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Matter of 305 Riverside Corp. v. New York State Div. of Hous. & Community Renewal

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Matter of 305 Riverside Corp. v New York State Div. of Hous. & Community Renewal

2023 NY Slip Op 31113(U)

April 11, 2023

Supreme Court, New York County

Docket Number: Index No. 150659/2023

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

---X

IN THE MATTER OF THE APPLICATION OF

305 RIVERSIDE CORP.

Petitioner,

- v -

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL,

Respondent.

---X

INDEX NO. 150659/2023

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1-24

were read on this motion to/for ARTICLE 78.

The petition to annul respondent's administrative order is granted and the subject issue is remanded back to respondent for further proceedings consistent with this decision.

Background

Petitioner claims that it filed two petitions to deregulate an apartment in the building it owns - on May 22, 2017 and May 29, 2018. These petitions asserted that the apartment should be deregulated based upon high-rent/high income deregulation pursuant to the Rent Stabilization Law. It asserts that respondent engaged in an impermissible retroactive application of the Housing Stability and Tenant Protection Act of 2019 ("HSTPA") and denied its efforts to deregulate this apartment. Petitioner contends that respondent dismissed these applications on procedural grounds only and did not consider its applications on the merits.

Respondent contends that the HSTPA prevented it from issuing deregulation orders after June 14, 2019. It argues that an apartment that was subject to rent stabilization prior to the June 14, 2019 deadline remains a regulated apartment and the fact is that the rent administrator had not issued its initial order by June 14, 2019. Respondent therefore concludes that it was precluded from making a determination as to the factual merits of petitioner's application (which concerned a claim that the apartment should be deregulated due to the tenant's alleged high income). Respondent argues that the legislature revoked the statutory exemption that permitted it to deregulate the subject apartment.

In reply, petitioner emphasizes that respondent failed to comply with statutorily mandated timelines in the Rent Stabilization Law and that is the reason that no decision was rendered prior to the effective date of the HSTPA. It claims that this part of the HSTPA, Part D, does not authorize retroactive application.

Discussion

"In reviewing an administrative agency determination, [courts] must ascertain whether there is a rational basis for the action in question or whether it is arbitrary and capricious. An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts. If the court finds that the determination is supported by a rational basis, it must sustain the determination even if the court concludes that it would have reached a different result than the one reached by the agency. Further, courts must defer to an administrative agency's rational interpretation of its own regulations in its area of expertise" (*Matter of Peckham v Calogero*, 12 NY3d 424, 431, 883 NYS2d 751 [2009] [internal quotations and citations omitted]).

Some context is critical in the instant dispute. In 2020, the Court of Appeals found that Part F of the HSTPA, the provisions about overcharge calculations, had impermissible retroactive effect (*Regina Metro. Co., LLC v New York State Div. of Hous. and Community Renewal,* 35 NY3d 332, 370, 130 NYS3d 759 [2020]). "Because the overcharge calculation provisions, if applied to past conduct, would impact substantive rights and have retroactive effect, the presumption against retroactivity is triggered" (*id.*). However, the Court of Appeals stressed that "Each of the HSTPA's fifteen parts contains its own effective date provision, indicating the Legislature considered 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, many of the HSTPA's other effective date provisions . . . state only that the parts of the legislation to which they apply 'shall take effect immediately'" (*id.* at 373). It observed that "we have no occasion to address the prospective application of any portion of the HSTPA, including Part F" (*id.* at 363).

In other words, the *Regina* case has no bearing on the relevant provision here, Part D of the HSTPA. Part D repealed luxury deregulation, including deregulation based upon the exact issue here—that the tenants' income exceeded the maximum amount permissible. It is undisputed that the effective date of this provision was June 14, 2019 and it is also undisputed that the applications at issue here were filed long, long before that date. The question for this Court, then, is whether it was rational for respondent to conclude that it lost all ability to rule on pending cases after June 14, 2019.

