Matter of West 147 & 150 LLC v New York State Div. of Hous. & Community Renewal
2019 NY Slip Op 33396(U)
November 12, 2019
Supreme Court, New York County
Docket Number: 101612/17
Judge: Shlomo S. Hagler
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 17

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In the Matter of the Application of

WEST 147 AND 150 LLC,

Petitioner,

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

Index No.: 101612/17

-against-

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL,

DECISION/ORDER

Respondent,

VICTOR KIM,

Respondent-Intervenor.

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HON. SHLOMO S. HAGLER, J.S.C.:

Petitioner West 147 and 150 LLC ("Petitioner" or "Owner") brings this Article 78 proceeding to annul, as arbitrary and irrational, the order dated September 21, 2017 ("Order") of respondent New York State Division of Housing and Community Renewal ("Respondent" or "DHCR") which denied the Owner's Petition for Administrative Review ("PAR") of the Rent Administrator ("RA")'s order, issued on January 13, 2017. The RA's order granted the overcharge complaint of respondent-intervenor Victor Kim ("Tenant"), the tenant of apartment 2A ("Apartment") in the building ("Building") located at 474 West150th Street, New York, New York.

On January 21, 2016, the Tenant filed a complaint with DHCR alleging that the Owner overcharged the Tenant by decontrolling the Apartment, while the Owner was receiving J-51 tax benefits for the Building, and increasing his rent by amounts exceeding those authorized by the applicable rent guideline orders. The Owner asserted that the Tenant was not overcharged because he had paid a preferential rent, i.e, a rent less than the legal regulated rent. *See* RSC § 2521.2 (a).

The RA found that the Apartment was improperly luxury deregulated because the Owner was receiving J-51 benefits for the Building from 2007 through 2010 (*Roberts v Tishman Speyer Props., L.P.*, 13 NY3d 270 [2009]). The RA held, pursuant to *72A Realty Assoc. v Lucas* (101 AD3d 401 [1st Dept 2012]), the four-year look-back period generally applicable to overcharge claims was inapplicable[1]. The RA further found, having examined the Tenant's leases prior to 2012, that the Owner failed to preserve the legal regulated rent, in that both on the Tenant's leases and in the Owner's registrations filed with DHCR in 2008 and 2009, the Owner listed the preferential rent, while failing to list a legal regulated rate. Therefore, pursuant to RSC § 2526.1 (a) (3) (i), the RA determined the preferential rent charged on the base date to be the legal regulated rent at that time. The Owner filed a PAR which was denied pursuant to the challenged Order herein.

Discussion

Where administrative determinations are made by the agency responsible for the administration of the law, the court is not to substitute its judgment for that of the agency. Even

[1]This Court notes that as amended by the Housing Stability and Tenant Protection Act, effective June 14, 2019, the four-year period for the awarding of rent overcharges under CPLR 213-a has been lengthened to 6 years.

though the court might have decided differently were it in the agency's position, the court may not upset the agency's determination in the absence of a finding, not supported by this record, that the determination had no rational basis (*see Matter of Mid-State Mgt. Corp. v New York City Conciliation & Appeals Bd.*, 112 AD2d 72 [1st Dept 1985], *affd* 66 NY2d 1032 [1985]; *Matter of Plaza Mgt. Co. v City Rent Agency*, 48 AD2d 129 [1st Dept 1975], *affd* 37 NY2d 837 [1975]). It is also well settled that an agency's interpretation of the statutes and regulations it is responsible for administering is entitled to great deference and must be upheld if reasonable (*see Matter of Partnership 92 LP & Bldg. Mgt. Co., Inc. v State of N.Y. Div. of Hous. & Community Renewal*, 46 AD3d 425 [1st Dept 2007] *affd* 11 NY3d 859 [2008]).

Citing *Conason v Megan Holding, LLC* (25 NY3d 1 [2015]) and *Matter of Boyd v New York State Div. of Hous. & Community Renewal* (23 NY3d 999, 1000 [2014]), the Owner argues that the RA improperly relied upon *Lucas*, inasmuch as all three of those cases hold that rents charged before the base date can be considered only where the owner has committed fraud. However, while the Commissioner affirmed the RA's decision, he did so on the basis of the following three sections of the RSC: RSC § 2526.1 (a) (2) (viii)[2], which provides for looking beyond the four-year look-back period, where, as here, leases within that period contain a preferential rent; RSC § 2521.2 (b), which requires that, when a preferential rent is charged, the legal regulated rent be set forth on the lease; and RSC § 2521 (c), which provides that, where the legal regulated rent is properly set forth in a lease, the owner is required to maintain the rental

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[2] Rent Stabilization Code (RSC)§ 2526.1 (a) (2) (viii) provides: "[F]or purposes of establishing the existence or terms and conditions of a preferential rent under section 2521.2(c) of this Title, review of the rental history of the housing accommodation prior to the four-year period preceding the filing of a complaint pursuant to this section shall not be precluded."

history of the apartment preceding the charging of a preferential rent. It is undisputed that petitioner failed to set forth the legal regulated rate on petitioner's leases in 2007, when it erroneously listed the Apartment as deregulated, or in 2008, or 2009, when only a preferential rent was listed.

Petitioner argues that, inasmuch as RSC § 2521.2 (c), like RSC § 2526.1 (a) (2), permits DHCR to consider rental history prior to the base date, such consideration should be limited to instances where the owner has been credibly accused of fraud. However, RSC § 2521 is not limited to cases concerning allegations of fraud, but requires that when a preferential rent is charged, both that rent and the legal regulated rent be set forth on the lease, and that the owner maintain the rental history of the apartment immediately preceding the preferential rate, even when doing so involves records dating more than four years prior to an overcharge complaint.

Petitioner also argues that DHCR should not have based its decision on RSC § 2521, as amended in 2014, because Owner could not have foreseen such amendment before it was enacted. However, RSC § 2527.7[3] provides that, absent undue hardship, even when the RSC is amended in the course of a proceeding, such amendment must control DHCR's determination. Petitioner cannot argue that it failed to set forth the legal regulated rent on petitioner's 2008 and 2009 leases because it was relying on petitioner not to file an overcharge complaint until more than four years later. Giving due deference to DHCR's interpretation of RSC § 2527.7, the

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[3] RSC § 2527.7 provides: "Except as otherwise provided herein, unless undue hardship or prejudice results therefrom, this Code shall apply to any proceeding pending before the DHCR, which proceeding commenced on or after April 1, 1984, or where a provision of this Code is amended, or an applicable statute is enacted or amended during the pendency of a proceeding, the determination shall be made in accordance with the changed provision."

determination had a rational basis, and should be upheld (*Matter of Partnership 92 LP & Bldg. Mgt. Co., Inc. v State of N.Y. Div. of Hous. & Community Renewal*, 46 AD3d 425 [1st Dept 2007] *affd* 11 NY3d 859 [2008]).

Conclusion

Accordingly, it is hereby

ORDERED AND ADJUDGED that the petition is denied and this proceeding is dismissed. The Clerk shall enter a judgment accordingly.

Dated: November 12, 2019

ENTER:

HON. SHLOMO S. HAGLER, J.S.C.