2022-11-16

Matter of Chai Found., Inc. v. New York State Div. of Hous. & Community Renewal

Matter of Chai Found., Inc. v New York State Div. of Hous. & Community Renewal
2023 NY Slip Op 30735(U)
March 10, 2023
Supreme Court, New York County
Docket Number: Index No. 156431/2022
Judge: John J. Kelley

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JOHN J. KELLEY** **PART** **56M**

Justice

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INDEX NO. 156431/2022

MOTION DATE 11/16/2022

MOTION SEQ. NO. 001

In the Matter of

CHAI FOUNDATION, INC.,

Petitioner,

- v -

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL,

Respondent.

DECISION, ORDER, AND JUDGMENT

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 8, 9, 11, 12, 13, 14, 15, and 16

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

In this proceeding pursuant to CPLR article 78, the petitioner seeks judicial review of a June 3, 2022 New York State Division of Housing and Community Renewal (DHCR) determination. That determination denied its petition for administrative review (PAR) of the Rent Administrator's (RA) October 12, 2021 order that had granted a tenant's application for reduction, based upon a reduction in "essential services" in the subject building, as defined in the Rent Stabilization Code (9 NYCRR 2520.1-2531.9; hereinafter RSC). In this regard, the RA found that the diminution in the size of the lobby and the second-floor landing, to accommodate a private stairway, created a hazard with respect to egress from the tenant's apartment. The DHCR submits the administrative record and answers the petition. The petition is denied, and the proceeding is dismissed.

On May 14, 2020, Vicki Ross, a tenant residing in Apartment 2 at 32 East 38th Street in Manhattan, filed an administrative complaint with the DHCR, pursuant to which she sought a rent reduction because the petitioner, as owner of the building, had reduced the size of the

building's lobby and had limited access to a second-floor landing to accommodate the erection of a private stairway. Specifically, she alleged that the front door of the building was left open during construction, the area of the lobby was reduced to create a new store, the second-floor landing was reduced from an area measuring 20 feet by 4 feet to one measuring approximately 4 feet by 4 feet, and that the petitioner added a private staircase and additional door situated 4 feet away from her apartment door, so that, if the new door opened while she was descending her staircase, that door would strike her. She further contended that her free ingress to and egress from her own apartment was compromised and that her apartment had no fire escape in the rear. The petitioner countered that it needed to connect the first floor of the building with the third floor, thereupon bypassing the tenant's apartment as part of its "housing program," that the diminished size of the landing was compliant with the New York City Building Code, that the layout had been approved by the New York City Department of Buildings, and that the new doors and stairway did not interfere with reasonable access to tenant areas. It further asserted that the reduction in the size of the landing was slightly less than asserted by the petitioner and, thus, was de minimis.

In an October 12, 2021 order, the RA found that certain "services" in the building were "not maintained" because

> "[t]here is evidence that the lobby and second floor landing were reduced in size to construct a private stairway. The door on the 2nd floor poses a hazard at it opens outward into the 2nd floor landing. Also, the door is locked, which prevents the 2nd floor tenant from accessing the roof, if needed."

Consequently, the RA granted a rent reduction, effective retroactively to September 1, 2020, and fixed the new rent at the "level in effect prior to the most recent guidelines increase for the tenant's lease which commenced before the effective date" of the order, subject to limitations and conditions that only would be applicable if the petitioner obtained DCHR approval of a Major Capital Improvement or Individual Apartment Improvement increase.

On November 2, 2021, the petitioner submitted a PAR, seeking administrative review of the RA's determination. In a June 3, 2022 order, the Deputy Commissioner of the DHCR denied the PAR, rejecting the petitioner's contentions that the RA's factual findings were erroneous, that the reduction in lobby size did not affect the tenant's use and enjoyment of the building, that the reduction was de minimis in any event, and that the use of the roof was not a required service because the tenant did not have permission to access it in the first instance. The Deputy Commissioner explained that the section RSC section 2523.4 authorizes the RA to direct the restoration of service and grant a rent reduction, and that DHCR Policy Statement 90-2 authorizes the RA to rely on a DHCR inspection when determining such a rent reduction application. He further stated that RSC sections 2522.4(d) and (e) obligated an owner to file an application in connection with any plan to modify or reduce required services, which would only be granted if approval was not inconsistent with the RSC or Rent Stabilization Law (Admin. Code of City of N.Y. §§ 26-501-26-520; hereinafter RSL).

