

101 W. 141st St. Tenants Assn. v City of New York

2019 NY Slip Op 30404(U)

February 20, 2019

Supreme Court, New York County

Docket Number: 158615/2017

Judge: Paul A. Goetz

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

101 West 141st Street Tenants Association,
by its Treasurer Ferlencie Hood,

Index No.: 158615/2017

Petitioner,

DECISION/ORDER

-against-

Mot. Seq. 001

The City of New York, acting by and through its
Department of Housing Preservation and
Development,

Respondent.

PAUL A. GOETZ, J.S.C.:

Petitioner 101 West 141st Street Tenants Association (“TA”) is a tenant organization comprised of multiple tenants residing at 101 West 141st Street, New York, New York (“Subject Premises”). Verified Petition, ¶ 2. The Subject Premises were leased to the TA from respondent, the New York City Department of Housing Preservation and Development (“HPD”) from December 1, 2001, pursuant to HPD’s Tenant Interim Lease Program (“TIL Program”). Verified Answer, ¶ 154 & Exh. A. Petitioner brings this Article 78 proceeding to challenge the HPD’s decision in its letters dated April 20, 2017, May 17, 2017, and June 20, 2017, to terminate the Subject Premises from the TIL Program, as of June 1, 2017. Petitioner alleges that HPD’s decision was arbitrary and capricious and seeks reinstatement into the TIL Program.

A. Background/Factual Allegations

Pursuant to the TIL Program, which is run by HPD, tenants of City-owned buildings can form tenant associations and apply to maintain and manage their building under an interim lease. Verified Answer, ¶ 148; Verified Petition, ¶¶ 13-15. If the tenants are successful in managing the

affairs of the building, the tenant's association can apply to become the owner of the building.

Verified Answer, ¶ 148.

In 2001, the TA entered into a Tenant Interim Lease ("Lease") with the City of New York in connection with the Subject Premises. Verified Answer, ¶ 154 & Exh. A. Under the TIL guidelines and Section 10.17 of the Lease, the TA Board was obligated to send monthly financial statements to HPD for the previous month's finances. Verified Answer, Exh. A, § 10.17 & Exh. B, ¶ 1; *see also* 28 RCNY § 34-07(e) (providing that the HPD may remove a building from the TIL Program based on its failure to comply with reporting requirements set forth in the interim lease). On April 25, 2016, HPD informed the TA that it had, *inter alia*, failed to submit completed financial reports in a timely manner, and as a result, it would be assigned to a six-month Corrective Action Plan ("CAP") starting on May 1, 2016, through November 1, 2016. Verified Answer, ¶¶ 166-67 & Exh. F. With respect to financial reporting, the last report submitted was from December 2015 and the last report that was processed was from December 2014. *Id.* The TA was provided until November 1, 2016 to provide the missing items. *Id.*

By notices dated July 27, 2016, October 7, 2016 and November 23, 2016, HPD informed the TA that it was still non-compliant with the requirements of the TIL program, including financial reporting. Verified Answer ¶¶ 168, 169, 171 & Exhs. G, H, and J. Although the TA had failed to comply with the November 1, 2016 deadline, HPD gave the TA another opportunity to "rectify all compliance issues by January 6, 2017" to avoid termination from the TIL Program. Verified Answer, Exh. J. With respect to financial reporting, the last report submitted was for January 2016 and it was incomplete. Verified Answer ¶ 173 & Exh. J. By notices dated November 28, 2016, December 13, 2016 and January 24, 2017, HPD informed the TA that the

January 2016 report was still incomplete and that new reports would not be accepted until the last report submitted was deemed complete. Verified Answer, ¶¶ 174-76 & Exhs. K, L, and M.

