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PTR Realty LLC v. Department of Housing Preservation & Development of the City of New York

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**PTR Realty LLC v Department of Hous. Preserv. &
Dev. of the City of N.Y.**

2023 NY Slip Op 32716(U)

August 7, 2023

Supreme Court, New York County

Docket Number: Index No. 150496/2023

Judge: Erika M. Edwards

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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. ERIKA M. EDWARDS

PART 10M

Justice

-----X

PTR REALTY LLC,

Petitioner,

- v -

DEPARTMENT OF HOUSING PRESERVATION &
DEVELOPMENT OF THE CITY OF NEW YORK; ADOLFO
CARRION in his official capacity as Commissioner of the
DEPARTMENT OF HOUSING PRESERVATION &
DEVELOPMENT OF THE CITY OF NEW YORK,

Respondent.

-----X

INDEX NO. 150496/2023

MOTION DATE 01/17/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28

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

Upon the foregoing documents, for the reasons stated on the record on July 17, 2023, and as set forth below, the court denies Petitioner PTR Realty LLC’s (“Petitioner”) Verified Petition and dismisses the Verified Petition with prejudice as against Respondent Department of Housing Preservation & Development of the City of New York; Adolfo Carrion in his official capacity as Commissioner of the Department of Housing Preservation & Development of the City of New York (“Respondent”), without costs to any party.

Petitioner brought this Article 78 proceeding against Respondent seeking an order annulling Respondent’s determination that Petitioner’s property had Housing Quality Standard (“HQS”) violations, declaring that Respondent wrongfully withheld subsidy payments to Petitioner, compelling Respondent to pay Petitioner the past and future subsidies withheld as agreed upon under the Housing Assistance Payment (“HAP”) Contracts between the parties and awarding Petitioner attorneys’ fees and expenses.

Petitioner argues in substance that Respondent improperly withheld subsidies under the Housing Choice Voucher Program, also known as Section 8, for five Bronx apartment units owned by Petitioner. Petitioner further argues that the determination that Petitioner's property had HQS violations was arbitrary and capricious, without or in excess of its authority, and without sound basis in reason or facts. Additionally, Petitioner argues in substance that the requirement that the violations be certified as corrected within thirty (30) days is unreasonable and arbitrary. Petitioner argues in substance that the violations pertaining to the exterior roof required permits, sidewalk sheds and planning which takes longer than thirty days to complete. Petitioner further argues in substance that none of the HQS violations were located inside of any of the subsidized units, nor did they have any impact on said units. Therefore, Petitioner argues that the court should annul Respondent's determination and direct Respondent to pay Petitioner all back and future subsidies owed under the HAP contract.

Respondent opposes the Verified Petition and argues in substance that the determination to abate the HAP subsidies and the requirement that all HQS violations must be certified as corrected is required by federal regulations and that Respondent is not authorized to disregard these regulations. Respondent further argues in substance that the determination to withhold the payments was not arbitrary and capricious, not an abuse of discretion, and that it was statutorily required. Respondent argues that there is no distinction as to whether the violations were issued for repairs inside of the subject apartments, in common areas or areas outside of the building, as Petitioner was obligated to correct the violations within the statutory period, or request an approved extension. Petitioner failed to do so, so Respondent argues that Petitioner is not entitled to the relief requested.

In an Article 78 proceeding, the scope of judicial review is limited to whether a governmental agency's determination was made in violation of lawful procedures, whether it was arbitrary or capricious, or whether it was affected by an error of law (*see* CPLR § 7803[3]; *Matter of Pell v Board of Educ.*, 34 NY2d 222, 230 [1974]; and *Scherbyn v BOCES*, 77 N.Y.2d 753, 757-758 [1991]). In reviewing an administrative agency's determination, courts must ascertain whether there is a rational basis for the agency's action or whether it is arbitrary and capricious in that it was without sound basis in reason or regard to the facts (*Matter of Stahl York Ave. Co., LLC v City of New York*, 162 AD3d 103, 109 [1st Dept 2018]; *Matter of Pell*, 34 NY2d at 231). Where the agency's determination involves factual evaluation within an area of the agency's expertise and is amply supported by the record, the determination must be accorded great weight and judicial deference (*Testwell, Inc. v New York City Dept. of Bldgs.*, 80 AD3d 266, 276 [1st Dept 2010]). When a court reviews an agency's determination it may not substitute its judgment for that of the agency and the court must confine itself to deciding whether the agency's determination was rationally based (*Matter of Medical Malpractice Ins. Assn. v Superintendent of Ins. of State of N.Y.*, 72 NY2d 753, 763 [1st Dept 1988]).

Furthermore, an agency is to be afforded wide deference in the interpretation of its regulations and, to a lesser extent, in its construction of the governing statutory law, however an agency cannot engraft additional requirements or assume additional powers not contained in the enabling legislation (*see Vink v New York State Div. of Hous. and Community Renewal*, 285 AD2d 203, 210 [1st Dept 2001]).

Here, the court agrees with Respondent and finds that Petitioner is not entitled to the relief requested. Respondent's determination to withhold payments based on Petitioner's failure to certify that the HQS violations were corrected within thirty days was consistent with federal

regulations and such determination was not arbitrary and capricious, an abuse of discretion, nor outside the scope of, or in excess of, the agency's authority. Additionally, under the circumstances, such determination was rational and consistent with the applicable law. The federal regulations do not exempt violations which are not located within the subject apartments, nor those which may not directly affect said apartments, so Petitioner was required to correct the outstanding violations within the statutory time period or request an extension to receive full payment from Respondent.

The court is not persuaded by Petitioner's arguments to the contrary.

Therefore, the court denies the Verified Petition and dismisses it with prejudice and without costs to any party.

The court has considered any additional arguments raised by the parties, but not specifically discussed herein, and the court denies any additional requests for relief which were not expressly granted herein.

As such, it is hereby

ORDERED and ADJUDGED that the court denies Petitioner PTR Realty LLC's Verified Petition and dismisses the Verified Petition with prejudice as against Respondent Department of Housing Preservation & Development of the City of New York; Adolfo Carrion in his official capacity as Commissioner of the Department of Housing Preservation & Development of the City of New York, with prejudice and without costs to any party.