The Deputy Commissioner averred that

> "[t]he record indicates that three separate inspections of the premises were conducted on December 16, 2020, February 22, 2021, and May 17, 2021, whereupon the inspector observed, in relevant part, that at the time of the inspection, there was evidence that the lobby and the second floor landing were reduced in size to construct a private stairway; the door on the second floor poses a hazard as it opens outward onto the second floor landing as was locked, thereby restricting the tenant's access to the roof should there be need. The inspector attached date and time-stamped photographs of the conditions to substantiate their findings. Further, a review of the violation issued by the New York City DOB revealed that a violation was issued on August 13, 2020 for the second floor landing door which was a potential hazard to the tenants using the staircase connected to the landing."

The Deputy Commissioner credited the RA's reliance on DHCR records and the inspector's training and experience.

In connection with the petitioner's argument that a rent reduction was not warranted because the reduction in the size of the lobby and second-floor landing was de minimis, the Deputy Commission found that the contention was "without merit and merely self-serving." He

explicitly found that the reduction in size was not de minimis, and that the reduced space created an access issue for the tenant, in that the area was smaller and in that the new door posed a hazard due to the manner in which it opened into the now smaller space. As the Deputy Commissioner phrased it, "[a]s the tenant experienced actual, measurable reduction of the landing space which also created a hazard due to the door on the second-floor landing, the finding of a rent reduction was warranted for this issue." He concluded that the RA properly relied on inspector's reports and photographs, and that determinations with respect to the reductions in size of the lobby and second-floor landing did not require an expert to support them, as the reductions were "discernable by visual inspection by the Agency's inspector." The Deputy Commissioner also held that it was irrelevant that the DOB may have approved the subject construction, as the DHCR was the entity charged with enforcing the RSL and RSC.

This proceeding ensued.

Where, as here, an administrative determination is made, and there is no statutory requirement of a trial-type hearing, that determination must be confirmed unless it is arbitrary and capricious, affected by an error of law, or made in violation of lawful procedure (*see* CPLR 7803[3]; *Matter of Madison County Indus. Dev. Agency v State of N.Y. Auths. Budget Off.*, 33 NY3d 131, 135 [2019]; *Matter of Lemma v Nassau County Police Officer Indem. Bd.*, 31 NY3d 523, 528 [2018]; *Matter of McClave v Port Auth. of N.Y. & N.J.*, 134 AD3d 435, 435 [1st Dept 2015]; *Matter of Batyreva v New York City Dept. of Educ.*, 50 AD3d 283, 283 [1st Dept 2008]; *Matter of Rumors Disco v New York State Liquor Auth.*, 232 AD2d 421, 421 [2d Dept 1996]). Inasmuch as the petitioner made no allegations that the DHCR's determination was made in violation of lawful procedure or was affected by an error of law, the DHCR's determination to deny the PAR in this proceeding involving a rent reduction must be confirmed unless it was arbitrary and capricious (*see Matter of 2010 Powell, LLC v New York State Div. of Hous. & Community Renewal*, _____AD3d_____, 2023 NY Slip Op 01043, *1 [1st Dept, Feb. 23, 2022];

see also Matter of 81st Realty Corp. v New York State Div. of Hous. & Community Renewal, _____AD3d_____, 2023 NY Slip Op 01058, *1 [1st Dept, Feb. 28, 2023]).

A determination is arbitrary and capricious where it is not rationally based, or has no support in the record (*see Matter of Gorelik v New York City Dept. of Bldgs.*, 128 AD3d 624, 624 [1st Dept 2015]), or where the decision-making agency fails to consider all of the factors it is required by statute to consider and weigh (*see Matter of Kaufman v Incorporated Vil. of Kings Point*, 52 AD3d 604, 608 [2d Dept 2008]). Stated another way, a determination is arbitrary and capricious when it is made "without sound basis in reason and is generally taken without regard to the facts" (*Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]).

