

Matter of Parrish v New York City Loft Bd.
2014 NY Slip Op 31046(U)
April 24, 2014
Supreme Court, New York County
Docket Number: 101595/13
Judge: Cynthia S. Kern
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

Index Number : 101595/2013

PARRISH, MARK

vs

NYC LOFT BOARD

Sequence Number : 001

ARTICLE 78

PART _____

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

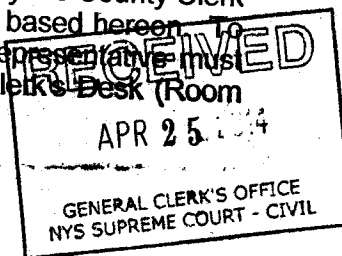
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the annexed decision.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).



MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 4/24/14

CRK, J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----X

In the Matter of the Application of

MARK PARRISH,

Petitioner,

Index No. 101595/13

For an Order Pursuant to Article 78
of the Civil Practice Law and Rules,

DECISION/ORDER

-against-

NEW YORK CITY LOFT BOARD and 76 NORTH LLC,

Respondents.

-----X

HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Answering Affidavits.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Petitioner Mark Parrish brings the instant petition pursuant to Article 78 of the Civil Practice Law and Rules (“CPLR”) seeking to reverse a determination made by respondent New York City Loft Board (the “Loft Board”). For the reasons set forth below, the petition is denied.

The relevant facts are as follows. Petitioner is the commercial tenant of the Blue Studio (the “Unit”) in the building located at 71 North 7th Street, Brooklyn, New York (the “Building”). Respondent Loft Board is a New York City agency created by Multiple Dwelling Law (“MDL”) Article 7-C (the “Loft Law”) and is responsible for administering the provisions of the Loft Law and has the authority to adopt rules and regulations to implement those provisions. Respondent

76 North LLC (“76 North”) is the landlord and owner of the Building. Petitioner maintained a lease with 76 North from May 1, 1996 until April 30, 2011. In or around July 2010, petitioner sought, *inter alia*, renewal of the lease, permission to make certain repairs to the Unit and partial use of the Unit as his residence. In or around November 2010, 76 North notified petitioner that it decided not to renew the lease. On November 29, 2010, petitioner filed an application with the Loft Board seeking Article 7-C coverage pursuant to MDL § 281(5) based on petitioner’s alleged partial use of the Unit as his residence. On January 6, 2011, 76 North filed an answer opposing the application and on February 7, 2012, petitioner filed his reply. On or about February 17, 2012, the Loft Board referred the case to the Office of Administrative Trials and Hearings (“OATH”) for adjudication and it was assigned to Administrative Law Judge Joan R. Salzman.

Separately in February 2012, 76 North commenced a holdover proceeding against petitioner in New York City Civil Court, Kings County seeking a final judgment of possession for the Unit. On May 15, 2012, petitioner and 76 North entered into a Stipulation of Settlement (the “Stipulation”) in which the parties agreed to the settlement of the holdover proceeding. On that date, 76 North and petitioner executed another document titled Agreement (the “Agreement”) in which the parties agreed, *inter alia*, that petitioner would withdraw his coverage application with prejudice and that petitioner could occupy the Unit through August 31, 2016.

On May 16, 2012, petitioner’s counsel informed Judge Salzman of the Agreement and the settlement of the coverage dispute and on that date, Judge Salzman returned the case to the Loft Board informing the Loft Board that the “[p]arties have agreed to withdraw this application with prejudice,” that the matter was being marked as “settled” and she included a copy of the Stipulation and the Agreement. On September 28, 2012, the Loft Board sent the parties a

* 4]

Proposed Order, rejecting the Agreement based upon public policy grounds, which would be presented to the Loft Board for a final determination at a public meeting on October 4, 2012. At the meeting on October 4, 2012, the Loft Board issued Order No. 4027 in which it rejected the terms of the Agreement and remanded petitioner's Article 7-C coverage application to OATH for further investigation and adjudication. Specifically, the Order states that

The Loft Board finds that the terms of the settlement proposed in the Agreement are against public policy. The Agreement thwarts the Loft Law's goal to legalize converted commercial buildings for residential use to comply with the applicable law and conform to minimum standards for health, safety and fire protection. Without Article 7-C coverage, the Tenant's residential use of the Unit would not only be illegal, but also would not require the Owner to perform any legalization work or maintain a basic level of health, safety or fire protection in accordance with existing laws. The Agreement proposes to leave intact, for approximately another four years, exactly the illegal and unsafe housing the Loft Law seeks to rectify.

In or around November 2012, 76 North, joined by petitioner, filed an application for reconsideration of the Loft Board's Order based on the allegation that (1) the Loft Board did not have jurisdiction over the holdover proceeding; and (2) petitioner had the right to withdraw his coverage application. In or around August 2013, the Loft Board issued Order No. 4163 denying the application for reconsideration on the ground that the Loft Board had jurisdiction over the coverage application pending before it as well as the Agreement and that the Loft Board has the discretion to review a proposed settlement and reject such a settlement on public policy grounds. Petitioner then commenced the instant Article 78 proceeding seeking to reverse the Loft Board's determination and leave intact the Stipulation and Agreement.

