2023-09-29

Matter of Stuyvesant Town-Peter Cooper Vil. Tenants' Assoc. v. New York State Div. of Hous. & Community Renewal

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2023 NY Slip Op 33432(U)

September 29, 2023

Supreme Court, New York County

Docket Number: Index No. 154095/2021

Judge: Verna L. Saunders

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. VERNA L. SAUNDERS, JSC** **PART** **36M**

Justice

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INDEX NO. 154095/2021

MOTION SEQ. NO. 001

In the Matter of the Application of
STUYVESANT TOWN-PETER COOPER VILLAGE TENANTS' ASSOCIATION, and SUSAN STEINBERG, as President and Tenant Representative,
Petitioners,

for Judgment under Article 78 of the Civil Practice Law and Rules,

-against-

DECISION + ORDER ON MOTION

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL and BPP ST OWNERS, LLC, and BPP PCV OWNERS, LLC,
Respondents,

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42

were read on this motion to/for **ARTICLE 78**.

In this Article 78 proceeding, Stuyvesant Town-Peter Cooper Village Tenants Association and its president, Susan Steinberg ("petitioners"), seek a judgment to overturn 19 separate orders of respondent New York State Division of Housing and Community Renewal (DHCR) as arbitrary and capricious. For the following reasons, their petition is denied.

Co-respondents BPP ST Owners, LLC, and BPP PCV Owners, LLC ("landlord") are the corporate owners of the residential rent-stabilized apartment complex known as Stuyvesant Town-Peter Cooper Village that is located between East 14th and 20th Streets on the lower east side of New York County. (NYSCEF Doc. No. 1, *verified petition*, ¶ 3). Petitioners are the complex's tenants' association and its president. (*Id.*, ¶ 1). The DHCR is the New York State agency charged with overseeing rent-stabilized housing accommodations located within New York City. (*Id.*, ¶ 2).

Each of the nineteen (19) orders under review herein is a final order issued by the DHCR's Deputy Commissioner upon a petition for administrative review ("PAR") of a prior ruling by a DHCR rent administrator ("RA"). Each PAR order upheld an earlier RA's decision to authorize increases to the legal regulated rents of some of the complex's rent stabilized apartment units to compensate for the cost of major capital improvement ("MCI") work that landlord had performed. Those MCI improvements were evidently part of an ongoing, complex-wide renovation project. Landlord submitted its MCI applications separately after it completed

the work in each of the complex's buildings. Of the instant PAR orders, ten (10) concerned MCI applications that landlord filed in 2018 for the installation of hot water heaters in several buildings;[1] eight (8) more concerned MCI applications that landlord filed in 2016 for the installation of hot water heaters in other buildings;[2] and one (1) concerned an MCI application that landlord filed in 2018 for installing a gas re-piping system in one building.[3] (NYSCEF Doc. Nos. 2, 30, *PAR orders*). Since the MCI work in the complex's buildings was largely identical, the Deputy Commissioner's PAR orders contained certain identical determinations regarding legal challenges that petitioners had raised in proceedings before RAs. This proceeding concerns two such determinations that the Deputy Commissioner repeated in several of the PAR orders and that petitioners assert were arbitrary and capricious.

Petitioners commenced this Article 78 proceeding to vacate the nineteen (19) subject PAR orders on May 6, 2021. (NYSCEF Doc. Nos. 1-14). The DHCR and landlord filed their respective answers on October 7 and 21, 2021. (NYSCEF Doc. Nos. 28, 33).

The court's role in an Article 78 proceeding is to determine, upon the facts before the administrative agency, whether the determination had a rational basis in the record or was arbitrary and capricious. (See *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]; *Matter of E.G.A. Assoc. v New York State Div. of Hous. & Community Renewal*, 232 AD2d 302, 302 [1st Dept 1996]). A 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 v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231). However, if there is a rational basis for the administrative determination, there can be no judicial interference (see *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d at 231-232).

