2023-08-22

Matter of Georgia Props., Inc. v. New York State Div. of Hous. & Community Renewal

Matter of Georgia Props., Inc. v New York State Div. of Hous. & Community Renewal
2023 NY Slip Op 32919(U)
August 22, 2023
Supreme Court, New York County
Docket Number: Index No. 150620/2023
Judge: Shahabuddeen Abid Ally
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SHAHABUDDEEN ABID ALLY** **PART** **16TR**

Justice

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INDEX NO. 150620/2023

In the Matter of the Application of
GEORGIA PROPERTIES, INC.,

MOTION DATE 4/5/2023

Petitioner,

MOTION SEQ. NO. 001

- v -

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL,

DECISION + ORDER ON MOTION

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1-11, 16-25 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Petitioner moves pursuant to Article 78 for a judgment setting aside and nullifying respondent's administrative orders which denied and dismissed the High Income Rent Deregulation applications, and an order remitting the applications to DHCR for determination on the merits based upon the state of the law at the time of their initial filing. Respondent has filed written opposition. Upon the above cited papers and for the reasons that follow, the petition is denied and the proceeding dismissed.

Background

Petitioner is the owner and landlord of the building known as 275 Central Park West, New York, NY (the "Building"), which includes apartment 14A (the "Apartment"). Respondent New York State Division of Housing and Community Renewal ("DHCR") is the state governmental agency charged with administering enforcing the Rent Stabilization Law.

On May 25, 2017 and May 25, 2018, petitioner filed with DHCR petitions to deregulate the Apartment pursuant to Rent Stabilization Law ("RSL") § 26-504.3. Before the petitions were fully processed, the portions of the RSL relevant to high-income deregulation were repealed by the Housing Stability and Tenant Protection Act of 2019 ("HSTPA"). The HSTPA, as amended, provided that the effective date of the repeal was June 14, 2019 and that "any unit that was lawfully deregulated prior to June 14, 2019 shall remain deregulated" (*see* HSTPA, Part D, § 8).

On November 13, 2019, the Rent Administrator issued two orders denying the above petitions on the ground that the provisions permitting issuance of high-income deregulation orders had been repealed by the HSTPA. On December 4, 2019, petitioner filed two Petitions for Administrative Review ("PAR"). In an order dated December 20, 2022, the Deputy Commissioner denied the PARs and affirmed the Rent Administrator's prior denial.

Petitioner subsequently brought the instant Article 78 proceeding seeking to set aside respondent's orders denying its deregulation petitions. Petitioner first argues that respondent erroneously and unreasonably delayed adjudication of its deregulation petition; had respondent adhered to the statutorily prescribed time period, petitioner contends, the petitions would have been processed well before passage of the HSTPA. Second, petitioner argues that respondent's orders erroneously give retroactive effect to the HSPTA in contravention of the Court of Appeals decision in *Regina Metropolitan Co., LLC v N.Y. State Div. of Hous. & Comm. Renewal* (35 NY3d 332 [2020]), which invalidated the retroactive application of the portion of the HSTPA relating to overcharge calculations.

In opposition, respondent contends that it was reasonable to interpret the plain language of the HSTPA to mean that after June 14, 2019, DHCR lacked authority to process deregulation petitions regardless of the state of the law when the petitions were submitted. Although the delay

between submission of the petitions and their denial was lengthy, respondent argues, petitioner has not shown that the delay was the result of negligence or willfulness and therefore there has been no showing that the delay was unreasonable. Respondent further argues that *Regina* is inapplicable as Part F, which applied to rent overcharge complaints, is distinguishable from Part D, which relates to high income deregulation petitioners and that the Court of Appeals expressly narrowed its opinion in *Regina* to apply only to the former.

Discussion

In the context of an Article 78 proceeding, the court's function is to evaluate whether, upon the facts before an administrative agency, that agency's determination had a rational basis in the record or was arbitrary and capricious (CPLR § 7803[3]; *see, e.g. Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222 [1974]; *Matter of E.G.A. Assoc. v New York State Div. of Hous. & Community Renewal*, 232 AD2d 302 [1st Dept 1996]). The administrative determination will only be found arbitrary and capricious if it is "without sound basis in reason, and in disregard of . . . the facts" (*see Matter of Century Operating Corp. v Popolizio*, 60 NY2d 483, 488 [1983], citing *Matter of Pell*, *supra* at 231). If the administrative determination has a rational basis, there can be no judicial interference (*Matter of Pell*, *supra* at 231-232).

First, petitioner has not shown that the delay between the filing of the respective deregulation petitions and their subsequence denial was unreasonable. It is the petitioner's burden to show that that respondent's delay was caused intentional or caused by respondent's negligence (*160 E. 84th St. Assoc. LLC v N.Y. State Div. of Hous. & Comm. Renewal*, 209 AD3d 517 [1st Dept 2022]). Here, petitioner has not established any facts other than the length of the delay, which in and of itself is insufficient to negligence or willfulness (*see id.*; *Matter of*

McCarthy v N.Y. State Div. of Hous. & Comm. Renewal, 290 AD2d 313, 314 [1st Dept 2002][finding no negligence or willfulness established despite very lengthy delay in adjudicating the complaint].

Second, petitioner has not demonstrated that respondent's application of the HSTPA to preclude deregulation was arbitrary and capricious nor that it lacked rational basis in the law. The Rent Administrator rationally relied on the plain language of Part D of the HSTPA in its conclusion that it no longer had the authority to issue deregulation orders based upon the repealed provisions. In denying the PARs, the Deputy Commissioner set forth clear reasoning based on the plain language of the HSTPA, relevant case law, and the facts and circumstances of the subject petitions, supporting the conclusion that DHCR could not issue deregulation orders after June 14, 2019.

The Court does not find that *Regina* decision compels a different outcome. The Court of Appeals explicitly acknowledged that each of part of the HSTPA set forth its own effective date, "indicating the Legislature considered the issue of temporal scope for each" (*Regina*, 35 NY3d at 373). As the Court further noted, other than Part F, the HSTPA is otherwise "almost entirely forward-looking" without Part F's reference to prior claims (*id.*). *Regina* Court went on to state:

> In contrast, many 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 provide that the relevant part applies prospectively only, such as by indicating that it take 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 have 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.

The Court of Appeals thus clearly intended for *Regina* to be narrowly construed and applicable to Part F only. Part D, in contrast, is prospective in nature as described by the Court of Appeals above, and therefore *Regina* is inapplicable (*see, e.g. 160 E 84th St. Assoc. LLC v N.Y. State Div. of Hous. & Comm. Renewal*, 202 AD3d 610 [1st Dept 2022]).

Finally, the Court of Appeals has established that an owner does not have a vested right in the continuation of a particular provision of the law or particular DHCR policy or procedure (*see, e.g. I.L.F. Y. Co. v Temporary State Hous. Rent Comm'n*, 10 NYS 2d 263 [1961], appeal dismissed, 369 U.S. 795 [1962]).

Conclusion

Based on the foregoing, the Court finds that petitioner has not met its burden to show that respondent's determination was arbitrary and capricious nor that it lacked rational basis in the law. Accordingly, it is hereby

ORDERED and ADJUDGED that the petition is denied and dismissed in its entirety; and it is further

ORDERED that respondent shall serve upon petitioner and the Clerk of the court a copy of this decision and order with notice of entry within twenty days thereof; 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 herein has been considered and is denied.

This constitutes the decision and order of the Court.

8/22/2023
DATE

SHAHABUDDEEN ABID ALLY, A.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