On review of an Article 78 petition, "[t]he law is well settled that the courts may not overturn the decision of an administrative agency which has a rational basis and was not arbitrary

and capricious.” *Goldstein v. Lewis*, 90 A.D.2d 748, 749 (1st Dep’t 1982). “In applying the ‘arbitrary and capricious’ standard, a court inquires whether the determination under review had a rational basis.” *Halperin v. City of New Rochelle*, 24 A.D.3d 768, 770 (2d Dep’t 2005); *see Pell v. Board. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 N.Y.2d, 222, 231 (1974)(“[r]ationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard.”) “The arbitrary or capricious test chiefly ‘relates to whether a particular action should have been taken or is justified ... and whether the administrative action is without foundation in fact.’ Arbitrary action is without sound basis in reason and is generally taken without regard to facts.” *Pell*, 34 N.Y.2d at 231 (internal citations omitted).

In the instant action, the petition must be denied as the Loft Board’s Order No. 4163 rejecting the application for reconsideration had a rational basis. Pursuant to 29 RCNY § 1-07(a), there are four grounds upon which an application for reconsideration of a Loft Board Order may be granted, which include (1) allegations of denial of due process or material fraud in the prior proceedings; (2) an error of law; (3) an erroneous determination based on a ground that was not argued by the parties at the time of the prior proceedings and that the parties could not have reasonably anticipated would be the basis for a determination; and (4) discovery of probative, relevant evidence which could not have been discovered at the time of the hearing despite the exercise of due diligence. Here, 76 North applied for reconsideration of the Loft Board’s Order No. 4027 on the grounds that the rejection of the Agreement and remand to OATH was an error of law because (1) the Loft Board did not have jurisdiction over the holdover proceeding; and (2) petitioner had the right to withdraw his coverage application. As an initial

[* 6]

matter, the Loft Board's Order rationally rejected 76 North's jurisdictional argument as without merit as the Loft Board was not attempting to obtain jurisdiction over the holdover proceeding but rather was merely addressing the application for Article 7-C coverage that was brought before it by petitioner. It is undisputed that MDL § 282 gives the Loft Board authority to act upon matters, such as applications for coverage, brought before it. That the Stipulation and Agreement was also used to settle the holdover proceeding does not preclude the Loft Board from maintaining jurisdiction over the application for Article 7-C coverage.

Additionally, the Loft Board's Order rationally rejected 76 North's assertion that petitioner had the right to withdraw his coverage application. As an initial matter, the Loft Board had the power to reject the Agreement and thus, deny petitioner's request to withdraw his coverage application. In 1982, the New York State Legislature enacted the Loft Law to protect the health, safety and general welfare of the public. Specifically, the Legislature stated that

a serious public emergency exist[ed] in the housing of a considerable number of persons...created by the increasing number of conversions of commercial and manufacturing loft buildings to residential use without compliance with the applicable building codes and laws and without compliance with local laws regarding minimum housing maintenance standards; that many such buildings [did] not conform to minimum standards for health, safety and fire protection; that housing maintenance services essential to maintain health, safety and fire protection [were] not being provided in many such buildings...the intervention of the state and local governments is necessary to effectuate legalization...of the present illegal living arrangements...the provisions of this article are necessary and designed to protect the public health, safety and general welfare.

MDL § 280. In 2010, the Legislature expanded the Loft Law adding specific safety limitations for units covered under Article 7-C. These safety limitations include, *inter alia*, a minimum size for the unit, a window, a separate entrance for the unit and a provision that the building must not

contain certain commercial activity that was inherently incompatible with residential use. *See* MDL § 281(5). A tenant who intends to use a unit in one of these buildings as his residence is entitled to bring an application to the Loft Board for Article 7-C coverage pursuant to 29 RCNY § 1-06. 29 RCNY § 1-06(j) describes the procedures for processing such applications after the parties have agreed to settle the dispute. Specifically, where a coverage dispute is resolved to the mutual satisfaction of the parties,

a stipulation of agreement shall be entered into by the parties and reviewed by the Executive Director. A summary report of such matters including the type of application, the issues presented and the resolution reached shall be made to the Loft Board, which may direct that a particular matter be reopened and remanded for further investigation.

29 RCNY § 1-06(j)(5). Thus, pursuant to such rule, the Loft Board had the power to reject the Agreement and remand the application for further investigation and adjudication.

Additionally, the Loft Board rationally exercised its power to reject the Agreement and deny petitioner’s request to withdraw his coverage application on the ground that the Agreement was against public policy. In the Agreement, there were no provisions to ensure compliance with the minimum requirements for residential occupancy. Rather, the Agreement allows petitioner to remain in the Unit until August 31, 2016 as his residence and to use the Building for short-term rentals, in exchange for a waiver of all Article 7-C coverage. Thus, the terms of the Agreement are clearly against public policy as they do not require 76 North to perform any legalization work or maintain a basic level of health, safety or fire protection in accordance with the existing laws.

Petitioner’s assertion that the Loft Board’s Order was irrational because the Loft Board made the assumption that 76 North does not intend to legalize the building is unavailing. Nowhere in the Agreement does it state that petitioner may reside in the Building on the