As noted, petitioners challenge two of the findings that the DHCR Commissioner consistently made and repeated in various PAR orders. The petition identifies these as:

> "(1) the Owner's failure to include the public garages within the Apartment Complex in its MCI applications as part of the commercial offset; and (2) DHCR's method of calculating the commercial offset pursuant to RSC §2522.4 (a) (16)."

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[1] This group of PAR orders was issued in 2021 under DHCR Docket Numbers HR410012RT; HR410016RT; HR410021RT; HR410022RT; HR410023RT; HR410024RT; HR410025RT; HR410027RT; HR410028RT; and HR410029RT. (*See* NYSCEF Doc. Nos., 2, 30, *PAR orders*).

[2] This group of PAR orders was issued in 2021 under DHCR Docket Numbers FX410020RT; FX410038RT; FX410007RT; FX410008RT; FX410014RT; FX410021RT; FW410027RT; and FW410052RT. (*See* NYSCEF Doc. Nos., 2, 30, *PAR orders*).

[3] This PAR order was issued on February 26, 2021, under DHCR Docket Number HR410020RT. (*See* NYSCEF Doc. Nos., 2, 30, *PAR orders*).

(NYSCEF Doc. No. 1, *verified petition*, ¶ 6). The Commissioner's determination regarding public garages is contained in twelve (12) of the PAR orders,[4] and states (with some variation in wording between those orders) as follows:

> "After reviewing the record of the proceeding below, the Commissioner finds the claim that an undisclosed commercial parking garage benefited from the subject MCI to be without merit. In support of their claim, the tenants point to a March 25, 2019, statement made by the owner below which notes that the complex's garages have bathrooms and sinks that are 'in the process of being equipped with their own separate hot water systems.' According to the tenants, the owner's statement demonstrates the parking garages did, at some point, benefit from the hot water heater MCIs and should therefore be included in the commercial deduction from the rent increase calculation. However, the Commissioner notes that the complete owner's statement referenced in the tenants' appeal in fact specifies that any hot water connection to the sinks and bathrooms of parking garages in the complex were disconnected 'as part of the [MCI] upgrade' and therefore, did not benefit from the installation. In full, the owner's March 25, 2019, statement describes that:
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> "'Prior to the hot water/heat exchanger improvement program, the hot water in the sinks and bathrooms located in the garages were supplied from the buildings' hot water systems. As part of the upgrade program, however, these connections were disconnected, and these sinks are in the process of being equipped with their own separate hot water systems. These sinks either have no hot water or they have hot water from their own separate hot water system. None of the garages receive [a] benefit from the hot water/heat exchangers, including either in the garage itself, the bathrooms, or the slop sinks.'
>
> "As the owner's full March 25, 2019 statement shows that the sinks and bathrooms within the complex's public parking garages were disconnected from the hot water system connections as part of the hot water heater upgrade and not sometime after the MCI installation occurred, the Commissioner finds no evidence in the record to support the tenants' contention that public parking garage space within Stuyvesant Town-Peter Cooper Village benefited from the subject hot water heater MCI." (*Id.*, NYSCEF Doc. Nos. 2, 30).

Petitioners argue that this finding was arbitrary and capricious because the DHCR Commissioner ignored statements submitted by landlord that it was still "in the process" of installing separate hot water heaters in the buildings' garages in 2019, and therefore improperly concluded that the heaters serving the buildings' residential units had been disconnected earlier during the renovation process. (NYSCEF Doc. No. 1, *verified petition*, ¶¶ 10-11, 27, 54). The DHCR responds that the Deputy Commissioner reviewed the entire administrative record and reasonably rejected petitioner's inference because other statements, documents and photographs submitted by landlord plainly demonstrated that the building's residential hot water heaters had

