Estates NY Real Estate Servs. LLC v City of New York
2019 NY Slip Op 31598(U)
June 3, 2019
Supreme Court, New York County
Docket Number: 155991/2018
Judge: III, Julio Rodriguez
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JULIO RODRIGUEZ, III** **PART** **IAS MOTION 62EFM**

Justice

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ESTATES NY REAL ESTATE SERVICES LLC,

Plaintiff,

- v -

THE CITY OF NEW YORK, NEW YORK CITY COMMISSION ON HUMAN RIGHTS

Defendant.

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INDEX NO. 155991/2018

MOTION DATE 04/25/2019

MOTION SEQ. NO. 003

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 003) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80

were read on this motion to/for DISMISSAL.

Plaintiff commenced this declaratory judgment action seeking an order declaring that the "source of income" provisions of the New York City Human Rights Law ("NYCHRL") do not apply to the New York City Human Resources Administration ("HRA") security deposit voucher program; declaring that the Urstadt Law prohibits the HRA security deposit voucher program; declaring that Social Services Law ("SSL") 143-c prohibits the HRA security deposit voucher program; enjoining defendants City of New York ("City") and New York City Commission on Human Rights ("NYCCHR") from ordering plaintiff to accept HRA security deposit vouchers; and, enjoining defendant City and NYCCHR from imposing any penalty based on plaintiff's refusal to accept HRA security deposit vouchers. Plaintiff also seeks costs and disbursements.

Defendants City and NYCCHR now move to dismiss this action pursuant to CPLR 3211 (a) (7) for failure to state a cause of action. Defendants contend plaintiff's complaint should be dismissed because 1) plaintiff has not exhausted its administrative remedies in the pending NYCCHR complaint ("Latonya Walters v. LeFrak Organization, Inc., et al."), 2) the "source of income" provisions of the NYCHRL indeed apply to the HRA security deposit voucher program, and 3) the HRA security deposit voucher program is not prohibited by the Urstadt Law or SSL 143-c.

Plaintiff argues that to exhaust the administrative procedure would be futile and that they are excepted from doing so where the dispute is one solely of law.

Therefore, the issues before this court are: first, as a threshold matter, whether plaintiff is required to exhaust administrative remedies before seeking review of NYCCHR's administrative enforcement actions; second, whether a landlord or management company's refusal to accept HRA security deposit vouchers is discrimination based upon "lawful source of income" under

the NYCHRL; and, third, whether the HRA security deposit voucher program is prohibited by the Urstadt Law and SSL 143-c.

Facts

HRA is an administrative unit of the NYC Department of Social Services, which is a local department of the New York State Department of Social Services (SSL 56[1]; *see* 18 NYCRR 400.1; NYC Charter § 603). Pursuant to SSL 62, the NYC Department of Social Services "shall be responsible for the assistance and care of any person who resides or is found in its territory and who is in need of public assistance and care which he is unable to provide for himself."

HRA has a practice of issuing vouchers for security deposits (Sprayregen aff., exhibit C at bates no. D025-26). Plaintiff has a "business policy to require a cash security deposit from all prospective tenants, whether or not subsidized, with respect to all apartments" (defendants' exhibit M, at ¶ 22). An administrative NYCCHR complaint was filed against plaintiff, "Latonya Walters v. LeFrak Organization, Inc., et al." (Sprayregen aff., exhibit L), which alleged that plaintiff's policy violated NYCHRL 8-107 (5) (a) (1) (*id.*, at 7). As a result of the contemplated administrative proceeding, plaintiff brought this declaratory judgment action seeking an order declaring that the NYCHRL does not apply to the security deposit voucher program or that the program is otherwise prohibited by state law.

