Matter of Malone v New York State Div. of Hous. and Community Renewal
2019 NY Slip Op 31169(U)
April 25, 2019
Supreme Court, New York County
Docket Number: 150814/2018
Judge: John J. Kelley
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOHN J. KELLEY **PART** IAS MOTION 56EFM

Justice

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INDEX NO. 150814/2018

In the Matter of

MOTION DATE 02/07/2018

GEORGIA MALONE,

MOTION SEQ. NO. 001

Petitioner,

- v -

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL,

DECISION, ORDER, and JUDGMENT

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 73, 74

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

In this CPLR article 78 proceeding, the petitioner seeks judicial review of a New York State Division of Housing and Community Renewal (DHCR) determination denying her Petition for Administrative Review (PAR) of a Rent Administrator's determination that she was properly offered a lease at market-rate rental, rather than at the rent-stabilized level. The DHCR answered the petition and filed the administrative record. The petition is denied, and the proceeding is dismissed.

In its denial of the PAR, the DHCR noted that the petitioner signed leases for two apartments in the same building---one in 1995 and one in 2009---both of which had been deregulated in 1995. The DHCR rejected the petitioner's assertion that the deregulation of the two apartments was tainted by fraud. Such a finding would otherwise allow the DHCR to look back to the tenancies that existed when the owner made the allegedly fraudulent filings with the agency and permit the DHCR to ascertain the proper base rent and any annual or biennial increases permitted by rent stabilization guidelines. Since the DHCR found no indicia of fraud, it only looked back four years prior to the time the petitioner filed her administrative claim in 2015,

and concluded that the renewal leases offered to her in 2011 and thereafter were properly set at market rates.

Luxury deregulation is triggered either when (a) the unit became vacant and the legal regulated rent thereupon exceeded $2,000.00 per month ($2,500.00 after June 24, 2011; see L 2011, ch 97) (high-rent vacancy deregulation), or (b) the legal regulated monthly rent of the unit exceeded $2,000.00 ($2,500.00 after June 24, 2011) and the tenants' annual household income exceeded $175,000.00 for two consecutive years (high-rent/high-income deregulation) (see Admin. Code of City of NY §§ 26-403.1, 26-504.1). High-rent vacancy deregulation is warranted where, after a stabilized apartment becomes vacant, its legal regulated rent exceeds $2,000.00 ($2,500.00 after June 24, 2011), inclusive of vacancy increase allowances and increases permitted for landlord improvements (*see Altman v 285 W. Fourth, LLC*, 31 NY3d 178 [2018]).

The registered rents on file with the DHCR for the years immediately prior to the commencement of the petitioner's tenancies met that threshold. A tenant may only overcome the presumption created by the registered rent by showing that any increases up to or over the deregulation threshold were secured as part of a fraudulent scheme to remove the unit from regulation, usually by fraudulent reporting of the apartment's regulatory status or existing legal rent level (*see Matter of Grimm v New York State Div. of Hous. & Community Renewal*, 15 NY3d 358 [2010]; *Altschuler v Jobman 478/480, LLC*, 135 AD3d 439 [1st Dept 2016]; 9 NYCRR 2526.1[g]).

Where the DHCR rationally determines that there was no fraud involved in registering prior rents for particular apartment units, the court must confirm its determination (*see Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal*, 164 AD3d 420, 423-424 [1st Dept 2018]). Here, the DHCR rationally concluded that the petitioner's two apartments are not subject to the Rent Stabilization Law (Admin. Code of City of NY §§ 26-501-26-520) or Rent Stabilization Code (9 NYCRR 2520.1-2531.9), and that, as such, the owner did not overcharge her for rent from the commencement of her tenancies in 1995 and 2009,

respectively. Specifically, the DHCR rationally determined that the two apartments were properly and legally deregulated in 1995. In a detailed January 5, 2018, decision denying the petitioner's PAR, the DHCR explained why there were no indicia of fraud, why luxury deregulation of the apartments properly occurred in 1995, one year after the deregulation law went into effect, and why the increase in the rent for Apartment No. 2 at that time was properly attributable, in part, to work undertaken to convert that apartment from a duplex into a single-floor unit.

With respect to Apartment No. 1, the administrative record reflects that the owner registered Fatima Finamore as the tenant of record in 1992 at a rent of $2,000 per month. This registration was filed contemporaneously with that tenancy and matched the one-year vacancy lease contained in the administrative record. The fact that the owner incorrectly reported that Finamore had a two-year lease in the 1993 registration is of no moment because the rent did not increase that year in any event. In addition, the fact that the owner registered Finamore as rent-stabilized that year is supported by the fact that high-rent vacancy deregulation was not available until January 1, 1994; hence, there was a rational basis upon which the DHCR could conclude that the regulated status of the unit in 1993 did not create an inference that it would remain regulated as of 1994. Moreover, the record reveals that the owner registered Nanjoo Joung as the tenant of record in 1995, that this registration was filed contemporaneously with his tenancy, and that the description of the tenancy matched the lease in the administrative record. The rent for Joung's lease was $3,000 per month. In 1995, the prior rental rates for 1992 through 1994, qualified the apartment for high-rent vacancy deregulation. The fact that the owner erroneously registered Joung as rent-stabilized does not, by itself, confer such status on the apartment.