"While agency interpretations of their own regulations are generally afforded considerable deference, courts must scrutinize administrative rules for genuine reasonableness and rationality in the specific context presented by a case" (*Matter of Murphy v New York State Div. of Hous. & Community Renewal*, 21 NY3d 649, 654-655 [2013] [citations and internal quotation marks omitted]; *see Kuppersmith v Dowling*, 93 NY2d 90, 96 [1999]; *Matter of Dworman v New York State Div. of Hous. & Community Renewal*, 94 NY2d 359 [1999]; *Matter of Gaines v New York State Div. of Hous. & Community Renewal,* 90 NY2d 545, 548-549 [1997]). "While as a general rule courts will not defer to administrative agencies in matters of pure statutory interpretation, deference is appropriate where the question is one of specific application of a broad statutory term" (*Matter of O'Brien v Spitzer*, 7 NY3d 239, 242 [2006] [citations and internal quotation marks omitted]; *see Matter of KSLM-Columbus Apts., Inc. v New York State Div. of Hous. & Community Renewal*, 5 NY3d 303, 312 [2005]; *Matter of American Tel. & Tel. Co. v State Tax Comm.*, 61 NY2d 393, 400 [1984]).

With those rules in mind, the court defers to the DHCR's interpretation of what constitutes an "essential service" provided by a building owner (*see* 9 NYCRR 2202.3[b][2] [including, within the definition of the term, such "other services wherein failure to provide and/or

maintain such would constitute a danger to the life or safety of, or would be detrimental to the health of, the tenant or tenants"]), as well as in determining whether the extent of a reduction in service is de minimis or not (*see Matter of 2010 Powell, LLC v New York State Div. of Hous. & Community Renewal*, 2023 NY Slip Op 01043, *1; 9 NYCRR 2523.4[e][21], [f]; 2529.6). The court rejects the petitioner's challenge to those interpretations, and concludes that the DHCR's interpretation of the RSC was rational and not arbitrary and capricious (*see Matter of Terrace Ct., LLC v New York State Div. of Hous. & Community* Renewal, 18 NY3d 446, 454 [2012]; *see also Matter of 2010 Powell, LLC v New York State Div. of Hous. & Community Renewal*, 2023 NY Slip Op 01043, *1; *see generally Matter of Gaines v New York State Div. of Hous. & Community Renewal*, 90 NY2d 545, 551 [1997]).

The petitioner also contends that the DCHR improperly credited the tenant's allegations, and did not accord sufficient weight to its own allegations. "It is beyond dispute that the credibility determinations of an administrative law judge are entitled to great weight" (*Matter of Albany Manor Inc. v New York State Liq. Auth*., 57 AD3d 142, 144-145 [1st Dept 2008]). "'[I]t is the function of the administrative agency, not the reviewing court, to weigh the evidence'" (*Matter of Isaksson-Wilder v New York State Div. of Human Rights*, 43 AD3d 921, 922 [2d Dept 2007], quoting *Matter of Curto v Cosgrove*, 256 AD2d 407, 408 [2d Dept 1998]). The only inquiry that this court may make in connection with the quality of that evidence is whether it rationally supported the DHCR's final determination, not whether some of that evidence should have been given greater or lesser weight by the decisionmaker. The court will not second-guess the DHCR's fact-finding (*see Matter of 215 E. 68th St., L.P. v New York State Div. of Hous. & Community Renewal,* 2021 NY Slip Op 31711[U], *14, 2021 NY Misc LEXIS 2706, *21 [Sup Ct, N.Y. County, May 20, 2021]), and concludes that there was sufficient evidence in the record to support the rationality of the DHCR's final determination.

In light of the foregoing, it is

ORDERED that the petition is denied; and it is

ADJUDGED that the proceeding is dismissed.

This constitutes the Decision, Order, and Judgment of the court.

3/10/2023
DATE

JOHN J. KELLEY, 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**