Exhaustion of Administrative Remedies

The Court of Appeals addressed the issue of exhaustion of administrative remedies in *Lehigh Portland Cement Co. v New York State Dept. of Environmental Conservation*, 87 NY2d 136 (1995), stating:

> "Generally, 'one who objects to the act of an administrative agency must exhaust available administrative remedies before being permitted to litigate in a court of law' (*Watergate II Apts. v. Buffalo Sewer Auth.*, 46 N.Y.2d 52, 57, 412 N.Y.S.2d 821, 385 N.E.2d 560). However, exhaustion of administrative remedies is not required where an agency's action is challenged as beyond its grant of power or when resort to an administrative remedy would be futile (*Watergate, supra,* at 57, 412 N.Y.S.2d 821, 385 N.E.2d 560). Although a court may dismiss a declaratory judgment action in a proper exercise of discretion, the mere existence of other adequate remedies does not mandate dismissal (CPLR 3001; *Matter of Morgenthau v. Erlbaum,* 59 N.Y.2d 143, 148, 464 N.Y.S.2d 392, 451 N.E.2d 150)" (*Lehigh*, 87 NY2d at 140).

[1] "The city of New York shall have all the powers and duties of a social services district insofar as consistent with the provisions of the special and local laws relating to such city. The officers thereof charged with the administration of public assistance and care shall have additional powers and duties of a commissioner of social services not inconsistent with the laws relating to said city" (Social Services Law 56).

Moreover, an objector to an administrative agency's act need not exhaust available remedies when "its pursuit would cause irreparable injury" (*Coleman v Daines*, 79 AD3d 554, 560 [1st Dept 2010]). Finally, "[e]xhaustion is also not required where only an issue of law is involved, or where the issue involved is purely the construction of the relevant statutory and regulatory framework" (*id.* [internal citations and quotations omitted]).

Here, there is a pending NYCCHR complaint ("Latonya Walter v. LeFrak Organization, Inc., et al.") dated June 18, 2018, which includes plaintiff Estates NYC Real Estate Services LLC as a respondent (Sprayregen aff., exhibit L).[2] Plaintiff (amongst other respondents in the NYCCHR proceeding) answered the administrative complaint via its amended verified answer dated September 27, 2018 (Sprayregen aff., exhibit M). In its amended administrative answer, plaintiff denied the allegations of the administrative complaint (*id.*). The amended administrative answer also states affirmative defenses challenging the applicability of the charged NYCHRL provisions, describes the instant Supreme Court action, and sets out the challenges to legality argued in plaintiff's complaint herein (*id.*).

Plaintiff urges that there are no disputes of fact.[3] Although plaintiff sets forth a general denial in its administrative answer (defendants' exhibit M, at ¶¶ 1-3), plaintiff does admit to having a "business policy to require a cash security deposit from all prospective tenants, whether or not subsidized, with respect to all apartments, whether or not rent regulated" (*id.*, at ¶ 22).[4] In light of this admission, plaintiff contends that to continue with the administrative proceeding is futile because NYCCHR has held in at least one previous decision ("Agosto v. American Construction, et al." [plaintiff's exhibit L]) that "security vouchers constitute a 'lawful source of income' under the NYCHRL" (*id.*, at 5).

This court agrees. Moreover, in analyzing whether plaintiff's resort to administrative remedies is in fact futile, it is significant that the final determination in the administrative proceeding would be made by the Commission (NYC Admin. Code 8-120 ["...conclusions of law and relief *recommended* by an administrative law judge..."] [emphasis added]); *cf. Goddard v City University of New York [CUNY], Hunter College*, 129 AD3d 583 [1st Dept 2015] [where proceeding could result in referral to jointly-chosen panel]). As noted in "Agosto v. American Construction, et al." (plaintiff's exhibit L), the Commission, in rendering a decision and order on an administrative complaint, "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [Administrative Law Judge]" (*id.*, at 3). There is no reason to believe that NYCCHR will, in the pending proceeding, change its interpretation of the relevant law.

