Matter of 247-253 W. 116 LLC v New York State Div. of Hous. & Community Renewal

2018 NY Slip Op 31458(U)

July 3, 2018

Supreme Court, New York County

Docket Number: 100541/2017

Judge: Arlene P. Bluth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 32
--X
In the Matter of the Application of
247-253 West 116 LLC,

Petitioner,

Index No. 100541/2017
Motion Seq: 001

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules,

-against-

DECISION, ORDER & JUDGMENT
ARLENE P. BLUTH, JSC

NEW YORK STATE DIVISION OF HOUSING and
COMMUNITY RENEWAL and CONSTANCE
JONES,

Respondents.

--X

The petition to annul a determination by respondent New York State Division of Housing and Community Renewal ("DHCR") is denied and this proceeding is dismissed.

Background

This proceeding arises out of an overcharge complaint lodged by respondent Constance Jones (a tenant in a building owned by petitioner) in August 2010. Jones alleged in her complaint, which was filed against the prior owner of the building, that when she commenced her tenancy in May 2010, her rent was $1,450 per month while the prior tenant paid just $419.62 per month. Petitioner took ownership of the premises in 2013.

On November 23, 2012, the Rent Administrator ("RA") assessed an overcharge against the prior owner of $26,660.80 (NYSCEF Doc. No. 17 at 1). Both Jones and the prior owner filed a petition for administrative review ("PAR") and DHCR denied both PARs. After both Jones

and the prior owner filed separate Article 78 petitions challenging DHCR's decision, DHCR agreed to remand the matter to the agency for further consideration.

The RA (in a decision dated August 17, 2016) imposed an overcharge penalty of $80.313.41 (including treble damages) and a total penalty of $127,000.91 (which included attorneys' fees) (NYSCEF Doc. No. 4 at 5-6). Petitioner filed a PAR, which raised numerous issues including whether the RA properly discounted certain Individual Apartment Improvements ("IAIs") claimed by the owner to justify part of the rent increase for Jones. An owner may increase the legal regulated monthly rent by 1/40 (for increases that took effect prior to September 24, 2011) of the cost incurred for making IAIs in an apartment. The PAR also contested the longevity bonus entitled to the owner for the duration of the previous occupant's tenancy and whether Jones was entitled to attorneys' fees.

DHCR denied petitioner's PAR (*id.* at 9). With respect to the IAIs, DHCR found that "The Rent Administrator correctly excluded the cost of refinishing the bathtub from the IAIs because this was an ordinary maintenance and repair expense" (*id.* at 9). DHCR stressed that "the owner did not install a new bathtub and the Commissioner finds that refinishing an existing bathtub is not an improvement which qualifies for an IAI rent increase" (*id.* at 9-10).

DHCR credited an inspection of the apartment it conducted on December 18, 2015 in which an inspector was unable to find numerous IAIs that the owner claimed to have completed (*id.* at 3-4). "The facts in this matter indicate that the inspector was able to observe that certain items which were claimed to have been installed were not present in the apartment, including the Shaker corner wall, Lazy Susan, two mortise cylinders and a new front door. As such, the Rent

Administrator properly excluded these items from the IAI rent increase despite them being listed in the owner's documentation" (*id.* at 11).

DHCR also excluded other items from the IAI list including "8 closet sockets, 9 Gerber shower stems, 3 Gerber deck stems, 3 Gerber shower diverter stems, 3 Gerber shower handles, 3 Gerber shower sleeves, 59 fluorescent bulbs, 1 access panel, 8 metal closet sockets, 2 door sweeps and 3 toilet seats because the quantity of such items was excessive as they relate to a single apartment" (*id.*).

DHCR dismissed petitioner's claim that a de minimis difference between the legal rent and the rent charged does not justify a overcharge award of $26,000 (*id.*). DHCR added that "the overcharges in this case were not de minimis and resulted from a combination of the failure to register, the elimination of some IAIs and the erroneous longevity increase" (*id.* at 12).

Treble damages were imposed against the owner because "Evidence of willfulness lies in the fact that the agency inspector found that certain claimed improvements were never installed in the apartment; duplicate items such as three toilet seats, were claimed in the rent increase; and the fact that the post-registration overcharge involved more than just the disallowance of the IAIs and the erroneous longevity increase" (*id.* at 13). And while the DHCR granted Jones attorneys' fees, it upheld the RA's determination to award only about half of what Jones' attorney was seeking (*id.* at 14). Petitioner then commenced the instant proceeding.

Discussion

In an article 78 proceeding, "the issue is whether the action taken had a rational basis and was not arbitrary and capricious" (*Ward v City of Long Beach*, 20 NY3d 1042, 1043, 962 NYS2d

587 [2013] [internal quotations and citation omitted]). "An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts" (*id.*). "If the determination has a rational basis, it will be sustained, even if a different result would not be unreasonable" (*id.*). "Arbitrary action is without sound basis in reason and is generally taken without regard to the facts" (*Matter of Pell v Board of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231, 356 NYS2d 833 [1974]).

Petitioner characterizes the penalty imposed by DHCR ($127,000.91) as a windfall and emphasizes that Jones was provided with a renovated apartment when she moved in. Petitioner maintains that DHCR approved nearly 90% of its claimed IAIs and, therefore, there is no basis to find that petitioner's conduct was willful– a finding that imposes treble damages.