[4] This group of orders includes those issued under DHCR Docket Numbers FX410020RT; FX410038RT; HR410012RT; HR410016RT; HR410021RT; HR410022RT; HR410023RT; HR410024RT; HR410025RT; HR410027RT; HR410028RT; and HR410029RT. (*See* NYSCEF Doc. Nos., 2, 30, *PAR orders*).

been disconnected from the garages "as part of the [MCI] upgrade," and that, while the garages' separate hot water heaters were "in the process" of being installed, the garages were simply without hot water.[5] (NYSCEF Doc. No. 29, ¶¶ 49-61, *Schneider affirmation*). Petitioners' reply papers merely restate their contention that the Deputy Commissioner should have inferred from the evidence that the buildings' garages were still being supplied with hot water from the residential units' heaters after the MCI work was complete. (NYSCEF Doc. No. 40, ¶¶ 53-72, *McGuiness reply affirmation*,). Petitioners' argument is unavailing. The Appellate Division, First Department, consistently reaffirms that "[a] determination by the DHCR, if reasonable, must be upheld . . ., even if a different result would not be unreasonable [and that] in an article 78 proceeding, the reviewing court may not weigh the evidence, choose between conflicting proof, or substitute its assessment of the evidence or witness credibility for that of the administrative factfinder." (*Matter of Underhill-Washington Equities, LLC v Division of Hous. & Community Renewal*, 157 AD3d 705, 706-707 [1st Dept 2018] [internal citations and quotation marks omitted]). Here, the challenged PAR orders all identified the evidence in the record that the Deputy Commissioner relied upon to determine that the subject residential hot water heaters had been disconnected from the various garages. Petitioners have only raised an inference that that evidence could be interpreted differently. The court may not do so. Instead, because the Deputy Commissioner's determinations in the twelve (12) challenged PAR orders regarding the subject hot water heaters were rationally based on materials in the record, the court upholds those determinations and rejects petitioners' argument.

The DHCR Commissioner's determination regarding commercial offset calculations is set forth in nine (9) of the PAR orders[6] which include the finding that:

> "Regarding the tenants' claim that the commercial deduction from the MCI increase was improperly calculated by the Rent Administrator, the Commissioner notes that Section 2522.4 (a) (16) of the Rent Stabilization Code states, in pertinent part, that 'A. where the subject building contains commercial rental space . . . and the DHCR determines that such commercial space benefits from the improvement, DHCR shall allocate the approved costs between the commercial rental space and the residential rental space based upon the relative square feet of each rental area.' Accordingly, in calculating the commercial deduction from the MCI rent increase during the proceeding below, the Rent Administrator determined the ratio between the square footage of the benefited commercial space to the total square footage of the nine MCI buildings. The tenants' contention that 'common areas' within the buildings do not constitute residential rental space and therefore should not be included in the total square footage of the subject premises is without merit. The tenants' claim that the commercial deduction should be calculated using a complex-wide comparison of all benefitted commercial space in Stuyvesant Town/Peter Cooper Village to all MCI buildings impacted by the eight total hot water heater MCIs is also without merit, as such method of calculating the deduction would be improper under the above-mentioned section of the Rent Stabilization Code." (NYSCEF Doc. Nos. 2, 30).

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[5] Landlord joins in and adopts the DHCR's argument. (NYSCEF Doc. No. 34, ¶ 10, *Bernache affirmation*).

[6] This group of orders includes those issued under DHCR Docket Numbers FX410020RT; FX410038RT; FX410007RT; FX410008RT; FX410014RT; FX410021RT; FW410027RT; FW410052RT; and HR410020RT. (NYSCEF Doc. Nos., 2, 30, *PAR orders*).