The DHCR rationally concluded that the owner's failure to register Apartment No. 1 from 1996 to 2011 was not fraudulent in light of the fact that the subject apartment was deregulated in 1995. The owner's 2012 registration of that apartment as exempt from regulation is irrelevant

to the issue of fraud because the rent level had exceeded the deregulation threshold at least as early 1995 and because deregulation is based on the actual rent level rather than the contents of an exit registration filing. Hence, the failure to file an exit registration does not invalidate the deregulation.

With respect to Apartment No. 2, the administrative record indicates that the owner registered the apartment as rent stabilized in 1992 and 1993 at a rent of $1,100 per month. Both of those registrations were filed contemporaneously with the tenancies at the time. Following a vacancy registration in 1994, the owner registered Joung as the tenant of record beginning in May 1994. That registration was filed contemporaneously with Joung's tenancy and matches the rent ledger included in the administrative record. The rent as of May 1994 was $2,500 per month, a rate that qualified the apartment for high-rent vacancy deregulation. As with the owner's registration of Finamore's lease to Apartment No. 1, the fact that the owner registered Joung's lease to Apartment No. 2 as rent-stabilized does not confer such status on the apartment.

As with Apartment No. 1, the DHCR rationally concluded that the owner's failure to register Apartment No. 2 from 1996 to 2011 was not fraudulent inasmuch as the subject apartment was deregulated in 1994 and 1995 while Joung's tenancy was in effect. It also rationally concluded that the owner's registration of the apartment as exempt in 2012 does not suggest the existence of a fraudulent scheme to deregulate because the rent level exceeded the deregulation threshold as early as 1994. Moreover, the exit registration for Apartment No. 2 referable to the tenancy immediately before the petitioner's was filed in July 2012, more than three years before petitioner first contacted the DHCR about the apartment. The owner's rent records, dating back to 1994, supported the DHCR's conclusion that the rent for Apartment No. 2 exceeded the threshold for high-rent deregulation prior to the petitioner's tenancy and that petitioner was the second tenant after 1995 who paid more than the 1995 deregulation threshold. Given that the subject apartment was deregulated long before the petitioner's

tenancy, there is support in the record for the DHCR's determination that the market-rate lease offered to the petitioner was not in furtherance of a fraudulent scheme to deregulate the apartment.

Nor was it irrational for the DHCR to conclude that 1994 increase in the rental rate of Apartment No. 2 from $1,100 to $2,500 was insufficient, by itself, to support the petitioner's claim of fraud. At that time, the owner was permitted both a vacancy increase in rent (*see* Admin. Code of City of N.Y. § 26-511[c][5-a][i]), and an increase for individual apartment improvements (IAI) (*see* 9 NYCRR 2522.4[a][1]; *see also* 9 NYCRR 2522.4 [a] [2]; DHCR Policy Statement 90-10 [Jun. 26, 1990]; *Matter of Rockaway One Co., LLC v Wiggins*, 35 AD3d 36 [2d Dept 2006]). Given the petitioner's long delay in challenging these increases, the DHCR rationally concluded that the petitioner cannot now claim that the owner had insufficient records of the work performed to convert Apartment No. 2 from a duplex into a single-floor apartment. The petitioner has never denied that the apartment was converted from a duplex by, at the very minimum, the sealing off a connecting staircase. Moreover, there was sufficient evidence in the administrative record, including an itemized work proposal involving more than just the sealing off of the staircase, to support the DHCR's conclusion that IAIs justified the 1994 increase.

In addition, the building had been converted into cooperative ownership for a period of time, but was converted back into a regular rental building. Hence, it was not irrational for the DHCR to conclude that the owner's fraudulent intent was not the basis for its erroneous characterization of the subject apartments as coops in several registration statements, or that they were hence exempt from rent regulation on that ground.

The court thus concludes that the DHCR rationally determined that the landlord was not involved in a fraudulent scheme to take the petitioner's apartments out of regulation (*see Matter of Grimm v State of N.Y. Div. of Hous. & Community Renewal Off. of Rent Admin.*, 15 NY3d at 367; *Stulz v 305 Riverside Corp.*, 150 AD3d 558 [1st Dept. 2017]; *Todres v W7879, LLC*, 137 AD3d 597, 598 [1st Dept 2016]), that the agency thus could only look back four years to 2011 to

ascertain whether there were rent overcharges (*see Borden v 400 E. 55th St. Assoc., L.P.*, 24 NY3d 382, 398 [2014]; *Todres v W7879, LLC*, 137 AD3d at 598), and that there were no rent overcharges from 2011 forward. The DHCR's determination is supported by the record, is not arbitrary and capricious, and is not affected by error of law.

Accordingly, it is

ORDERED that the petition is denied; and it is,

ADJUDGED that the proceeding is dismissed.

This constitutes the Decision, Order, and Judgment of the court.

4/25/2019
DATE

JOHN J. KELLEY, J.S.C.
HON. JOHN J. KELLEY
J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE