2023-06-30

Segal v. New York State Div. of Hous. & Community Renewal

[*1]

Segal v New York State Div. of Hous. & Community Renewal
2023 NY Slip Op 50753(U)
Decided on June 30, 2023
Supreme Court, Kings County
Joseph, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on June 30, 2023

Supreme Court, Kings County

Paula Z. Segal, Petitioner,

against

New York State Division of Housing and Community Renewal and CAG Enterprises, Inc., Respondents.

Index No: 501233/2021

Paula Z. Segal, Esq.
TakeRoot Justice
123 William Street, 16th Floor
New York, NY 10038
Phone: 646-459-3067

Aida Patricia Reyes, Esq.
Attorney for Respondent
New York State Division of Housing and Community Renewal
641 Lexington Avenue, 6th Floor
New York, NY 10022
Phone:212-872-0336

David B. Cabrera, Esq.
Borah, Goldstein, Altschuler, Nahins & Goidel, P.C.
Attorney for Respondent CAG Enterprises, Inc.

377 Broadway
New York, NY 10013
Phone: (212) 431-1300

Ingrid Joseph, J.

The following e-filed papers considered herein: NYSCEF Doc. Nos.:

Notice of Petition/Affirmation/Exhibits Annexed 19-28
Affirmation in Opposition/Memorandum of Law/Exhibits Annexed. 37-40, 42, 46
Amended Reply Affirmation 47

Petitioner Paula Z. Segal ("Petitioner") moves by petition for an order annulling Respondent New York State Division of Housing and Community Renewal's ("DHCR") order and decision, dated August 10, 2021, denying Petitioner's Petition for Administrative Review (Mot. Seq. 2).[FN1] Petitioner alleges that DHCR did not apply the correct regulation to determine the base date rent governing her overcharge claims. DHCR opposes the petition on the grounds that it rationally and properly applied the regulation that was in effect on the base date.

Petitioner entered into a lease beginning in May 2017 for an apartment located in Brooklyn, New York. The relevant history of the apartment is as follows. From May 2001 to April 2013, the same tenant ("Tenant A") had occupied the apartment. In 2013, the legal regulated rent was registered as $930.[FN2] In September 2013, another tenant ("Tenant B") leased the apartment at a rate of $1,250 according to the 2014 rent registration. At the end of Tenant B's lease in 2016, the landlord had registered her rent as $1,313. Petitioner subsequently signed a vacancy lease in May 2017 for $1,600.

Shortly after moving in, Petitioner filed a Tenant's Complaint of Rent and/or Other Specific Overcharges in Rent Stabilized Apartments (the "Complaint"), alleging that the rent that was charged to Tenant B was above the legal rent. Specifically, Petitioner argued that Tenant B's rent should have started at $1,097, which accounts for the 18% increase allowed for vacancy leases from the last registered rent of $930. In response, the owner CAG Enterprises, Inc. (the "Owner") argued that the rent included costs for certain improvements made to the apartment in 2013 and a 7.2% longevity increase because Tenant A had been in continuous occupancy since 2001. On March 5, 2020, the Rent Administrator (the "RA") partially granted the Complaint, finding that Petitioner had been overcharged in 2017. In making this determination, the RA found that the base date [FN3] was May 2, 2011—six years preceding the filing of the Complaint—and cited the Housing Stability and Tenant

Protection Act of 2019. The RA also determined that in 2013 the Owner was entitled to the 18% vacancy increase, a 7.2% longevity increase and a $140.95 increase for the cost of improvements to the apartment. Ultimately, the RA found that Tenant B's starting rent of $1,250 was proper.

Petitioner then filed a Petition for Administrative Review ("PAR No.1"), wherein she claimed that (1) the RA erred in allowing the longevity increase where the Owner did not provide a rider to the tenant occupying the apartment after the base date; and (2) the Individual [*2]Apartment Improvements ("IAIs") were not only unsupported by facts, but also in violation of the law. The Owner opposed PAR #1, alleging that Petitioner's claims regarding the IAIs were self-contradictory and arguing that lack of notice did not bar a longevity increase under Rent Stabilization Code ("RSC") § 2522.5. On November 20, 2020, the Commissioner issued an order denying PAR #1, finding that the RA erred in setting the base date rent as six years prior to the filing of the Complaint.[FN4] At the time of the Complaint, a four-year lookback was applicable and as such, the base date was May 2, 2013. [FN5] The base date rent, according to the Commissioner, was the rent agreed upon by the Owner and the first rent stabilized tenant taking occupancy after a vacancy (the "first rent rule"). Accordingly, the Commissioner determined that (a) the longevity and IAI increases were incorporated in that base date rent and were not challengeable and (b) the longevity increase was permissible and not conditioned on being reserved in a lease rider.