The now-former procedure for filing an application to deregulate the apartment permitted a landlord to seek to deregulate an apartment where the tenants' income exceeded a stated threshold (*see former* Rent Stabilization Law § 26-504.3). Petitioner filed a 2017 luxury

deregulation petition with respondent, which *required* respondent to inquire with the tenants about their income within 20 days of the filing. It argues that there is no evidence that respondent complied with that obligation and the first communication petitioner contends it received from respondent was the Rent Administrator's order dated November 13, 2019. That order denied petitioner's applications on the ground that the HSTPA prohibited deregulation of a rent regulated apartment (NYSCEF Doc. No. 4). Petitioner maintains that it followed the same procedure for 2018 and, again, it received nothing until getting an order from the Rent Administrator stating that deregulation was prohibited after June 14, 2019.

The Court grants the petition because, on these papers, the purported cut-off date of June 14, 2019 only passed due to respondent's failure to timely process petitioner's applications. There is no question that petitioner submitted its first application for the apartment in question in May 2017, more than *two years* before the relevant provision of the HSTPA became effective and long before this law was even passed. And there is no dispute that the formerly effective deadlines under the Rent Stabilization Law required that respondent had to obtain necessary information from the tenants about their income within 20 days (or by June 12, 2017). Moreover, if the tenants did not respond within 60 days (or August 11, 2017), then respondent was compelled to deregulate the apartment.

This is not a situation in which the landlord was dilatory in filing additional documents or the landlord's own actions caused the applications to be delayed such that they remained pending on June 14, 2019. Instead, it was respondent's failure to meet clear deadlines that kept this application pending beyond June 14, 2019. Respondent should have, obviously, processed this application in a timely fashion on the merits.

Respondent's decision in the petition for administrative review fails to adequately address or explain its rationale on this issue. It concludes that "The fact that these 2017 and 2018 petitions would have been determined based on the tenant's incomes in 2015, 2016 and 2017, events that occurred before the passage of HSTPA, is of no matter given that this apartment could not have been deregulated after June 14, 2019, which is a prospective determination" (NYSCEF Doc. No. 18 at 3). That circular reasoning does not compel the Court to deny the petition. The only reason, at least on these papers, that a decision on the merits was not rendered was because of respondent's failure to issue a timely decision.

Respondent's apparent justification, that it was issuing "deregulation determinations on the merits almost to the exact date of the passage of the HSTPA" (*id.*) is of no moment. That respondent was overwhelmed, disorganized, or simply behind on issuing decisions does not authorize the Court to modify the timeline in the Rent Stabilization Law. To be sure, respondent was not required to immediately issue a decision. But to wait for years and years, only to then claim that a law passed during the intervening time period means it does not have to issue a decision on the merits is not sufficient. The only reason for the instant circumstances is respondent's inordinate delay.

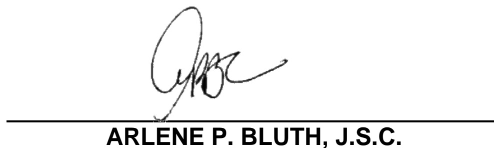
As the Court of Appeals noted in *Regina*, this part of the HSTPA (Part D) is a prospective provision. Here, an owner sought to deregulate an apartment based upon high rent income in 2017 and respondent did nothing *for years*. The Court finds that it is wholly irrational to not issue a decision on the merits under these circumstances.

Accordingly, it is hereby

ADJUDGED that the petition is granted; and it is further

ORDERED that the respondent's order dated December 20, 2022 (NYSCEF Doc No. 3) is vacated and this proceeding is remanded to respondent, who shall issue a decision on the merits of petitioner's applications; and it is further

ORDERED that petitioner is entitled to costs and disbursements upon presentation of a bill of costs to the County Clerk.



4/11/2023	ARLENE P. BLUTH, J.S.C.
DATE	

CHECK ONE:	X	**CASE DISPOSED**		**NON-FINAL DISPOSITION**		
	X	**GRANTED**	☐ **DENIED**	**GRANTED IN PART**	☐	**OTHER**
APPLICATION:	☐	**SETTLE ORDER**		**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	☐	**INCLUDES TRANSFER/REASSIGN**		**FIDUCIARY APPOINTMENT**	☐	**REFERENCE**