Matter of Fairley v State Of New York Div. Of Hous. And Community Renewal
2019 NY Slip Op 30649(U)
March 8, 2019
Supreme Court, Kings County
Docket Number: 515029/2018
Judge: Loren Baily-Schiffman

At an IAS Part 65 of the Supreme Court of the State of New York, County of Kings at a Courthouse Located at 360 Adams Street, Brooklyn, New York on the 8th day of March, 2019.

PRESENT: HON. LOREN BAILY-SCHIFFMAN
JUSTICE

In the Matter of the Application of

GWENDOLYN FAIRLEY,
Petitioner,

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

- against -

STATE OF NEW YORK DIVISION OF HOUSING AND COMMUNITY RENEWAL,
Respondent.

Index No.: 515029/2018

Motion Seq. # 1

DECISION & ORDER

As required by CPLR 2219(a), the following papers were considered in the review of this motion:

	PAPERS NUMBERED
Notice Petition and Verified Petition and Exhibits	1
Memorandum of Law in Support of Verified Petition	2
Verified Answer and Exhibits	3
Memorandum of Law in Opposition	4
Memorandum of Law in Reply	5
Affirmation in Reply	6

Upon the foregoing papers, Gwendolyn Fairley ("Petitioner") move this Court for an Order pursuant to CPLR § 7804 (i) annulling the Order and Opinion of the State of New York Division of Housing and Community Renewal's ("Respondent") Deputy Commissioner denying the Petition for Administrative Review and annulling the Rent Administrator's Order Denying Petitioner's Complaint of Overcharge; (ii) granting Petitioner a money judgment for the amount of rent overcharges and treble damages; or in the alternative; (iii) remanding the case to Respondent for discovery and further proceedings, together with the costs and disbursements of this proceeding; and (iv) granting such other and further relief as this Court deems just and proper.

Background

Petitioner was a tenant at 371 Irving Avenue, Apt. 3R Brooklyn, NY 11237 ("subject apartment") since about October 2007. On or about February 22, 2017 Jane Taylor entered into a written lease with Elizabeth Green, the then landlord, to rent the subject apartment for two years at the preferential rate of $1000 per month. The subject apartment was and is currently rent stabilized, but the lease offered to Jane Taylor was not a rent stabilized lease and lacked a vacancy lease rider as required under the circumstances.[1] On or about September 2007, Petitioner moved into the subject apartment as Taylor's roommate and on October 16, 2007, Petitioner signed a lease as co-tenant with Taylor. Thereafter, Taylor vacated the subject apartment and Petitioner remained there paying the rent directly to Green. On February 17, 2008 Petitioner executed a new lease at a preferential rent of $1100 which was also a non-stabilized lease and lacked a rent stabilization rider. On or about November 25, 2008, Petitioner learned that the subject apartment was rent stabilized when Green sent her a Notice of Renewal Form issued under the Rent Stabilization Code.

Thereafter, Green incrementally raised the rent. All the rent increases were within the regulated rates. In November 2015, Silvershore Properties 1002 LLC ("Silvershore") purchased the building at 371 Irving Avenue, Brooklyn, NY 11237 and is the current landlord of the subject apartment. Petitioner paid her rent to Silvershore

Petitioner made a *pro se* Rent Overcharge Complaint for the subject apartment to Respondent, which was received on January 3, 2017, alleging that because the October 2007 rent

[1] The subject apartment was vacant from June 2, 2004 until Taylor rented it at a significantly higher rate.

agreement did not comply with rent stabilization guidelines, all the incremental rent increases since then violated the Rent Stabilization Code. By Order dated March 16, 2018, the DHCR Rent Administrator denied the Petitioner's Overcharge Complaint and ruled that all rent adjustments subsequent to the base date, January 3, 2013, the date four years prior to the filing of the complaint, had been lawful. Petitioner filed a Petition for Administrative Review ("PAR") with the DHCR Deputy Commissioner. In an Order and Opinion dated May 23, 2018, the Deputy Commissioner denied the PAR and affirmed the Rent Administrator's Order, holding that all the allegedly illegal rent adjustments occurred before the base date. Additionally, the Deputy Commissioner found that no exception to the statutory base date applied in this case. In the instant proceeding, Petitioner again maintains that because the initial rent she was charged for the subject apartment violated the Rent Stabilization Code, she is entitled receive the amount she was overcharged from the inception of her tenancy.

Discussion

Petitioner's challenge is grounded on the assertion that the DHCR administrative determination was arbitrary and capricious, lacked a rational basis in the administrative record, and lacked a rational basis in law. Specifically, Petitioner claims she made a prima facie showing of fraud by the predecessor landlord and accordingly rent overcharges from before the base date can still be awarded.

It is well settled that any individual subject to an administrative decision may challenge such determination pursuant to Article 78 of the CPLR. However, this Court cannot vacate an administrative decision if the decision was rational and not arbitrary and capricious. ***Pell v. Board***

of Education of Union Free School, 34 NY 2d 222 (1974). If the reviewing court finds that the agency determination has a rational basis, the determination must be sustained. ***Matter of Navaretta v Town of Oyster Bay, 72 AD3d 823 (2nd Dept 2010).*** Additionally, an agency's interpretation of the statutes and regulations that it administers is entitled to deference and must be upheld if reasonable. ***508 Realty Assocs., LLC v New York State Div. of Hous. & Cmty. Renewal, 61 AD3d 753, 755 (2nd Dept 2009).*** Under the Rent Stabilization Code's regulatory scheme, "[a] complaint... must be filed with the DHCR within four years of the first overcharge alleged, and no determination of an overcharge... may be based upon an overcharge having occurred more than four years before the complaint is filed." **RSC 2526.1(a).** However, certain exceptions to this four-year rule apply. For instance, the Court of Appeals held that where there is a "colorable claim of fraud" and there "is evidence of a landlord's fraudulent deregulation scheme to remove an apartment from the protections of rent stabilization," DHCR should not rigidly apply the four-year rule. ***Grimm v State Div. of Hous. & Cmty. Renewal Office of Rent Admin., 15 N.Y.3d 358, 367 (2010).*** However, generally, an increase in the rent alone will not be sufficient to establish an exception to the four-year rule. ***Id.***

In the present case, the Deputy Commissioner's determination was not arbitrary and capricious and was rationally supported by the record and the law. The Deputy Commissioner found that based on the record, there was no evidence of a scheme to deregulate the subject apartment. Additionally, the Deputy Commissioner's legal analysis falls squarely within the Court of Appeals' interpretation of the four-year rule that a rent increase alone, without further evidence, is insufficient evidence of a fraudulent scheme to deregulate an apartment. As

Petitioner relies solely on the increase in rent to support her fraud claim, this claim must be rejected. Accordingly, IT IS HEREBY:

ORDERED that Petitioner's motion is denied in its entirety.

This is the Decision and Order of the Court.

ENTER

LOREN BAILY-SCHIFFMAN
JSC

HON. LOREN BAILY-SCHIFFMAN

KINGS COUNTY CLERK
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