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Singletary v. Residential Mgt. Inc.

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Singletary v Residential Mgt. Inc.
2022 NY Slip Op 22387
Decided on December 20, 2022
Appellate Term, First Department
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Decided on December 20, 2022
SUPREME COURT, APPELLATE TERM, FIRST DEPARTMENT
PRESENT: Brigantti, J.P., Hagler, Tisch, JJ.
570410/22

Shakesque Singletary, Petitioner-Respondent,

against

**Residential Management Inc. and River Realty, Respondents-Appellants, and
The Department of Housing Preservation and Development, Respondent.**

Respondents Residential Management Inc. and River Realty appeal from a "decision/order" of the Civil Court of the City of New York, New York County (Jack Stoller, J.), entered on or about November 25, 2019, after a hearing, which awarded respondent Department of Housing Preservation and Development (HPD) civil penalties in the sum of \$132,565.00 in a Housing Part (HP) enforcement proceeding.

Per Curiam.

Appeal from "decision/order" (Jack Stoller, J.), entered on or about November 25, 2019, deemed an appeal from the ensuing judgment (same court and Judge), entered on or about November 26, 2019, and so considered (*see* CPLR 5520[c]), judgment affirmed, with \$25 costs.

The determination rendered by a hearing court is entitled to great deference on appeal and will not be set aside unless such determination could not have been reached under any fair interpretation of the evidence (*see Claridge Gardens v Menotti*, 160 AD2d 544 [1990]).

Here, respondents-landlords' liability for civil penalties was firmly established by the hearing evidence, including petitioner-tenant's testimony, photographs, and HPD's subsequent inspections, which fully supports the trial court's finding that respondents failed to correct certain violations cited in the May 3, 2019 consent order. Nor did respondents establish their defense of lack of access by a preponderance of the evidence, since the record supports the hearing court's express conclusion that the May 2019 order "contained no less than four access dates," that "none of respondents' [*2] witnesses testified that respondent could not get access on the scheduled dates" and that "respondents' contractor, the manager, and respondents' worker all testified that they did work in the subject premises, which is not consistent with respondents' position that petitioner denied access."

Respondents' argument that the civil penalties imposed (*see* Administrative Code of City of NY § 27-2115[a]) violated the Excessive Fines Clause of the Eighth Amendment of the United States Constitution is unpreserved (*see Matter of People v Orbital Publ. Group, Inc.*, 193 AD3d 661 [2021]; *Matter of Franklin St. Realty Corp. v NYC Env'tl. Control Bd.*, 164 AD3d 19, 30 [2018], *aff'd* 34 NY3d 600 [2019]) and in any event without merit. The Excessive Fines Clause is inapplicable because the penalty serves a remedial, rather than punitive, purpose, as it is intended to coerce property owners to comply with housing maintenance standards (*see generally Matter of Tiwari v City of New York*, 190 AD3d 442 [2021]). Even if the Excessive Fines Clause applied, the penalty schedule contained in Administrative Code § 27-2115 - which classifies violations by their seriousness and accordingly varies the time landlords are allotted to correct them - was not "grossly disproportional to the gravity of [the] offense" (*see County of Nassau v Canavan*, 1 NY3d 134, 140 [2003][internal quotation marks and citation omitted]), i.e. the fine does not "notably exceed[] in amount that which is reasonable, usual, proper or just" (*Matter of Prince v City of New York*, 108 AD3d 114, 119 [2013][internal quotation marks and citation omitted]; *see Matter of Department of Hous. Preserv. & Dev. of City of NY v Deka Realty Corp.*, 208 AD2d 37, 45-46, 51 [1995]), and respondents had the ability to mitigate the accrual of the fines by immediately correcting the violations (*see Matter of Franklin St. Realty Corp. v NYC Env'tl. Control Bd.*, 164 AD3d at 30; *OTR Media Group, Inc. v City of New York*, 83 AD3d 451, 454 [2011]).

All concur

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Clerk of the Court

Decision Date: December 20, 2022

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