Matter of 614 E. 168 Partners v State of N.Y. Div. of Hous. & Community Renewal
2020 NY Slip Op 32022(U)
May 18, 2020
Supreme Court, Bronx County
Docket Number: 250560/2017
Judge: Robert T. Johnson
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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX

_______________________________________X

In the Matter of the Application of

614 East 168 Partners

Petitioner(s),

DECISION

For A Judgment Under Article 78 of the

Civil Practice Laws and Rules,

Index # 250560/2017

-against

State of New York Division of Housing and Community

Renewal: Office of Rent Administration, and Arlene Reyes,

Respondent(s).

_______________________________________X

HON. ROBERT T. JOHNSON:

This is an Article 78 petition brought by 614 East 168 Partners ("petitioner") to annul a determination made by the commissioner of the Division of Housing and Community Renewal ("respondent") which denied a Petition for Administrative Review ("PAR"), and upheld the determination of a Rent Administrator ("RA") in an overcharge complaint proceeding brought by respondent Arlene Reyes ("tenant"). For the reasons set forth as follows, the relief sought in the petition is denied.

Tenant moved into her rent stabilized apartment at the premises located at 614 East 168th Street in 2011. At that time, the building was owned by 614 East 168, LLC ("prior owner"). On February 11, 2015, the tenant initiated a rent overcharge complaint against that owner. The last rental payment she had made was on January 31, 2015. The grounds for her complaint were that the landlord was attempting to raise her rent from $975 to $1250 per month, that she had not

been provided with a lease by the last two owners, that she needed to find out her legal regulated rent amount, and that she was awaiting needed repairs.

Petitioner bought the building from the prior owner by deed dated August 14, 2015. Thereafter, petitioner began a nonpayment proceeding against the tenant in Housing Court (L&T Index 54341/2015). On January 14, 2016 petitioner and the tenant, both represented by counsel, entered into a stipulation in Housing Court that petitioner would be entitled to a judgment in the amount of $3900, that it would provide a two year lease to the tenant, and that the rent would be $1071.57. On March 15, 2016, tenant's counsel sent a letter to the Human Resources Administration seeking approval for the tenant to receive a grant to pay the arrears. On March 22, 2016, after having been advised of the change in ownership of the building, the commissioner served petitioner with a copy of the overcharge complaint. A second stipulation was entered into by the parties, with their counsel, in Housing Court on March 26, 2016. At that time, the amount of the judgment was to be $4971.57, which was apparently comprised of the prior agreed-to amount plus one month of the newly agreed-upon rent.

Petitioner did not respond to the overcharge complaint, nor did it appear before the RA or supply documents pursuant to the respondent's request for rental history information, prior to the issuance of his decision on July 28, 2016.

In his decision the RA found that a rent overcharge had occurred subsequent to February 11, 2011; that treble damages were awarded on the overcharge beginning two years before the filing of the complaint, because the owner had not established that the overcharge was not willful. Since neither the prior owner nor the petitioner had supplied the required rent history to the RA, he utilized the default procedure and determined that the correct rent for the tenant was $812.50. Because the prior owner had been put on notice that it would be liable for any overcharge, including interest and treble damages from the date of the commencement of the tenancy up to the date of the transfer of title, it was found to be so liable up through August 14, 2015. Petitioner was liable for any overcharges and interest thereafter.

After this decision was issued, petitioner timely moved for PAR. By decision dated June 15, 2017, the commissioner upheld the decision of the RA.

Petitioner now argues that the stipulations entered into between the parties in Housing Court were intended to conclude all matters between petitioner and the tenant. As such, both collateral estoppel and res judicata principles apply, and it was an abuse of discretion for the commissioner to ignore the determinations made in Housing Court. Petitioner admits it failed to respond to the notice for the hearing before the RA, but indicates it was reasonable for it to believe that the hearing was moot because of the resolution of the case in Housing Court. Although petitioner urges that the decision of the commissioner be annulled in toto, alternatively, it argues that the decision should be modified to the extent of calculating the overcharges assessed against it based upon the rental amount agreed to in the stipulation entered into on March 31, 2016.

Respondents argue that the decisions by the RA and the commissioner had a rational basis and should not be overturned. Neither collateral estoppel nor res judicata are applicable,

respondents contend, because it was not a party to the Housing Court matter. In addition, neither the stipulations entered into in Housing Court, nor the letter written from the tenant's attorney to the Human Resources Administration, makes any reference to the overcharge complaint. Treble damages are appropriately awarded here, respondents state, because an overcharge is presumed to be willful unless the owner establishes, by a preponderance of the evidence, that it was not. Respondents note that only the prior owner was found liable for treble damages, and that the petitioner is liable only for overcharges and interest from the date of its purchase of the building forward.

In a proceeding to review the determination of an administrative agency brought pursuant to CPLR 7803 (3), inquiry is limited to "whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion" (including any penalty imposed). The proceeding is a special proceeding (CPLR 7804 [a]) within the purview of CPLR article 4 (*10 West 66th Street Corp. v. New York State Div. of Housing & Community Renewal*, 184 AD.2d 143, 148 [1st Dept 1992]). Where an agency's factual findings have a rational basis and are not unreasonable, its determination will not be disturbed (*Matter of Salvati v Eimicke*, 72 NY2d 784, 791 [1988]; *Matter of Lite View, LLC v NY State Div. of Hous. & Community Renewal*, 97 AD3d 105, 108 [1st Dept 2012]).

Here, this Court finds that the decision of the commissioner had a rational basis and, should not be disturbed. Even though not compelled to do so, because the information was not supplied to the RA, the commissioner examined the stipulations from Housing Court, as well as the letter sent by the tenant's attorney and concluded they did not resolve the overcharge complaint. This court agrees with that finding as well. The stipulations simply do not address the overcharge complaint by the tenant. Since petitioner was undoubtedly aware of that complaint, at least before the second stipulation was entered into, it could have sought to put specific language in the stipulation addressing it but, did not. Rather, petitioner chose to simply ignore the notice regarding the overcharge complaint, as well as the legitimate request for a rent history, and somehow concluded that the RA should have understood that the complaint was now "moot". Petitioner does not allege that it supplied any information to the RA, or in any way tried to confirm whether he agreed that the complaint was "moot".

Because petitioner never supplied the respondent with a rental history, it cannot object to the RA using a "default formula" in arriving at the legal rent since a base rent could not be established (*Thorn v Baron*, 5 NY3d 175, 181 [2005]).

Finally, the award of treble damages had a rational basis as well, since no evidence was produced below (and, indeed, is not attempted to be put forward on this petition either), that the overcharge was not willful (*985 Fifth Ave. v State Div. of Hous. & Community Renewal*, 171 AD2d 572, 575 [1st Dept 1991]["The imposition of treble damages for rent overcharging is authorized by section 26-516 of Title 26, Chapter 4 of the New York City Administrative Code...unless 'the owner establishes by a preponderance of the evidence that the overcharge was not willful']. As was stated by the RA, only the prior owner is liable for treble damages; petitioner is liable for overcharge and interest from the date it purchased the building. This decision also has a rational basis, and the court agrees that such should be the starting date of

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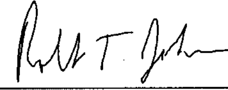
petitioner's liability. While petitioner urges that any staring date should be from the date of the second stipulation in the Housing Court, the rent agreed to there by the tenant exceeds that of the legal rent as determined by the RA, a decision that this court has already stated will be upheld.

The relief sought in the petition is denied.

Dated: May 18, 2020



Robert T. Johnson, JSC