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[2] The fact that plaintiff filed the instant action on June 26, 2018—one day before plaintiff received the NYCCHR administrative complaint for "Latonya Walters v. LeFrak Organization, Inc., et al." (Turkel aff. at ¶¶ 23-25)—does not obviate the general requirement to exhaust administrative remedies. That plaintiff sought to 'head off' the filing of an administrative complaint is significant only insofar as the filing of the instant declaratory judgment complaint coincided with either 1) a fundamental absence of a justiciable controversy, or 2) an administrative action—contemplated by all the parties—that was "pending" in substance. For the sake of economy, this court accepts the latter.

[3] "There are no disputed issues of fact, as Estates admits that it will not accept an HRA Security Voucher" (plaintiff's memorandum of law in opposition at pg. 5).

[4] "That was, and remains, [plaintiff Estates NY Real Estate Services LLC's] policy" (defendants' exhibit M at ¶ 22).

Plaintiff has admitted that it refuses the HRA security deposit vouchers, and the dispute herein is therefore one purely of law. Moreover, NYCCHR is the final authority in the pending administrative proceeding, and—combined with NYCCHR's definite positions on the relevant legal issues—resort to the administrative proceeding would be futile. For the foregoing, this court finds that the present circumstances constitute an exception to the general rule that administrative remedies must be exhausted before challenging administrative acts.

Refusal to Accept Security Deposit Voucher as Discrimination

Plaintiff contends in this declaratory judgment action that its policy to accept only cash for apartment rental security deposits, and accordingly to refuse HRA security deposit vouchers, does not constitute discrimination under the NYCHRL. Defendants' position is that such a policy is discriminatory under New York City Admin. Code 8-107 (5) (a) (1).

The NYCHRL "shall be construed liberally for the accomplishment of [its] uniquely broad and remedial purposes" (NYC Admin. Code. 8-130 [a]). The Court of Appeals has acknowledged that "all provisions of the NYCHRL must be construed 'broadly in favor of discrimination [complainants], to the extent that such a construction is reasonably possible" (*Chauca v Abraham*, 30 NY3d 325 [2017] citing *Albunio v City of New York*, 16 NY3d 472, 477-78 [2011]). Indeed,

> "it is beyond dispute that the City Human Rights Law now 'explicitly requires an independent liberal construction analysis *in all circumstances*,' an analysis that 'must be targeted to understanding and fulfilling what the statute characterizes as the City HRL's 'uniquely broad and remedial purposes,' which go beyond those of counterpart State or federal civil rights laws' (*Williams v. New York City Hous. Auth.*, 61 A.D.3d 62, 66, 872 N.Y.S.2d 27 [2009], *lv. denied* 13 N.Y.3d 702 [2009])" (*Bennett v Health Mgt. Sys., Inc.*, 92 AD3d 29, 34 [1st Dept 2011] [emphasis in original]).

Under this construction, this court is to evaluate whether the NYCHRL's prohibition of discrimination based upon "lawful source of income" (NYC Admin. 8-107 [5] [a] [1]) applies to a landlord or management company's refusal to accept HRA security deposit vouchers.

As a starting point, NYC Admin. Code 8-107 (5) (a) (1) prohibits discrimination based upon, amongst other things, "lawful source of income". Such prohibition includes a prospective tenant's use of a government assistance voucher (*Tapia v Successful Mgt. Corp.*, 79 AD3d 422 [1st Dept 2010]; *see Alston v Starrett City, Inc.*, 161 AD3d 37 [1st Dept 2018]). Plaintiff contends, however, that there is a substantive distinction in this context between "income" and a "security deposit".

NYC Admin. Code 8-102 (25) states: "[t]he term 'lawful source of income' shall include income derived from social security, or any form of federal, state or local public assistance or housing assistance including section 8 vouchers." Because 1) the NYCHRL is to be liberally construed, 2) the provision at issue employs an inclusive, non-exhaustive definition (*id.* ["shall

include"]; *cf. Comm'n on Human Rights & Opportunities ex rel. Arnold v. Forvil*, 302 Conn. 263 [2011] [5]), and 3) HRA security deposit vouchers are plainly a source of housing assistance, the only issue is whether HRA security deposit vouchers fairly fit within the plain language of the term itself— "lawful source of income".

