the TIL program if petitioners submitted the missing monthly financial reports and any other documents HPD requested.

Petitioners submitted documentation, however, HPD informed petitioners by multiple letters[1] of the deficiencies with the submissions and granted the petitioners time to cure the deficiencies. HPD determined that petitioners failed to provide to HPD all the documents it requested, thus failed to meet its obligations under the stipulation. Accordingly, HPD was not required to reinstate the Tenant Association into the TIL Program, pursuant to the stipulation, and informed the petitioners by letter dated January 6, 2022. *See* NYSCEF Doc. 33.

*Standard of Review*

Article 78 review is permitted, where a determination was made that "was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed…." CPLR §7803(3).

"Arbitrary" for the purpose of the statute is interpreted as "when it is without sound basis in reason and is taken without regard to the facts." *Pell v Board of Ed. of Union Free School Dist. No. of the Towns of Scarsdale and Mamaroneck, Westchester Cty.* 34 NY2d 222, 231 [1974].

[1] A review of the record establishes that HPD sent petitioners six notices, although HPD avers that five notices were sent; one in May 2020, two in June 2020, one in September 2020, one in December 2020 and one in October 2021. *See* NYSCEF Doc. 32.

A court can overturn an administrative action only if the record illuminates there was no rational basis for the decision. *Id.* "Rationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard." *Id.* If the court reviewing the determination finds that "[the determination] is supported by facts or reasonable inferences that can be drawn from the records and has a rational basis in the law, it must be confirmed." *American Telephone & Telegraph v State Tax Comm'n* 61 NY2d 393, 400 [1984].

It is well established that the court should not disturb an administrative body's determination once it has been established that the decision is rational. See *Matter of Sullivan Cnty. Harness Racing Ass'n, Inc. v Glasser*, 30 NY2d 269 [1972]; *Presidents' Council of Trade Waste Assns. v New York,* 159 AD2d 428, 430 [1st Dept 1990].

*Discussion*

Here, the Court finds that petitioners' termination is not before this Court, as that issue was resolved pursuant to the stipulation entered by the parties resolving the 2018 Article 78 petition. The issue before this Court is whether HPD's decision not to reinstate the petitioners was arbitrary and capricious; the Court finds that it was not. While respondents' contend that the January 6, 2022 letter does not constitute a new agency determination to restart the clock for the purposes of the statute of limitations, this Court declines to weigh in on that issue and will reach the merits of the underlying petition.

As it is well established that the determination of the agency must be given deference, the record before this Court is devoid of any interpretation or application of the underlying laws, rules or policies that are so irrational as to require this Court to intervene. Moreover, the terms of the stipulation of settlement are clear and unambiguous and grant HPD a release of any and all obligations if petitioners fail to comply. The record before this Court establishes that petitioners

were put on notice of deficiencies and said deficiencies were not cured pursuant to the TIL policies and procedures, as well as the stipulation of settlement. The Court has reviewed petitioners' remaining contentions and finds them unavailing. Based on the foregoing, it is hereby

ADJUDGED that the petition is denied.

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11/10/2022
DATE

LYLE E. FRANK, J.S.C.

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|---|---|---|---|---|---|---|---|
| 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 |