Petitioners argue that the RAs incorrectly applied RSC (9 NYC Admin Code) § 2522.4(a)(16) when calculating the "commercial space offset" for the requested MCI rent increases, and that the PAR orders were consequently arbitrary and capricious because the Deputy Commissioner was wrong to uphold the improper RAs' calculations. (*Id*). The DHCR responds that the PAR orders were rationally based, and that petitioners' arguments fail because (a) the First Department has already upheld the agency's method of applying RSC § 2522.4(a)(16), and (b) in any event, that regulation was inapposite to the RAs' calculations.[7] (NYSCEF Doc. No. 29 ¶¶ 62-75, *Schneider affirmation*). Petitioners' reply papers merely restate their original argument. (NYSCEF Doc. No. 40, *McGuiness reply affirmation*, ¶¶ 8-52). Petitioners' arguments are unavailing.

RSC § 2522.4(a)(16) provides as follows:

> "(a). Increased space and services, new equipment, new furniture or furnishings; major capital improvements; other adjustments.
>
> * * *
>
> "(16). When determining the adjustment of legal regulated rents pursuant to paragraph (2) of this subdivision, where the subject building contains commercial rental space in addition to residential rental space, and the DHCR determines that such commercial space benefits from the improvement, DHCR shall allocate the approved costs between the commercial rental space and the residential rental space based upon the relative square feet of each rental area." (9 NYCRR § 2522.4[a][16]).

The "definitions" provision of the RSC (9 NYC Admin Code § 2520.6) does not mention the terms "residential space" or "commercial space" at all, nor does it state whether "common areas" (as petitioners wish to define the term) shall be included as one or the other types of "space." There is thus no support for petitioners' argument that the RAs applied RSC § 2522.4 (a)(16) in a way that contravened the regulation's "plain meaning" in the nine (9) challenged PAR orders. By contrast, the Deputy Commissioner's decision to uphold the RAs' square footage calculations in their determinations of "commercial offsets" was supported by three factors. First, it was rationally based on material in the administrative record, i.e., the documents which the RAs received from landlord that which established the exact amount of residential and commercial space in each affected building. (NYSCEF Doc. Nos. 19-26, *administrative record*). Second, it was legally authorized because the First Department has indeed affirmed a trial court decision that reviewed and upheld the DHCR's method of applying 9 NYCRR § 2522.4(a)(16). (See *Matter of Storch v New York State Div. of Hous. & Community Renewal*, 56 AD3d 278, 279 [1st Dept 2008]). Third, it is well settled that the DHCR's interpretation of its own regulations (i.e., the RSC) and the statutes it is responsible for administering (i.e., the RSL) is entitled to great deference, and their interpretations must be upheld if reasonable. (See e.g., *Matter of Zucker v State of N.Y. Div. of Hous. & Community Renewal*, 200 AD3d 485, 486 [1st Dept 2021]; *Matter of Leonard St. Props. Group, Ltd. v New York State Div. of Hous. & Community Renewal*, 178 AD3d 92, 103 [1st Dept 2019]; *Matter of Partnership 92 LP & Bldg. Mgt. Co., Inc. v State of N.Y. Div. of Hous. & Community Renewal*, 46 AD3d 425, 428-429 [1st Dept

[7] Landlord joins in and adopts the DHCR's argument. (NYSCEF Doc. No. 34 ¶ 11, *Bernache affirmation*).

2007]). As noted, the DHCR's interpretation of RSC § 2522.4(a)(16) with respect to calculating "commercial offsets" has been found to be reasonable. Petitioners have not presented any rationale or authority to support a contrary determination. Therefore, the court upholds the Deputy Commissioners' findings regarding the RAs' "commercial offset" calculations in the nine (9) challenged PAR orders and rejects petitioners' argument. All other arguments have been considered and are either without merit or need not be addressed given the foregoing. Accordingly, it is hereby

ORDERED, that the petition for relief, pursuant to CPLR Article 78, of petitioners Stuyvesant Town-Peter Cooper Village Tenants Association, and Susan Steinberg (Mot. Seq. 001) is denied, and the petition is dismissed; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for respondents shall serve a copy of this decision and order with notice of entry upon petitioners.

This constitutes the decision and order of this court.

September 29, 2023

HON. VERNA L. SAUNDERS, JSC

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**