SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2465-20

APPLE BLOSSOM HOLDINGS, LLC,

Plaintiff-Appellant,

v.

THE CITY OF JERSEY CITY RENT LEVELING BOARD,

Defendant-Respondent.

Submitted March 16, 2022 – Decided May 9, 2022

Before Judges Hoffman and Geiger.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-3257-19.

Alison C. Ingenito, attorney for appellant.

Peter J. Baker, Corporation Counsel, attorney for respondent (Maura E. Connelly, Assistant Corporation Counsel, on the brief).

PER CURIAM

Plaintiff Apple Blossom Holdings, LLC appeals from a March 26, 2021 Law Division order dismissing its complaint in lieu of prerogative writs. Plaintiff's complaint challenged the decision of the City of Jersey City Rent Level Board (the Board) finding that the rent increase for one of plaintiff's apartments was unlawful because it exceeded the amount allowable under Jersey City Municipal Code (MC), Sections 260-2 and 260-3. We affirm.

I.

On February 14, 2018, plaintiff purchased an apartment building (the property) located at 143 Lafayette Street in Jersey City. Three weeks earlier, on January 24, 2018, the previous owner of the property filed a 2018 Landlord Registration Statement, indicating that Apartment 9 at the property was vacant. At the time, the rent for other tenants in the building approximated $1,360 per month.

On February 8, 2019, Cara Turcich, the tenant then renting Apartment 9, filed an illegal rent complaint with the City of Jersey City Office of Landlord/Tenant Relations. She alleged that the rent for Apartment 9 exceeded the amount permitted under Jersey City MC §260-3.

On April 26, 2019, Deja Anderson, acting Rent Level Administrator (RLA) for the Office of Landlord/Tenant Relations, issued a preliminary rent

determination (PRD) for Apartment 9. The PRD stated the allowable rent for the property was $1,008.24, $491.76 less than the registered rent of $1,500. Anderson explained that plaintiff's rent for Apartment 9 violated MC §260-3(A), which states,

> at the termination of a lease of a periodic tenant, no landlord of any dwelling as defined in §260-1 may request or receive a percentage increase in rent which is greater than four percent or the percentage difference between the consumer price index three months prior to the expiration or termination of the lease and three months prior to the commencement of the lease term . . . .

At the time, Anderson had no evidence indicating that the $1,500 was anything but an increase from the prior rent, which was more than the four percent allowed under the MC.

On May 9, 2019, plaintiff submitted an objection to the PRD. As evidence, plaintiff included the 2019 Registration Statement and a Vacancy Capital Improvement Application (VCIA), dated May 1, 2018, for Apartment 9, listing $79,300 in capital improvements. Plaintiff asserted that Apartment 9 was vacant from March 1, 2018, to November 15, 2019, and during that time the apartment received capital improvements warranting a rent increase of $1,229.15, which would increase the rent for the apartment from $974.81 to

$2,203.96. Plaintiff included work permits, checks issued to a contractor, invoices from the contractor, and before and after pictures of the apartment as evidence of the improvements.

On May 17, 2019, Dinah Hendon, the director of the Office of Landlord/Tenant Relations, sent a letter to plaintiff explaining that its VCIA was deficient for failing to include the required Truth-In-Renting Statement. She explained that, as a prerequisite to applying for this rent increase, MC §260-3(J) provides: "The landlord shall provide to each tenant a copy of the Truth-In-Renting Statement and . . . be in full compliance with the landlord identity disclosure provision contained within the statement in order to qualify for rental increase."

On May 20, 2019, Anderson issued a Final Determination upholding the PRD of $1,008.24. This Final Determination did not consider plaintiff's VCIA because it was deficient in failing to include the Truth-In-Renting Statement. Anderson signed a letter included with the Final Determination as an "alternate" RLA. On May 29, 2019, plaintiff appealed the Final Determination and requested a hearing in front of the Board.