Unfortunately for petitioner, it did not cite sufficient grounds to annul DHCR's determination. The petition merely highlights disagreements with DHCR's denial of petitioner's PAR– disagreeing with DHCR's rational conclusions is not a basis to vacate those findings. For instance, DHCR found that refinishing the tub was a repair rather than an improvement– meaning that it could not be applied to petitioner's IAIs. But petitioner failed to cite controlling case law requiring DHCR to consider refinishing a tub to be an improvement. And this Court is unable to conclude that it was irrational for DHCR to disagree with petitioner on this issue.

The Court also stresses that petitioner failed to specifically address a key part of the DHCR decision– the fact that petitioner apparently tried to include plainly outrageous requests as part of its IAIs. Petitioner does not dispute that it tried to include *three toilet seats and 59 fluorescent bulbs* as part of its IAIs despite the fact that these renovations were related to a single apartment. This is not a case where petitioner made a few typos in calculating how much IAIs

could have increased Jones' rent– instead, the evidence before the DHCR shows a systematic effort to mischaracterize what was done in order to jack up Jones' rent. Based on these findings, it was not irrational for DHCR to impose treble damages on petitioner.

With respect to the DHCR inspection, the Court finds that DHCR's reliance on the inspector's findings was rational. In its decision, DHCR found that "the agency mailed the owner a Notice of Inspection" and that "[t]here is no indication that the notice was returned to the agency or was not received by the owner" (NYSCEF Doc. No. 4 at 10). Having an inspector review an apartment- especially where the owner claims it is entitled to a substantial IAI rent increase– is a reasonable measure and petitioner has not stated any sufficient reason why the Court should disregard DHCR's reliance on the inspector. As stated above, although petitioner disagrees with the findings of DHCR's inspector, that disagreement does not compel the conclusion that DHCR's determination was irrational.

The Court finds that DHCR's conclusion on the longevity bonus issue was rational. DHCR found that petitioner was entitled to a 16-year longevity bonus as the prior tenant "occupied the apartment from September 1993 until April 2010 which is 16 years and 7 months. Since the prior tenancy's occupancy is 5 months short of completing 17 years, the owner was only entitled to a longevity increase based on 16 years" (*id.* at 9). Petitioner presented no reason to disturb this finding– the prior tenant was not there for a full 17 years so why should petitioner be entitled to a longevity bonus for 17 years?

Attorneys' Fees

The Court also finds that the award of attorneys' fees was rational. The fact is that DHCR awarded only about half of the attorneys' fees requested by Jones' attorney. And the amount initially sought by Jones' attorney before the RA *did not include* the work performed in preparing Jones' Article 78 petition (a proceeding that was later remanded). According to the DHCR, "the Rent Administrator arrived at a reasonable conclusion that the nature of the services performed by that attorney enabled the tenant to achieve a result which she otherwise would not have achieved" (NYSCEF Doc. No. 4 at 14).

"The Commissioner concludes that the Rent Administrator adequately reviewed the entries in the attorneys' bills to eliminate fees not connected to legal work on this matter. While the tenant's attorney claimed he and his staff spent over 276 hours working on the file while not in Court, the Rent Administrator granted only 186.75 hours. Further, while the tenant's attorney asserted that he was entitled to a billable rate of $450.00 per hour, the Rent Administrator granted a rate of $250.00 per hour . . . [t]his resulted in an award of $46,687.50 in attorney fees, almost half of what the tenant's attorney was seeking" (*id.*).

There is no basis to annul the portion of DHCR's decision awarding attorneys' fees. DHCR adopted the RA's in-depth analysis of the requested attorneys' fees and DHCR was entitled to make this determination (*see* RSL § 26-516[a][4]; RSC § 2526.1[d]). Even though this Court might have awarded a different amount to Jones' attorney, that is not a ground to reverse DHCR's determination.

Summary

Petitioner is understandably upset with having to pay over a $100,000 for overcharging a tenant. But the fact is that petitioner failed to articulate a ground to reverse DHCR's determination. The record before this Court suggests that petitioner substantially misrepresented that certain work was done and tried to include patently absurd improvements as part of its effort to increase the rent. That type of behavior clearly supports the imposition of treble damages especially in light of the fact that the burden is on the owner to prove that an overcharge was not willful (*see* RSC § 2526.1[a][1]).

Petitioner's argument that 90% of its claimed IAIs were accepted by DHCR misses the point. The fact is that DHCR rejected certain IAI increases claimed by petitioner because the work was never done or made no sense (i.e. requesting an IAI increase for 59 lightbulbs in one apartment). For this same reason, it does not matter that Jones was allegedly provided with a substantially renovated apartment. While the prior owner may have done *some* work after the prior tenant moved out, it does not justify misrepresenting the work that was actually done in order to charge a higher monthly rent. At the very least, it provides a rational basis for DHCR's finding that the overcharge was willful.

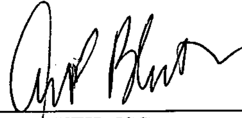
Accordingly, it is hereby

ORDERED and ADJUDGED that the petition is denied and this proceeding is dismissed with costs and disbursements to respondents; and it is further

ADJUDGED that respondent New York State Division of Housing and Community Renewal having an address at 25 Beaver Street, Room 707, New York, New York 10004, and respondent Constance Jones having an address at 247 West 116th Street, Apt. 5B, New York,

New York 10026, recover from petitioner, having an address at Sidrane and Schwartz-Sidrane LLP, 119 North Park Avenue, Suite 201, Rockville Centre, New York 11570, costs and disbursements in the amount of $________________, as taxed by the Clerk (and to be filled in by the clerk), and the respondents shall have execution therefor.

Dated: July 3, 2018
New York, New York



ARLENE P. BLUTH, JSC

HON. ARLENE P. BLUTH
J.S.C.