Stuyvesant Town-Peter Cooper Vil. Tenants Assn. v New York State Div. of Hous. & Community Renewal
2023 NY Slip Op 34130(U)
November 22, 2023
Supreme Court, New York County
Docket Number: Index No. 154094/2021
Judge: Alexander Tisch

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ALEXANDER TISCH** **PART** **18**

Justice

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STUYVESANT TOWN-PETER COOPER VILLAGE TENANTS ASSOCIATION, SUSAN STEINBERG,

Petitioners,

- v -

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, BPP ST OWNERS, LLC, BPP PCV OWNERS, LLC

Respondents.

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INDEX NO. 154094/2021

MOTION DATE 04/27/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26

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

Upon the foregoing documents, petitioners bring this special proceeding pursuant to CPLR Article 78, requesting that the Court reverse and annul the determinations of the New York State Division of Housing and Community Renewal (DHCR) which granted respondents, BPP ST Owners, LLC and BPP PCV Owners, LLC (the Owner) a major capital improvement (MCI) rent increase for the replacement of video intercom systems within ten buildings of the apartment complex.

Background

Petitioners are the Tenants' Association and its President that represent over two thousand rent stabilized tenants at Stuyvesant Town/Peter Cooper Village. In or around August 2014 through December 2014, the Owner for said rent stabilized apartments replaced the video intercom systems within ten (10) buildings of the apartment complex. After replacing the video intercom systems, the Owner applied for a major capital improvement rent increase on or about September

7, 12, and 13, of 2016 (NYSCEF Doc. No. 1, Petition). In the Owner's application for a rent increase, the Owner submitted that the replaced items were approximately 30 years old, if not older, and that the useful life of the intercom systems expired (NYSCEF Doc. No. 3, MCI Application). This however, turned out to be false, as the intercom systems were replaced in late 2001/early 2002 (NYSCEF Doc. No. 1, Petition, ¶14). The tenants opposed the Owner's application for a rent increase, but, on or about July 12, 2018, DHCR granted the MCI rent increase for completing the major capital improvement. Petitioners filed a petition for administrative review on or about August 16, 2018, however, DHCR denied the petition, concluding, *inter alia*, that the appeal did not have merit and the useful life of the intercom systems was not an issue, since a rent increase was not granted for any prior MCI requests regarding intercom installations at the subject premises (NYSCEF Doc. No. 1, Petition, ¶19).

Parties' Contentions

Petitioners argue that DHCR's determination that the Owner was not required to apply for a waiver of the useful life provision because no prior MCI rent increase was granted for an intercom installation at the subject premises was made in violation of lawful procedure and was arbitrary and capricious and an abuse of discretion. In opposition, respondents argue the owner was not required to seek a waiver because an MCI application was not previously granted for the intercoms, and if an MCI application was not previously granted, the useful life of the device is irrelevant as is the waiver requirement.

Discussion

Pursuant to CPLR 7803(3) and the Rent Stabilization Code (RSC) § 2530.1, the Court may review a final order of DHCR, and its inquiry is "limited to whether the determination is arbitrary and capricious, or without a rational basis in the record and a reasonable basis in law" (Matter of

Delillo v New York State Div. of Hous. and Community Renewal, 45 AD3d 682, 683 [2d Dept 2007] ["An agency's interpretation of the statutes and regulations that it administers is entitled to deference, and must be upheld if reasonable"]; see also Gilman v New York State Div. of Housing and Community Renewal, 99 NY2d 144, 149 [2002]). "It is a long-standing, well-established standard that the judicial review of an administrative determination is limited to whether such determination was arbitrary or capricious or without a rational basis in the administrative record" (Partnership 92 LP v State Div. of Hous. & Cmty. Renewal, 46 AD3d 425, 428 [1st Dept 2007]).

9 NYCRR § 2522.4, the adjustment of legal regulated rent, provides the guidelines that must be followed when seeking an MCI rent increase. 9 NYCRR § 2522.4 (a) (1) states "[a]n owner is entitled to a rent increase where there has been a substantial increase…in the services, or installations of new equipment." In order to obtain said rent increase, the owner must file an application prescribed by DHCR pursuant to 9 NYCRR § 2522.4 (a) (2). In accordance with filing the prescribed application, the owner's MCI must meet the following criteria:

> "(*a*) deemed depreciable under the Internal Revenue Code, other than for ordinary repairs;
> (*b*) is for the operation, preservation and maintenance of the structure;
> (*c*) is an improvement to the building or to the building complex which inures directly or indirectly to the benefit of all tenants, and which includes the same work performed in all similar components of the building or building complex, unless the owner can satisfactorily demonstrate to the DHCR that certain of such similar components did not require improvement; and
> (*d*) the item being replaced meets the requirements set forth on the following useful life schedule, except with DHCR approval of a waiver, as set forth in clause (*e*) of this subparagraph" (9 NYCRR § 2522.4 (a) (2i-d).