On June 20, 2019, plaintiff appeared before the Board for a hearing on its challenge of the decision that plaintiff's rent increase was illegal under the

MC. Plaintiff first argued that Anderson did not have the authority to make any decisions about rent because the Jersey City MC does not provide for the alternate RLA position.

Plaintiff further argued that, pursuant to MC §260-3(C), a landlord can increase rent, without applying to the Board, if the space was vacant and capital improvements were made. MC §260-3(C) states:

> (1) In the event of a vacant housing space, the landlord may raise the rental above the cost-of-living increase without prior application being made to the Bureau of Rent Leveling, and only if he or she has made capital improvements to the housing space. Such capital improvements will entitle the landlord to increase the base rent of the vacant unit by the following amount:
>
> > (a) For capital improvements up to $5,000.00 in value, the vacant unit's monthly base rent shall be increased by $1.35 per $100.00 of improvement; and
> >
> > (b) For capital improvements in excess of $5,000.00, the vacant unit's monthly base rent shall increase by $1.55 per $100.00 of improvement.
>
> (2) It shall be the sole responsibility of the landlord to register the new rent of any improved unit with the Division of Tenant/Landlord Relations pursuant to § 260-2 of this chapter. No capital improvements shall be recognized under this provision unless they are made in accordance with applicable city codes and the appropriate permits are obtained. It shall be the

> responsibility of the landlord to document to the Bureau of Rent Leveling and prove the cost of any capital improvements in vacant housing space for which he or she desires to increase the rental.

In addition, plaintiff asserted that the Board never reviewed its May 9, 2019 VCIA; instead, the Board sent it to the RLA for review. Because the VCIA was sent to the RLA after the June 20, 2019 hearing, plaintiff argued that the RLA could not have considered it before the Final Determination of May 20, 2019. Plaintiff also contended that the VCIA was ignored in the July 9, 2019 memorandum by the Board. Plaintiff further claimed that the illegal rent complaint was not properly notarized, as required by MC §260-9(A)(2), nor was it ever provided to plaintiff for review.

At the hearing, plaintiff also questioned Anderson's authority to issue preliminary and final determinations, claiming she was not the actual RLA, but that Charles Odei held that position. Plaintiff further pointed out that an "alternate" administrator position does not exist under the statute. The Board explained that Odei was on leave starting July 24, 2019, so Anderson and Hendon were appointed as alternate administrators by the Director of Housing, Economic Development and Commerce, Marcos Vigil. MC §260-8(B) states: "The Rent Leveling Administrator shall be appointed by and under the direction of the Director of the Department of Housing, Economic

Development and Commerce." Odei, while present at the hearing, explained that he was "not really back" and when plaintiff's attorney said "at this time, Jersey City does not know who the Rent Leveling Administrator is for the City of Jersey City[,]" another Board member corrected her, saying "[w]e just had that discussion. Ms. Hendon just made that determination." The Board explained that "we accept that [Anderson] was the authority at the time." The Board also found that plaintiff's permits were not obtained at the proper times.

Turcich also spoke at the hearing. She explained that some of the items invoiced, including a vanity/medicine cabinet in the bathroom, carbon monoxide detectors, and radiators in the bathroom and kitchen, were never installed. She stated that the checks provided by plaintiff totaled over $100,000, but the invoices only added up to $79,300. She stated that she was never informed that her apartment was rent controlled before moving in.

At the conclusion of the hearing, the Board announced the following ruling:

> So the Board has decided not to make a determination on the legality or the righteousness of the vacancy improvement, capital improvement. We're going to send that back to the Rent Leveling Administration office for a determination.
>
> What the Board is going to rule on is the permissibility of the rent increase that was charged

> from November of [2018], from the time of the inception of the lease, through the date of the application, May 9th of this year. And for that, we're saying that that rent increase was not appropriate.
>
> So we will rule in favor of the tenant for the period November [2018] through May 9 of 2019 . . . [a]nd [we will] send all the other matters back to the Rent Leveling Administrator for further consideration.