The critical distinction, plaintiff would have this court believe, is between the nature of "income" and a "security deposit" or between "rent" and a "security deposit". These distinctions, ultimately, do not compel the result sought by plaintiff. "Income" is defined by Black's Law Dictionary as "[t]he money or other form of payment that one receives, usu[ally] periodically, from employment, business, investments, royalties, gifts, and the like" (10th ed 2014). In turn, "payment" is defined as "[p]erformance of an obligation by the delivery of money or some other valuable thing accepted in partial or full discharge of the obligation.... The money or other valuable thing so delivered in satisfaction of an obligation." (*id.*). Consequently, income can be "some other valuable thing" (*see e.g.*, *Matter of Perel v Gonzalez*, 105 AD3d 552 [1st Dept 2013]). Here, the HRA security deposit voucher, "guarantees that HRA will pay up to the equivalent of one month's rent if it is verified that the tenant who occupied the apartment failed to pay his/her rent and/or caused damages to it" (Sprayregen aff., exhibit C at bates no. D025-26). As a thing of value provided on behalf of the prospective tenant, the HRA security deposit voucher therefore qualifies as a "lawful source of income" to the tenant.

Moreover, the legislative intent of Local Law 10 of 2008, which incorporated "lawful source of income" in the NYCHRL, supports this conclusion. The New York City Council has declared that the NYCHRL is to be "construed 'liberally for the accomplishment of [its] uniquely broad and remedial purposes'" (*Short v Manhattan Apts, Inc.*, 916 F Supp 2d at 375, 398 [SD NY 2012] quoting NYC Admin. Code 8-130), which include ensuring that individuals are able to actually secure housing without suffering discrimination (*see* Sprayregen aff., exhibits O and P).[6] Accordingly, faithful construction of the NYCHRL prohibition on discrimination based upon "lawful source of income" requires inclusion of the HRA security deposit voucher.

The HRA security deposit voucher provides value to the tenant by guaranteeing, on behalf of tenants, payments to landlords of up to the equivalent of one month's rent as recompense for failure to pay rent or damage to an apartment. This court therefore finds that the HRA security deposit voucher is a "lawful source of income" for purposes of NY Admin. Code 8-107 (5) (a) (1).

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[5] In *Comm'n on Human Rights & Opportunities ex rel. Arnold v. Forvil,* 302 Conn. 263 (2011) the Connecticut Supreme Court held that a landlord's policy of refusing state security guarantee vouchers violated the Connecticut law prohibiting discrimination based upon "lawful source of income". The Connecticut Supreme Court concluded that such a policy fell under the discrimination prohibitions of the applicable law, which defined "lawful source of income" stated as follows: "[l]awful source of income" *means* income derived from Social Security, supplemental security income, housing assistance, child support, alimony or public or state-administered general assistance" (Conn. Gen. Stat. 46a-63 [3] [emphasis added]).

[6] *See e.g.,* Sprayregen aff., exhibit O at 4 ("...the Section 8 voucher is only as good as the ability of the tenant to actually use that voucher in a neighborhood, in a building, and that's why we wanted to look at both the administration of the program and the discrimination that we think might be hindering many tenants' capacity.").

HRA Security Deposit Vouchers and the Urstadt Law

Plaintiff next contends that the Urstadt Law proscribes the HRA security deposit voucher program. The Urstadt Law (McKinney's Uncons. Laws of N.Y. § 8605) was originally passed in 1971 and provides, in relevant part:

> "No housing accommodations presently subject to regulation and control pursuant to local laws or ordinances adopted or amended under authority of this subdivision shall hereafter be by local law or ordinance or by rule or regulation which has not been theretofore approved by the state commissioner of housing and community renewal subjected to *more stringent or restrictive provisions of regulation and control than those presently in effect*" (*id.* [emphasis added]).

The Urstadt Law "was intended to prohibit attempts, whether by local law or regulation, to expand the set of buildings subject to rent control or stabilization" (*Tapia v Successful Mgt. Corp.*, 79 AD3d 422 [1st Dept 2010] citing *City of New York v. New York State Div. of Hous. & Community Renewal,* 97 N.Y.2d 216, 227 [2001]). "In determining whether a local law imposes more stringent or restrictive control over a housing unit than presently existed, the 'substance rather than the form of the local law is determinative'" (*Alston v Starrett City, Inc.*, 161 AD3d 37, 42 [1st Dept 2018] citing *Mayer v City Rent Agency*, 46 NY2d 139, 149 [1978]).

In *Tapia* (*supra*), the First Department held that requiring the acceptance of Section 8 rent vouchers "will have no impact in expanding the buildings subject to rent stabilization law or expanding regulation under the rent laws, and thus does not offend the objective of the Urstadt Law" (*Tapia*, 79 AD3d at 425).

The scope of the Urstadt Law is exhibited by the First Department's holding in *Alston* (161 AD3d 37), where plaintiff sought an injunction directing the defendant apartment complex-owner to accept her application and tenancy under the City Living in Communities ("LINC") program. Plaintiff sought an injunction on the basis that to refuse her application on the basis of participation in LINC, which "provide[d] rental supplements or vouchers, usually paid by HRA directly to the landlord" (*id.*, at 40), amounted to discrimination based upon "lawful source of income" (NYC Admin. Code 8-107 [5] [a] [1]). The First Department found issue, however, in the content of LINC's mandatory lease riders, which "compel[led] a landlord to renew a lease for up to five years at a minimum increase specifically tied to other City rent regulatory programs to which the housing unit is not presently subject" (*Alston*, 161 AD3d at 42). The First Department then distinguished this conclusion from *Tapia* (79 AD3d 422), noting, "[s]ignificantly, the defendants in *Tapia* submitted no evidence that acceptance of Section 8 vouchers would 'limit the rent increases that they could [otherwise] obtain'" (*Alston*, 161 AD3d at 215).

This court therefore finds that, here, in the absence of any allegation that the HRA security deposit voucher program limits plaintiff's ability to raise its rent, the program does not offend the objective of the Urstadt Law. In other words, the Urstadt Law does not prohibit the HRA security deposit voucher program because the HRA security deposit voucher program would not impact the number of units subject to rent stabilization law or expand regulation under the rent laws in substance. The genuine effect—that is, a difference in the administrative

procedure by which the same amount of security funds makes its way to a landlord's account in the event of non-payment of rent or damage to an apartment—is consistent and permitted under the Urstadt Law.

Plaintiff's additional contentions regarding Rent Stabilization Code ("RSC") 2525.4 and General Obligations Law ("GOL") 7-101 are similarly unavailing, as RSC 2525.4 operates only as maximum limit on the amount a landlord can demand for security, and GOL 7-101 sets forth obligations of a landlord in instances where a landlord holds security funds.

Social Services Law 143-c

Finally, plaintiff objects to the HRA security deposit voucher program on the basis that it is prohibited by SSL 143-c. Plaintiff's position, in essence, is that the interaction of the NYCHRL with the HRA security voucher program violates SSL 143-c or, otherwise, that HRA lacks the legal authority to implement the program.

SSL 143-c provides, in relevant part, as follows:

> "1. Whenever a landlord requires that he be secured against non-payment of rent or for damages as a condition to renting a housing accommodation to a recipient of public assistance, a local social services official may in accordance with the regulations of the department secure the landlord by either of the following means at the option of the local social services official:
>
> (a) By means of an appropriate agreement between the landlord and the social services official, or
>
> (b) By depositing money in an escrow account, not under the control of the landlord or his agent, subject to the terms and conditions of an agreement between the landlord and the social services official in such form as the department may require or approve provided, however, that this option shall not be used in instances where recipients reside in public housing." (*id.*).

