2023-03-09

Matter of Riverside Syndicate Inc. v. New York State Div. of Hous. & Community Renewal

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2023 NY Slip Op 30714(U)

March 9, 2023

Supreme Court, New York County

Docket Number: Index No. 160089/2022

Judge: Sabrina Kraus

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SABRINA KRAUS **PART** 57TR

Justice

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In the Matter of the Application of RIVERSIDE SYNDICATE INC.

Petitioner,

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

- v -

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL,

Respondent.

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INDEX NO. 160089/2022

MOTION DATE 03/03/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 8, 18 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

BACKGROUND

This proceeding concerns the rent stabilized housing accommodation located at 155 Riverside Drive, New York, New York 10024, Apt. 7D (Subject Premises).

On May 29, 2018, Petitioner filed a deregulation petition with Respondent to deregulate the Subject Premises, on high rent/high income grounds pursuant to the governing statute then in effect, that being Rent Stabilization Law (Administrative Code of City of NY) § 26-504.3 (RSL).

The Housing Stability and Tenant Protection Act of 2019 (HSTPA) was enacted and effective June 14, 2019. HSTPA repealed the higher rent/high income deregulation provisions.

Section 8 of the HSTPA provided that any unit that was lawfully deregulated prior June 14, 2019 would remain deregulated.

On November 13, 2019, the Rent Administrator issued an order denying Petitioner's application. The Rent Administrator's order stated that HSTPA repealed the provisions which provided for the issuance of orders that authorized High-Rent/High-Income Deregulation.

On December 4, 2019, Petitioner filed a PAR and argued that had Respondent complied with the statutorily prescribed time periods the deregulation petition would have been determined prior to the repeal of high rent/high income deregulation by HSTPA, and that Respondent erred by applying the repeal of the High Rent/High Income deregulation provision retroactively.

On October 25, 2022, Respondent denied the PAR.

Petitioner filed this Article 78 petition seeking to have the order set aside and have the 2018 luxury deregulation petition processed pursuant to the law in effect prior to the enactment of the HSTPA.

Because Petitioner fails to show that DHCR's delay in processing the petition for deregulation was negligent or deliberate and because the legislature repealed the statutes that authorized the deregulation of rent stabilized apartments as of June 14, 2019, the petition is denied.

DISCUSSION

A court's role in reviewing a determination of an administrative agency is a limited one. The proper standard for judicial review of an administrative determination is whether it was arbitrary or capricious or without a rational basis or warrant in the administrative record. *Greystone Mgt. Corp. v. Conciliation and Appeals Bd.*, 94 A.D.2d 614 (1st Dept. 1983), aff'd, 62 N.Y.2d 763 (1984). A court may not disturb an administrative decision unless the agency's action was arbitrary and capricious, in violation of lawful procedures, or made in excess of its

jurisdiction. *Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222 (1974); *Ansonia Residents Assoc., v. N.Y.S. Div of Hous. & Comm. Renewal.*, 75 N.Y.2d 206 (1989).

Moreover, the reviewing Court may not substitute its judgment for that of the administrative agency own [*P'ship 92 LP v. State Div. of Hous. & Cmty. Renewal*, 46 A.D.3d 425, 427 (2007) aff'd, 11 N.Y.3d 859 (2008)].

Pursuant To the HSTPA The Subject Premises Remains Regulated Because It Was Not Deregulated Prior To June 14, 2019

Petitioner timely served Scott Schwartz and Sarah B. Schwartz, the tenants of record of the Subject Premises with the income certification form (ICF) for the 2018 filing period, which the tenants failed to complete and/or return.

On May 29, 2018, Petitioner filed the 2018 luxury deregulation petition with Respondent requesting verification of the household income because the tenants failed to properly return the ICF to the owner.

Respondent was required, within 20-days of Petitioner's filing on May 29, 2018, or by June 18, 2018, to notify the tenants that they must provide Respondent with information required for Department of Taxation and Finance (DTF) to verify whether the total annual household income exceeds the deregulation income threshold in each of the two (2) preceding calendar years. *See* former RSL § 26-504.3(c)(1).

Admittedly, there is no evidence Respondent ever requested this information from the tenants nor does Respondent address this point in their submissions to the court or in the underlying administrative orders. Respondent apparently did not reach Petitioner's application until after the passage of the HSTPA.

Therefore, Respondent was precluded from determining whether the Subject Premises could be deregulated as HSTPA repealed the statutes on June 14, 2019 that authorized DHCR to

grant high rent/high income deregulation applications. The Legislature revoked the statutory exemption which permitted the deregulation of the Subject Premises. Respondent applied the June 14, 2019 date for terminating processing of deregulation applications as enacted by the Legislature. The Subject Premises was not deregulated as provided by former RSL §26-504.3(c)2 as Respondent had not issued a deregulation order prior to June 14, 2019, the cut-off date for deregulation set forth in HSTPA.

The fact that the processing of Petitioner's application did not adhere to the timeline contained in the former RSL provisions does not evidence negligence or willful delay. It is Petitioner's burden to show that Respondent's delay in issuing the deregulation order was intentional or caused by Respondent's negligence [*160 E. 84th St. AssOc. LLC v. N.Y. State Div. Of Hous. & Comm. Renewal*, 209 A.D.3d 517(1st Dept. 2022)]. Petitioner has failed to meet its burden in that regard on this record.

Respondent further notes that the tenants' lease expired after the June 14, 2019 date and even if Petitioner's application had been processed the Subject Premises could not be deregulated as deregulation status would occur at the expiration of the lease in effect at the time the deregulation order issued (Id; *see also* former RSL §26-504.3 (b), (c)2- 3).

Accordingly, it was rational for Respondent to conclude that it could not authorize the deregulation of the Subject Premises after the enactment of HSTPA on June 14, 2019 as HSTPA repealed the deregulation statutes as of that date.

Regina Metropolitan Co is not applicable to the Facts of this Proceeding

Petitioner argues that Respondent applied the HSTPA retroactively in contravention of the Court of Appeals decision in *Regina Metropolitan Co., LLC v New York State Division of*

Housing and Community Renewal 35 NY3d 332 (2020) where the Court of Appeals determined that HSTPA Part F, which deals with overcharge complaints, could not be applied retroactively.

However, HSPTA Part D, as amended, set forth a definitive effective date for the abolishment of high rent vacancy and high income deregulation. The repeal of high rent vacancy and high-income deregulation was to take effect immediately, but with an express carve out date and explanation, that any unit that was lawfully deregulated prior to June 14, 2019, would remain deregulated.

In *Regina* the Court of Appeals held in pertinent part:

> Each of HSTPA's fifteen parts contains its own effective date provision, indicting the Legislature consider the issue of temporal scope for each. The legislation is almost entirely forward-looking - only Part F's effective date provision contains language referring to prior claims. In contrast, main of the HSTPA's other effective date provisions, such as that applicable to the amendments eliminating vacancy and longevity bonuses, state only that the parts of the legislation to which they apply "shall take effect immediately" (see L 2019, ch 36, Part A §7, Part B § 8, Part C § 5, Part D §8, Part G § 7, Part J §2, Part L §3), in some cases indicating when the amendments contained therein expire (id. Part E §3, Part H §5, Part K §18). Others expressly provided that the relevant part applies prospectively only, such as by indicating that it takes effect immediately but applies to actions "commenced on or after such effective date" or that certain amendments take effect at some point in the future, such as "on the thirtieth day after this act shall have become a law" (id. Part M §29; see also id. Part N §2 [Part N "shall take effect immediately and shall only apply to plans (for conversion of an apartment to a condominium or cooperative) submitted-after the effective date"], Part O §14 [Part O "shall take effect on the thirtieth day after it shall become law"]). Therefore, this is not a case where the Legislature passed comprehensive legislation, including general "claims pending" language, without differentiating between the parts it intended to apply retroactively and those that could reasonably be given only prospective effect. Moreover, Part F relates almost entirely to the calculation of overcharge claims, and any such claim that was pending at the time the HSTPA was enacted necessarily involved conduct that occurred prior to the statute's enactment.

Part D is prospective in nature as anything lawfully deregulated remains deregulated. HSTPA Part D neither impairs a right that Petitioner had in the past as it did not yet have the right of deregulation; nor it does not increase Petitioner's liability for past conduct as with overcharges.

The First Department in *160 E. 84th St Assoc. LLC v. N.Y. State Div. of Hous.*, 202 A.D.3d 610 (2022) affirmed the Article 78 court's rejection of the petitioner's argument that HSTPA Part D on deregulation orders gave a retroactive effect.

Finally, the Court of Appeals has repeatedly made clear in cases challenging prospective legislation under different scenarios that an owner or tenant has no vested right in the continuation of a particular provision of the law or of any policy or procedure followed by DHCR. *See I.L.F. Y. Co. v. Temporary State Hous. Rent Comm'n*, 10 N.YS.2d 263 (1961), appeal dismissed, 369 U.S. 795, 82 S.Ct. 1155, 8 L.Ed.2d 285 (1962).

CONCLUSION

ACCORDINGLY, for the foregoing reasons it is hereby

ADJUDGED that the petition for relief pursuant to Article 78 is denied and the proceeding is dismissed; and it is further

ORDERED that, within 20 days from entry of this order, Respondent shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh);]; and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that this constitutes the decision and order of this court.

3/9/2023
DATE

SABRINA KRAUS, 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