After failing once again to rectify all compliance issues by the extension date of January 6, 2017, on January 25, 2017, the treasurer and secretary of the TA attended a “Final Compliance Review Session” at HPD. Verified Answer, ¶ 177 & Exh. N. By letter dated February 3, 2017, HPD summarized the meeting and stated that the TA was granted a final conditional extension of the Corrective Action Plan until February 28, 2017. Verified Answer, ¶ 178 & Exh. O. The letter informed the TA that the last complete report submitted was December 2015. *Id.* Although HPD received the TA’s January 2016 report, that report was incomplete as the TA was previously notified on at least four previous occasions. Verified Answer, Exhs. J, K, L and M. Thus, the TA was not compliant because it failed to submit 12 months of completed reports. Verified Answer, Exh. O.

The February 3, 2017 letter once again afforded the TA another extension to submit missing documents. Verified Answer, Exh. O. The TA was required to submit the missing items for the January 2016 report and, once processed, submit the February 2016 report, by February 28, 2017. *Id.* Once processed, i.e. complete, the TA was required to submit the March and April 2016 report by March 31, 2017. *Id.* HPD again informed the TA that under its updated financial reporting protocol, HPD would only process one report at a time and would not process a subsequent report until all submitted reports are complete. *Id.* Additionally, “[f]ailure to submit complete reports by specified submission dates[,] [would] nullify the extension schedule and the TA [would] be terminated from the TIL program.” *Id.*, p. 3.

The TA once again failed to comply with these deadlines. Although the financial report for January 2016 was submitted on November 10, 2016, it was not processed until March 7,

2017 because the TA failed to provide the required documents, despite the HPD's repeated notifications. Verified Answer, Exh. I (January 2016 report) and Exhs. J, K, L and M (deficiency notices). The February 2016 report was also submitted late, on March 8, 2017, and was not processed until April 26, 2017, due to the TA's failure to timely file all of the necessary documentation for the report. Verified Answer, Exh. Q (February 2016 report) and Exhs. R & S (deficiency notices). Likewise, the March 2016 and the April 2016 reports were also submitted late, on April 26, 2017 and June 8, 2017 respectively, well-after the March 31, 2017 deadline. Verified Answer, Exhs. V, and W.

By letter dated April 20, 2017, HPD informed the TA that it was terminating its enrollment in the TIL Program effective June 1, 2017. Specifically, the letter stated that the TA failed to comply with the submission dates set forth in the final compliance review letter dated February 3, 2017, as the last report submitted was for February 2016 and it was incomplete. Verified Answer, ¶ 187 & Exh. S. Additionally, by letters dated May 17, 2017, HPD informed the TA that the Lease would be terminated effective June 1, 2017. Verified Answer, Exhs. X & Y. By letters dated May 29 and June 7, 2017, the TA wrote to HPD to appeal its decision to terminate the TA from the TIL Program. Verified Answer, Exhs. Z & AA. On June 20, 2017, the HPD responded to the TA's letters and informed the TA that it stood by its decision to terminate the TA from the TIL Program based on "[its] continuous pattern of non-compliance," including its failure to timely submit complete financial reports, despite HPD's numerous notices and extensions. Verified Answer, Exh. BB.

Petitioner now brings this special proceeding seeking an order reversing the HPD's decision to terminate the TA from the TIL Program and directing HPD to reinstate the TA's enrollment in the program.

B. Discussion

In an Article 78 proceeding, the reviewing court “may not substitute its judgment for that of the agency responsible for making the determination, but must ascertain only whether there is a rational basis for the decision or whether it is arbitrary and capricious” (*Flacke v. Onondaga Landfill Systems, Inc.*, 69 N.Y.2d 355, 363 [1987]). “An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts” (*Testwell, Inc. v. New York City Dept. of Bldgs.*, 80 A.D.3d 266, 276 [1st Dep’t 2010]). Once it is determined that a rational basis exists in the record for the agency’s decision, the review process is concluded. (*Matter of Pell v. Bd. of Educ.*, 34 N.Y.2d 222, 231 [1974]).