On July 9, 2019, the Board issued a written memorandum upholding Anderson's findings of an allowable rent of $1,008.24 for the months of November 2018 (Turcich's move-in date) through May 9, 2019, and the VCIA was to be sent back to the Office of Landlord/Tenant Relations for review. The written memorandum noted the fact that plaintiff did not provide Turcich with a writing of "the name of and rent paid by all tenants who occupied the apartment rented by the new tenant during the prior [twelve] months," as required by MC §260-3(D), as part of its reasoning for upholding Anderson's findings. Similarly, the Board found that plaintiff did not follow §260-3(C) because "the landlord did not register the 'new rent' of $1,500 until counsel's letter of May 9, 2019, six and one-half months after [Turcich] signed the lease for the apartment," and more importantly, did not provide the RLA nor the Board "any evidence to 'document' and 'prove' compliance with Sec. 260-3(2)."

On August 23, 2019, plaintiff filed a complaint in lieu of prerogative writs in the Law Division. On July 1, 2020, the Board, through Hendon, issued a Revised Determination. The Revised Determination came to the same conclusion as the Final Determination issued on May 20, 2019, that plaintiff had not provided enough proof to satisfy the requirements of the MC to raise rent. It found that the invoices were "conclusory[,]" that there was a discrepancy in the total amount of the checks submitted compared to the invoices, and the invoice for planning and design was dated six months after the work commenced according to the acquired permits. Hendon also filed a certification with the court on February 5, 2021, certifying her job as RLA and the documents submitted by the Board as exhibits.

After hearing argument on March 26, 2021, the trial judge entered an order dismissing plaintiff's complaint with prejudice. In an oral decision delivered on the same date, the judge noted that "on her first attempt or review of this, the administrator had no evidence that the rent increase was anything other than illegal because the VCIA was as yet unfiled." The judge recognized that plaintiff had "no meaningful time" to cure the deficiency of the Truth-In-Renting-Statement between the deficiency letter and the Final Determination. However, the judge found that the July 1, 2020 Revised Determination did

address the VCIA. She also found that the Board correctly remanded the VCIA to the RLA for review.

The judge ultimately concluded that the decision of the Board was not arbitrary, capricious, or unreasonable because Hendon's revised determination showed that the evidence concerning the improvements to the property contained numerous "discrepancies." At least one contractor was related to the Apple Blossom entity, some of the invoices did not correspond to the dates and amounts charged, and "most notable," in the judge's opinion, was "the testimony of the tenant herself," that many of the claimed improvements, such as radiators, were never installed on the property. The judge found that Hendon revisiting the VCIA was not a cover-up for Anderson not having authority. Instead, the judge found that the VCIA "was eventually considered on remand and then again on Hendon's apparent own motion, and she was acutely aware of the pending litigation[.]" In conclusion, the judge ruled that "the determination of the Rent Leveling Board as to this VCIA[,] and the allowable rent[,] is hereby affirmed and the complaint is dismissed."

The judge also rejected plaintiff's arguments about the new documents, including the Revised Determination and Hendon's certification, because the parties had all but abandoned the case until she contacted them again. The

judge found that Hendon's Revised Determination was "not an attempt to shore up a defective determination" but instead was issued "after this case was filed, after the initial brief schedule, after the parties jointly sought a stay of proceedings, after the parties, at least hopefully in good faith, pursued settlement and after the apparent breakdown in those settlement negotiations."

On appeal, plaintiff renews the same three arguments rejected by the trial judge: 1) Turcich's illegal rent complaint was defective because it was not notarized and never provided to plaintiff; 2) Anderson did not have authority to make any rent decisions as an Alternate RLA; and 3) the trial judge erred in allowing the Board to submit Hendon's Revised Determination and the supplemental certification that Hendon submitted to the court.

II.