Petitioner filed an Article 78 petition and the matter was subsequently remanded to DHCR. On August 10, 2021, the Commissioner issued an order denying the second Petition for Administrative Review ("PAR #2"), but noted that his determinations did not change the RA's overcharge findings and calculations. Thereafter, Petitioner commenced this Article 78 petition, wherein she alleges that the DHCR's determinations denying PAR #2 were arbitrary and capricious, constituted abuses of discretion and/or were made in violation of the law. DHCR maintains that it correctly applied the first rent rule in effect in 2013. The Commissioner does not contest that Petitioner was overcharged; however, Petitioner argues that the way the overcharge was calculated was incorrect. The only question before the Court is whether the Commissioner erred in affirming the RA's inclusion of the IAI and longevity increases in Tenant B's rent beginning in 2013.

In determining an Article 78 proceeding, the Court must consider whether the challenged determination "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion" (CPLR 7803 [3]). Under this standard, courts will review the record to find whether the challenged

determination had a rational basis (i.e., whether there was some objective factual basis) (*see Matter of Gorecki v New York State Dep't of Motor Vehicles*, 201 AD3d 802, 803 [2d Dept 2022]).

The first issue is which version of the RSC applied to Petitioner's Complaint filed in 2017. Prior to the January 2014 amendment, RSC § 2526.1 (a) (3) (iii) provided that "[w]here the housing accommodation is vacant on the base date, the legal regulated rent shall be the *rent agreed to by the owner and the first rent-stabilized tenant taking occupancy after such vacancy*" (former RSC § 2526.1 [a] [3] [iii] [emphasis added]). Per the amended regulation, "the legal regulated rent shall be the *prior legal regulated rent*" (RSC § 2526.1 [a] [3] [iii], as amended by [*3]L 2014 [emphasis added]). Petitioner maintains that the amended regulation applies pursuant to RSC § 2527.7, which states, *inter alia*, that "unless undue hardship or prejudice results therefrom, . . . where a provision of this [Rent Stabilization] Code is amended, or an applicable statute is enacted or amended during the pendency of a proceeding [before DHCR], the determination shall be made in accordance with the changed provision" (RSC § 2527.7). DHCR, however, argues that the prior version controls because it was in effect at the time of the first lease after the base date vacancy.

Here, it is undisputed that RSC § 2526.1 (a) (3) (iii) had been amended in 2014, approximately three years before the filing of Petitioner's Complaint (*cf. Matter of Waverly Place Assocs. v New York State Div. of Hous. & Cmty. Renewal*, 292 AD2d 211, 212 [1st Dept 2002] [finding that there was no merit to argument that amendment should be applied when it did not become effective until after DHCR had issued its determination]). The Court finds that the appropriate regulation was the version that was in effect at the time Petitioner filed the Complaint in 2017 (*see Matter of Bergen Realty & Mgmt., LLC v New York State Div. of Hous. & Cmty. Renewal*, 190 AD3d 728, 729 [2d Dept 2021] [looking at the law applicable at the time the proceeding was commenced]; *Matter of AEJ 534 E. 88th, LLC v New York State Div. of Hous. & Cmty. Renewal*, 194 AD3d 464, 472-73 [1st Dept 2021] [finding argument that DHCR should not have applied 2014 amendment retroactively unavailing]; *Matter of W. 147 & 150, LLC v New York State Div. of Hous. & Cmty. Renewal*, 191 AD3d 419, 420 [1st Dept 2021]) [finding that DHCR "properly applied the version of [the RSC] that was in effect at the time of the overcharge proceeding"]; *Esplanade 94 LLC v Pavella*, 57 Misc 3d 75, 76—77, 2017 NY Slip Op 27338 [App Term, 1st Dept 2017] [applying amended RSC § 2526.1 (a) (3) (iii) to establish that the legal regulated rent was the prior legal regulated rent]; *Matter of Mountbatten Equities v New York State Div. of Hous. & Cmty. Renewal*, 226 AD2d 128, 129 [1st Dept 1996] [finding that DHCR correctly applied the current RSC to the proceedings]). Thus, the Commissioner erred in holding that the

regulation in effect at the time of the first lease after the base date vacancy controlled.