The record here shows that the TA failed to comply with the financial reporting requirements of the TIL Program. After many months of non-compliance, the TA was placed in a six-month corrective action program from May 1, 2016 to November 1, 2016. Verified Answer, Exh. F. Nevertheless, the TA did not comply with the corrective action plan requirements by the November 1, 2016 deadline. Verified Answer, Exh. J. As of November 1, 2016, the TA had only submitted an incomplete financial report for January 2016 and, thus almost a year’s worth of monthly financial reports was still outstanding. *Id.* However, instead of terminating the TA from the TIL Program, HPD gave the TA another opportunity to “rectify all compliance issues by January 6, 2017.” *Id.* When the TA failed to submit all missing items by January 6, 2017, HPD once again gave the TA another opportunity to rectify the compliance issues by providing the TA with a conditional extension to submit the missing items by February 28, 2017. Verified Answer, Exh. O. Specifically, the TA was required to complete the January 2016 report, which was first submitted on November 10, 2016, and, once processed, to submit the February 2016 report, by February 28, 2017. *Id.* If the TA complied with this requirement,

HPD would extend the deadline to submit the March and April 2016 reports until March 31, 2017. *Id.*

However, the TA still failed to comply with these deadlines. Although the January 2016 report was first submitted on November 10, 2016, it was incomplete. Verified Answer, Exh. I. HPD repeatedly notified the TA of this problem and yet it failed to timely rectify the issue. Verified Answer, Exhs. J-M. Thus, contrary to petitioner's assertion, the fact that the January 2016 report was not processed until March 7, 2018, was due to the TA's failure to submit the missing documents requested by HPD, and not due to the HPD's failure to process the report after it was first submitted on November 10, 2016. The TA also failed to timely submit the February 2016 report. Verified Answer, Exh. Q. The report was submitted on March 8, 2017, after the February 28, 2017 deadline. *Id.* Moreover, the report was incomplete and HPD notified the TA of this issue by letters dated March 15 and April 20, 2017. Verified Answer, Exhs. R & S. The TA failed to rectify this problem until after it received the April 20 letter and as a result, HPD did not process the report until April 26, 2017. Verified Answer, Exh. Q. Thus, the delay in processing the February 2016 report was caused by the TA's failure to timely submit a complete report, rather than the HPD's actions. Under these circumstances and petitioner's continued non-compliance with the financial reporting requirements of the TIL Program despite many opportunities to become compliant, HPD's determination to remove the Subject Premises from the TIL Program was reasonable and rational. *See 151 Est 140th Street Tenant Ass'n v. New York*, 161 A.D.2d 160, 163 (1st Dep't 1990); *Matter of 170 W.130th Street Tenants Ass'n v. Torres-Springer*, 2018 N.Y. Slip Op. 31105(U) (N.Y. Sup. Ct. June 4, 2018); *Matter of 264 W.117th Street Tenant Ass'n v. New York City Dept. of Hous. Preserv. & Dev.*, 59 Misc.3d 1227(A) (N.Y. Sup. Ct. May 4, 2018).

The TA also alleges that HPD's decision was ineffective because it did not properly notify the TA of its termination from the TIL Program. Petitioner asserts that the termination notice dated April 20, 2017 was defective because it was not served either personally or by registered or certified mail as required by the Lease. However, HPD's subsequent notice, dated May 17, 2017, was the effective notice of termination of the Lease and it was properly served by certified mail to the tenants of the building. Verified Answer, Exh. X. There can be no dispute that the TA received this notice as the TA attempted to appeal the decision in its May 29, 2017 letter to HPD. Verified Answer, Exh. Z. Thus, the fact that the May 17 notice provided the tenants with less than a 30-day notice of termination does not render the notice a nullity but is rather a procedural defect, which, at most, allowed the Subject Premises to remain in the TIL Program for an additional 17 days (*Cf. Kahn v. New York City Dep't of Educ.*, 79 A.D.3d 521, 522 [1st Dep't 2010] [holding that although the notice of termination was defective because it did not provide petitioner with the requisite 60 days prior notice, the defect was procedural and did not render the notice ineffective], *affirmed on appeal*, 18 N.Y.3d 457 [2012]).

Accordingly, it is

ORDERED and ADJUDGED that the petition is denied and the proceeding is dismissed and the Clerk is directed to enter judgment accordingly.

Dated: February 20, 2019


HON. PAUL A. GOETZ