"[W]hen reviewing the decision of a trial court that has reviewed municipal action, we are bound by the same standards as was the trial court." Fallone Props., L.L.C. v. Bethlehem Twp. Plan. Bd., 369 N.J. Super. 552, 662 (App. Div. 2004). Generally, courts afford the decisions of municipal boards substantial deference; the determinations of a rent control board are presumptively valid, and the burden is on the party challenging a board's decision to prove it was arbitrary, capricious, or unreasonable. Rivkin v.

Dover Twp. Rent Leveling Bd., 143 N.J. 32, 378 (1996); Park Tower Apts., Inc. v. City of Bayonne, 185 N.J. Super. 211, 222 (App. Div. 1982).

However, like the trial court, this deference does not apply to a board's interpretation of an ordinance. Schulmann Realty v. Hazlet Twp. Rent Control Bd., 290 N.J. Super. 176, 184 (App. Div. 1996). We construe an ordinance using the same rules of construction applied in interpreting a statute, applying its plain meaning if the terms are unambiguous. Mays v. Jackson Twp. Rent Leveling Bd., 103 N.J. 362, 376 (1986); Nuckel v. Borough of Little Ferry Plan. Bd., 208 N.J. 95 (2011).

Generally, matters outside of the record in front of the board cannot be considered on appeal. Kempner v. Edison, 54 N.J. Super. 408, 417 (1959). Similarly, although not directly on point, there is a long-standing principle applied by our courts that matters not objected to at the trial level cannot be considered as errors on appeal. See State v. Robinson, 200 N.J. 1, 20 (2009) (alteration in original); see also R. 1:7-2 ("a party, at the time the ruling or order is made or sought, shall make known to the court specifically the action which the party desires the court to take or the party's objection to the action taken and the grounds therefor."). In addition, Rule 2:10-2 states, "[a]ny error

or omission shall be disregarded by the appellate court unless it is of such a nature as to have been clearly capable of producing an unjust result . . . ."

Here, Turcich's complaint states: "I swear/and or affirm that to the best of my knowledge, all the above information an[d] attachments are accurate and further that there is no attempt on my part to conceal any evidence that may have a bearing in this request." Despite plaintiff's argument that it never received a copy of the complaint, its attorney responded to the complaint and stated in its objection, "I represent the interests of . . . the Landlord in the above-referenced Rent Leveling complaint." Similarly, at the Board hearing, plaintiff did not object to Turcich's complaint being admitted into evidence. Plaintiff also did not bring up the fact that it did not receive a copy of the complaint at the hearing, and raised the argument for the first time in its Law Division complaint. Additionally, Turcich was sworn in by the court reporter at the June 20, 2019 Board hearing and testified under oath about her illegal rent complaint.

We are satisfied that the fact that Turcich's complaint was not notarized was not capable of producing an unjust result, because she was subsequently sworn in at the Board hearing, and plaintiff was provided a full opportunity to present its defense to the complaint. Plaintiff acknowledged the complaint, went

forward with defending itself in front of the Board, and did not argue to the Board that Turcich's complaint was defective. We conclude the trial judge properly rejected plaintiff's arguments regarding the illegal rent complaint.

Moreover, Jersey City MC §260-8(B) states: "The Rent Leveling Administrator shall be appointed by and under the direction of the Director of the Department of Housing, Economic Development and Commerce." The RLA's powers include the power to "accept complaints from tenants of illegal increases, provided that all claims are sworn to and acknowledged by a person authorized by law to administer oaths[,]" and to "review applications and investigate complaints prior to a final decision being made in any case." §260-9(A)(2) and (A)(4).

Here, when plaintiff objected to the tenant's illegal rent complaint before the Board, the Board explained that the previous RLA, Odei, was on leave starting July 24, 2019, so Anderson and Hendon were appointed as alternate administrators by the Director of Housing, Economic Development and Commerce, Marcos Vigil. As required by the statute, they were appointed by the Director, and both had equal powers under the statute to make rent determinations and review Turcich's complaint.

