Matter of Sol Goldman Invs. LLC v State of N.Y. Div. Hous. & Community Renewal
2014 NY Slip Op 30398(U)
February 13, 2014
Supreme Court, New York County
Docket Number: 100449/2013
Judge: Doris Ling-Cohan
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. Doris Ling-Cohan Justice — PART 36

Index Number : 100449/2013
SOL GOLDMAN INVESTMENT
vs.
NYS DIVISION OF HOUSING
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. ____
MOTION DATE ____
MOTION SEQ. NO. ____

The following papers, numbered 1 to 4, were read on this motion to/for Article 78 Proceeding

Notice of Motion/Order to Show Cause — Affidavits — Exhibits ____ | No(s). 1,2
Answering Affidavits — Exhibits (+ memo) | No(s). 3
Replying Affidavits ____ | No(s). 4

Upon the foregoing papers, it is ordered that this motion is Article 78 proceeding is denied and dismissed in accordance with the attached memorandum decision/order/judgment.

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: 2/13/14

____, J.S.C.
JUSTICE DORIS LING-COHAN

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: IAS PART 36

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In the Matter of the Application of
Sol Goldman Investments LLC
A/A/F 1700 First Avenue LLC,

Petitioner,

-against-

State of New York Division of Housing and
Community Renewal,

Respondent.

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Index No.: 100449/13

DECISION/ORDER/JUDGMENT

Motion Seq. No. 001

HON. DORIS LING-COHAN, JSC:

Petitioner brings this Article 78 proceeding seeking an order directing respondent New York State Division of Housing and Community Renewal (DHCR) to modify its order (MCI Order) granting Major Capital Improvement (MCI) rent increase dated November 14, 2008, to include a MCI Increase for Petitioner's engineer's consulting fees, totaling $17,900.00.

UNDERLYING FACTS AND PROCEDURAL BACKGROUND

This proceeding concerns DHCR's determination that improvements made to housing accommodations 401 East 88 Street and 400 East 89 Street, New York, New York ("Buildings") as to the boiler/burner and water tank installations, performed by Sol Goldman Investments LLC A/A/F 1700 First Avenue LLC ("Owner"), constitute a Major Capital Improvement (MCI)but that the cost associated with the consulting engineer should be excluded from the approved MCI amount. Following this finding, DHCR granted a rent increase on rent stabilized and rent controlled units in the Buildings, pursuant to Part 2522 of the Rent Stabilization Code (RSC). Thereafter, Petitioner filed a petition for administrative review (PAR), opposing the

Administrator's decision to exclude the cost of the consulting engineer from the MCI amount on the ground that the consulting engineer's services were necessary due to the complexity of the installations.

In an administrative decision by DHCR, dated February 8, 2013 (Administrative Decision), Petitioner's PAR was denied. In such decision, DHCR found the record does not support a finding that the boiler/burner and water tank installations at issue were exceptionally complex such that the services of a consulting engineer were necessary and thus did not warrant the inclusion of consulting engineer's fees in the MCI rent increase.

Petitioner brought this Article 78 proceeding to challenge DHCR's Administrative Decision.

DISCUSSION

The standard for judicial review of an administrative determination is whether the decision was made arbitrarily or without a rational basis. *Greystone Mgt. Corp. v Conciliation and Appeals Bd.*, 94 AD2d 614 (1st Dept 1983). An administrative determination should not be disturbed unless the agency's action was arbitrary, in violation of lawful procedure, or in excess of its jurisdiction. *Matter of Pell v Board of Educ.*, 34 NY2d 222 (1974). Moreover, it is well settled that the interpretation given a statute by the agency charged with its enforcement will be respected by the courts if not irrational or unreasonable. *See Matter of Fineway Supermarkets, Inc. v State Liq. Auth.*, 48 NY2d 464, 468 (1979); *Matter of Howard v Wyman*, 28 NY2d 434, 438 (1971); *Matter of Lower Manhattan Loft Tenants v New York City Loft Bd.*, 104 AD2d 223, 224 (1st Dept 1984), *aff'd* 66 NY2d 298 (1985).

After review of all the submissions, the petition is denied and this proceeding is dismissed. Rent Stabilization Code § 2522.4(a)(2)(i) governs what qualifies for an MCI rent increase. It is undisputed that, pursuant to RSL § 26-511c(6)(b), respondent DHCR has exclusive jurisdiction to determine whether an owner may increase rent based upon the cost of installation of an MCI. Here, respondent DHCR determined that, while certain engineering expenses may qualify for a rent increase, tenants should not be required to pay a permanent rent increase based upon a landlord's administrative costs, or to pay duplicative costs. Petitioner challenges the portion of the MCI Order which did not approve any rent increase based upon the cost of employing a consulting engineer. Petitioner argues that such consultation was necessary and customary to its MCI project which involved two boilers, two burners, and a water tank. Although Petitioner proffers the engineer's proposal in support of its argument that the MCI project was sufficiently complex as to warrant the inclusion of the engineer's consultation fees in the MCI Order, such proposal fails to shed light on the complexity of the subject project. Rather, the portions of the engineer's proposal, as highlighted by Petitioner in its reply, speak only to such engineer's qualifications. Specifically, the fact that the engineer has filed 8,000 installations with the Department of Air Resources and the Department of Buildings does not demonstrate that respondent DHCR's determination was arbitrary and capricious. Moreover, the fact that the engineer has lectured on heating system design at seminars, and that the engineer is a licensed oil burner installer, does not necessitate a finding that the subject MCI project was so complex as to conclude that respondent DHCR's determination, which did not include the engineer's consultation fees in the MCI Order, was arbitrary and capricious. Thus, the petition is denied and this proceeding dismissed.

DECISION

Accordingly, it is

ORDERED and ADJUDGED that the petition is denied and the proceeding is dismissed; and it is further

ORDERED that within 30 days of entry of this order, respondents shall serve a copy upon petitioner, with notice of entry.

This constitutes the decision of the Court.

Dated: New York, New York
February 24, 2014

Hon. Doris Ling-Cohan, JSC

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