The Court further finds that DHCR's contention that it properly declined to apply the amendment because to do so would "result in a clear violation of the four-year [lookback] rule" unpersuasive. The four-year limitation period is applicable where the rent charged on the base date can be determined (*see Casey v Whitehouse Estates, Inc.*, 39 NY3d 1104, 1107 [2023] ["For purposes of calculating overcharges, *where it is possible* to determine the rent 'actually charged on the base date'. . . that amount should be used"] [internal citation omitted] [emphasis added]; *see also Matter of Fairley v Div. of Hous. & Cmty. Renewal*, 214 AD3d 800, 801 [2d Dept 2023]). However, DHCR is not precluded from reviewing the rental history prior to the four-year period where the apartment was vacant on the base date (RSC §§ 2526.1 [a] [2] [ix]; [a] [3] [ii]). Here, the RA correctly determined that the base date rent was $930, but he cited an inapplicable law in doing so. Nonetheless, the RA was permitted to look beyond the four-year period pursuant to RSC § 2526.1 (a) (2) (ix), which expressly allows for review of prior rental history where the apartment is vacant on the base date (RSC § 2526.1 [a] [2] [ix]). In applying the first rent rule the Commissioner disregarded RSC § 2526.1 (a) (2) (ix) (*see Regina*, 164 AD3d at 426 [acknowledging that RSC § 2526.1 (a) (2) (ix) applies to apartments that are vacant]; *see e.g.*, *Triumph Baptist Church, Inc. v Anderson*, 64 Misc 3d 1238(A), 2019 NY Slip Op 51454[U] [Civ Ct, NY County 2019]; *McDonald v JBAM TRG Spring, LLC*, 58 Misc 3d 1213(A), 2018 NY Slip Op 50075[U], n 6 [Sup Ct, NY County 2018]; *30 W. 130th St. Corp. v [*4]White*, 45 Misc 3d 896, 900—01, 2014 NY Slip Op 24274 [Civ Ct, NY County 2014]). Thus, the legal regulated rent was the prior legal regulated rent even though it requires looking back more than four years. The Commissioner's determination was thus affected by errors of law in misapplying pre-2014 RSC § 2526.1 (a) (3) (iii) and in failing to consider RSC § 2526.1 (a) (2) (ix).

In response to PAR #2, the Commissioner determined that the IAI and longevity increases were not relevant or at issue because these increases were incorporated in the rent agreed to by the Owner and Tenant B, the first rent stabilized tenant after the vacancy. Since the Court finds that the Commissioner erred in applying the first rent rule to allow these increases and foreclosing on an examination of Petitioner's claims, it is hereby

ORDERED, that the Petition is granted to the extent that the matter is remanded to DHCR for reconsideration of Petitioner's claims related to the IAI and longevity increases based on the Court's finding that amended RSC § 2526.1 (a) (3) (iii) applied to her Complaint.

All other issues not addressed are either without merit or moot.

This constitutes the decision and order of the Court.

June 30, 2023
Hon. Ingrid Joseph, J.S.C.

Footnotes

Footnote 1: Petitioner also moved by order to show cause seeking the same relief (Mot. Seq. 3). This decision and order applies to motion sequences 2 and 3.

Footnote 2:NY St Cts Elec Filing [NYSCEF] Doc. No. 42 at 195.

Footnote 3: For proceedings under Rent Stabilization Code § 2526, section 2520 (f) (1) defines the base date as the "date four years prior to the date of the filing" of the overcharge complaint (RSC § 2520 [f] [1]).

Footnote 4: Per the Commissioner's order, the six-year lookback period provided in the Housing Stability and Tenant Protection Act of 2019 did not apply retroactively (NYSCEF Doc. No. 24, citing *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Cmty. Renewal*, 164 AD3d 420 [1st Dept 2018], *affd* 35 NY3d 332 [2020]).

Footnote 5: There are multiple references to May 2, 2017 in the record as the date by which the base date is calculated. However, the Complaint was dated May 24, 2017 and received by DHCR on June 2, 2017 (NYSCEF Doc. No. 42 at 11). Whether the base date is May or June 2013, the apartment was still vacant on either date. Thus, this does not affect the Court's analysis.

Return to Decision List