Of the requirements mentioned above, the one of most importance for this matter is section (d), which requires the item being replaced meet the requirements set forth in the useful life schedule. However, pursuant to DHCR precedent, the useful life schedule is only pertinent when an owner seeks to replace an item for which they have already received an MCI rent increase. For

subset (e) (1) of 9 NYCRR § 2522.4 states "[a]n owner who wishes to request a waiver of the useful life requirement set forth in clause (d) of this subparagraph must apply to the DHCR for such waiver prior to the commencement of the work for which he or she will be seeking a major capital improvement rental increase." In other words, a waiver is not required, and the useful life of an item is not relevant when the owner does not intend on seeking a rental increase for the item being replaced. However, in this case though the owner sought a rent increase for the replacement of the video intercom systems in ten (10) of the apartment buildings, the owner was not required to submit a waiver because the owner was not replacing an item for which the owner previously received an MCI rent increase as. See Wages v DHCR, index no. 101186/2016, New York Sup Ct [New York County 2018, J. Billings], aff'd Matter of Wages v NY State Div. of Hous. & Community Renewal, 185 AD3d 446 [1st Dept 2020] ["since the owner had never applied for an MCI rent increase...the owner did not need a waiver to be relieved from meeting the useful life requirement"]; NY St Div of Hous & Community Renewal Advisory Op, Docket No VH410007RT, [8/3/2008] ["DHCR records do not show an MCI rent increase as having previously been granted...[a]ccordingly, there was no error by the Administrator in granting a rent increase"]; NY St Div of Hous & Community Renewal Advisory Op, Docket No UE230051RT, 10/12/2006] ["DHCR records show that no prior MCI rent increase has been granted...[a]ccordingly, based on the available evidence, the Administrator properly determined that a rent increase is warranted]; NY St Div of Hous & Community Renewal Advisory Op, Docket No LF430146RT, [7/23/2001]; ["no prior MCIs were granted, nor were any applied for...[t]hus, even if the useful life of the replaced item(s) had not expired, since those same replaced items were never the subject of a prior MCI increase, then the useful life requirement has not been violated"].

Respondents cite the aforementioned cases in support of their argument that a waiver was not required for the video intercoms that were replaced in 2014. In opposition, petitioners argue that respondents have focused on the wrong issue, as the issue is not whether an owner received a prior MCI rent increase for the item being replaced, but rather why an owner wants to replace an item or building system that has not outlived its useful life. The argument presented by petitioner runs contrary to DHCR precedent for when an owner is seeking an MCI rent increase, as the agency focuses on whether the item to be replaced has been subject to a previous rent increase. For if the item has been subject to a previous rent increase, certain guidelines are triggered, such as the application of the useful life of the item, and the need of a waiver, if the useful life has not expired. Furthermore, the cases presented by petitioner focus on items with indefinite useful life spans and fail to focus on whether MCI rent increases were previously granted for these items. Also, petitioners' reliance on SP 141 E 33 LLC v New York State Div. of Hous. & Cmty. Renewal is misguided and contrary to their argument because the owner within that case was not granted an MCI rent increase because he was already provided one, and said owner attempted to replace the item before the useful life of the item has expired [91 AD3d 575, 575–76 (2012)].

Continuing with DHCR precedent, the useful life of an item is not to be considered unless an MCI rent increase has been previously granted for that item, and if the owner wishes to replace that item before its useful life has expired, he or she must submit a waiver for DHCR approval [9 NYCRR § 2522.4 (a) (2) (d)]. Since respondent did not obtain an MCI rent increase for the previous video intercom replacement, the useful life of the items was not a factor, and they were not required to submit a waiver.

For these reasons, the Court finds that DHCR's decision to grant the MCI rent increase without inquiring about the required waiver was not arbitrary and capricious but is supported with

a rational basis and agency precedent. See Peckham v Calogero, 12 NY3d 424, 431 [2009] ["DHCR's determination…is consistent with its own rules and precedents; accordingly, there is a rational basis for the determination"].[1]

Accordingly, it is hereby ORDERED and ADJUDGED that the petition is denied and dismissed.

This constitutes the decision and order of the Court.

11/22/2023
DATE

ALEXANDER TISCH, 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

[1] The Court is disturbed by the respondents apparent misrepresentation of the age of the replaced intercom systems to DHCR but this doesn't alter Court's analysis as what matters is whether a previous MCI rent increase had been granted.