Additionally, as pointed out by the trial judge, even if Anderson did not have proper authority, the remedy would be for the Board to return plaintiff's application back to the Office of Landlord/Tenant Relations for review. The judge explained,

> I don't really give much shrift to that argument because if that were valid and the remedy would be, send this back and have the right person consider it, well, that's exactly what happened. When Hendon revisited it, and issued her July 2020 decision, she was the administrator and she had to work with the same record that Anderson had to work with and that I'm reviewing. The only thing that changed was the pendency of this lawsuit.

Sending plaintiff's VCIA back to the Office of Landlord/Tenant Relations for review would not be appropriate as two RLAs, both with the appropriate authority under the municipal code, had already reviewed it and denied the application. Similarly, both RLAs, at separate points in time, found that the rent increase application was deficient.

Finally, under Rule 2:5-4(a), we note that "[t]he record on appeal shall consist of all papers on file in the court or courts or agencies below, with all entries as to matters made on the records of such courts and agencies . . . and all papers filed with or entries made on the records of the appellate court." The same is true of local municipal boards, including rent control boards.

Reid v. Hazlet, 198 N.J. Super. 229, 233 (App. Div. 1985) (citing Green Acres of Verona, Inc. v. Borough of Verona, 146 N.J. Super. 468, 470 (App. Div. 1977)); see also Peoples Tr. Co. v. Bd. of Adjustment, 60 N.J. Super. 569, 575-76 (App. Div. 1959) (explaining that "Judicial review of [a] board of adjustment action is confined to the record made before the local board."); Reinauer Realty Corp. v. Paramus, 34 N.J. 406, 415-16 (1961) ("Certainly secret reports based upon undisclosed facts and opinions, which are adverse to the conclusion of the Board of Adjustment, cannot enter into the decision-making process.").

Here, the Revised Determination did not consider anything new, but instead sought to provide further explanation to plaintiff as to why the RLA made the decision that she did. As the trial judge explained, the Revised Determination was not an attempt to cover up a mistake:

> the Hendon revised determination is not an attempt to shore up a defective determination but, rather, it was issued as I pointed out, after this case was filed, after the initial brief schedule, after the parties jointly sought a stay of proceedings, after the parties, at least hopefully in good faith, pursued settlement and after the apparent breakdown in those settlement negotiations. So the inactivity in the litigation, the lapse of the stay period, the failure of either counsel to take action to alert the [c]ourt that settlement had broken down and no one's attempt to resume the

> briefing, can almost be viewed as an abandonment and both sides are guilty of it.

Similarly, Hendon's Revised Determination was not an effort to fix a mistake on Anderson's part, but was done in accordance with the decision of the Board at the June 20, 2019 hearing, ordering the VCIA to be sent back to the RLA for reconsideration. A proper determination is what plaintiff requested, because the VCIA was not originally considered in the Preliminary Rent Determination.

Hendon and Anderson both had authority from the Director of Housing, Economic Development and Commerce to make rent decisions in accordance with the MC. Plaintiff argues that the new documents changed the record. We disagree. As the trial judge explained, "[t]he only thing that changed was the pendency of this lawsuit." Unlike the explanation articulated in Reinauer, this was not an attempt to make a decision based on secret reports and facts, but was instead a further review of a decision already made, based on the same facts and record that Anderson considered in her Preliminary and Final determinations.

The trial judge considered the record in deciding that plaintiff's VCIA was properly rejected; in fact, she specifically noted the tenant's own testimony, which she found most convincing. The judge showed the Board

adequate deference, as it is specially qualified to deal with these matters, but did not blindly agree with everything the Board and RLA said. In fact, the judge pointed out that she did not find it significant that the VCIA was filed six months after the tenancy began. The judge considered the fact that plaintiff was originally missing the Truth-In-Renting-Statement, which was not some "ruse[,]" but "a legal prerequisite [that] was missing." She ultimately concluded that the Board's decision was not arbitrary, capricious, or unreasonable because plaintiff's proofs were not sufficient. We discern no basis to disturb the judge's decision dismissing plaintiff's complaint.

Affirmed.