Additionally, pursuant to SSL 143-c (2), "it shall be against the public policy of the state for a social services official to pay money to a landlord to be held as a security deposit against the non-payment of rent or for damages by a public assistance recipient".

Here, HRA, as an administrative unit of a local Department of Social Services district, provides security to landlords through its security deposit voucher program. The voucher, which "is issued by the [NYC] Department of Social Services", "guarantees that HRA will pay up to the equivalent of one month's rent if it is verified that the tenant who occupied the apartment failed to pay his/her rent and/or caused damages to [the apartment]" (Sprayregen aff., exhibit C at bates no. D025-26). Although the voucher requires a landlord to "submit proof of the unpaid rent and/or damages" (*id.*) in order to be compensated, this requirement is consistent with the statute and implementing regulations (*see Acevedo v New York State Dept. of Motor Vehicles*, 29 NY3d 202 [2017]). For example, 18 NYCRR 352.6 [c] [2] provides that "[t]he condition of the

premises when the recipient moves in and when the recipient moves out must be documented and agreed to by signature of the landlord and the recipient". Moreover, "[i]f the verification does not confirm that there are damages caused by the recipient, then cash must not be issued under a security agreement" (*id.*). Accordingly, HRA's implementation of the security deposit voucher program is permitted by the Department of Social Services' enabling legislation.

Plaintiff's contention that the pending NYCCHR proceeding would convert the "appropriate agreement" (Social Services Law 143-c [1] [a]) into a "contract of adhesion" is unavailing. SSL 143-c contemplates "terms and conditions…in such form as the department may require" (SSL 143-c [1] [b]), and the regulations make clear that the landlord is in fact compelled to verify its right to reimbursement from housing assistance deposits (18 NYCRR 352.6 [c] [2]).

This court therefore finds that the HRA security deposit voucher program is not inconsistent with the SSL.

Causes of Action for Injunctive Relief

Plaintiff's causes of action for injunctive relief are similarly dismissed because they lack a legal basis: the HRA security deposit voucher program is properly construed as a "lawful source of income" under the NYCHRL, the HRA security deposit voucher program does not violate the Urstadt Law, and the HRA security deposit voucher program does not violate SSL 143-c.

Judicial Estoppel

It must be noted that this court reached the questions of statutory interpretation only because it accepted plaintiff's representations, both in its administrative answer as well as its attorney's affirmation herein, insisting that plaintiff indeed held and holds a policy of refusing to accept HRA security deposit vouchers. Without plaintiff's representations in this respect, this action necessarily would have been dismissed for required fact-finding in the administrative proceeding; this court reached the merits of plaintiff's petition only by accepting that position.

Therefore, plaintiff is judicially estopped from asserting otherwise in any action, including administrative proceedings (*see Kalikow 78/79 Co. v State*, 174 AD2d 7 [1st Dept 1992] ["The doctrine of judicial estoppel holds that a party successfully taking a position in one proceeding may not thereafter assume an inconsistent position in a subsequent proceeding]), with respect to the relevant time period—that is, from at least June 2017 (plaintiff's exhibit L at ¶ 18) to at least April 25, 2019 (on which plaintiff's counsel stated at oral argument that plaintiff continues to refuse HRA security deposit vouchers).

Accordingly, it is ORDERED that defendants' motion to dismiss this action pursuant to CPLR 3211 (a) (7) is granted and the complaint is dismissed, and it is further

ORDERED that defendants are to serve a copy of this order with notice of entry upon plaintiff and the General Clerk's Office, and it is further,

ORDERED, that the Clerk is directed to enter judgment accordingly.

Any argument or requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected. This constitutes the decision and order of the court.

June 3, 2019

HON. JULIO RODRIGUEZ III, JSC

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