In re Application of Marroche

2003 NY Slip Op 50683(U) (2003) | Cited 0 times | New York Supreme Court | February 3, 2003

This opinion is uncorrected and will not be published in the Official Reports.

Landlord and Tenant--Rent Regulation

(*1)

(*2)

Petitioner Hector Marroche is the tenant of apartment 47G of the premises known as 235 West 76th Street, New York, New York ("the apartment"). Southcraft Company LLC was and continues to be the owner of the building located at 235 West 76th Street, New York, New York and apartments therein ("Owner"). Petitioner, pursuant to CPLR Article 78, seeks an order reversing, annulling, setting aside or modifying the final Order, dated August 8, 2002, issued by the Commissioner ("Commissioner") of the New York State Division of Housing and Community Renewal ("DHCR"), under Administrative Docket No. QG410018-RT as arbitrary, irrational, capricious and without a rational basis on the record. On August 8, 2002, the Deputy Commissioner denied petitioner's Petition for Administrative Review ("PAR") bearing Docket Number QG- 410018-RT, affirming the District Administrator's June 3, 2002 Order of Deregulation bearing Docket Number PD-4100102-LD, granting the owner's Petition for Deregulation on Default based upon the tenant's failure to respond to the owner's petition and/or to the notices sent to the tenant by DHCR. Petitioner argues essentially that DHCR did not follow the law in refusing to consider the merits of the tenant's reasons for his filing late and on a different form than sent to him by DHCR. The apartment is slated to be deregulated at the termination of the tenant's current lease on April 30, 2003.

The Court has considered the affidavits, exhibits and arguments of the parties as (*3)well as the administrative record supplied by DHCR in reaching its decision.

The underlying facts are not in issue. Petitioner Hector Marroche ("petitioner") resides in apartment 47G at 322 West 57th Street, New York, New York. The apartment is located in a building owned by Southhcroft Company LLC ("Owner"). Petitioner has been paying a stabilized rent of $2,259.71 per month or $27,116.52 per year under his most recent renewal lease which was commenced on May 1, 2001 and terminates on April 30, 2003.

On February 22, 2001, the owner served the tenant with an income verification form by certified mail

at his building address. On April 20, 2001, when the owner did not receive a response, the owner filed a petition for high income rent deregulation, pursuant to Section 26-504.3 of the Rent Stabilization Code, with DHCR. In its Deregulation Petition, the Owner advised DHCR that the legal rent charged for the apartment was greater than $2,000.00 per month and asked DHCR to verify the household income in order to establish that the total annual income of the household was in excess of $175,000 in each of the two preceding calendar years.

On May 8, 1997, DHCR's District Rent Administrator, by regular and certified mail, return receipt requested, served petitioner with a copy of the owner's Deregulation Petition along with an answer form directing petitioner to answer the Deregulation Petition by verifying his household income. The answer forms also contained a notice, which, pursuant to Section 26-504.3 of the Rent Stabilization Law, advised petitioner that:

(*4) You are required to complete this answer form and and return it to DHCR within sixty (60) days of this notice. Your failure to answer within will result in the issuance by DHCR of an order deregulating your housing accommodation and eliminating rent regulatory protections (such as protections against unlimited rent increases and eviction) for your housing accommodation.

The notices were sent to the correct address and, although the certified mailing was returned to DHCR as unclaimed, there is no indication that the regular mailing was returned to DHCR by the United States Postal Service.

Subsequently, on January 22, 2002,the Administrator sent to petitioner, in care of petitioner's accountant, a second copy of the notice and answer form, together with a notice form advising petitioner that he was required to provide certain specified information and complete specified portions of the answer form and further requiring petitioner to submit to DHCR photocopies of either the preprinted mailing labels or the first page of his New York State Income Tax Returns for 1999 and 2000. Again, the notice contained a statement warning petitioner that his failure to supply the required information could lead to the issuance of an order deregulating his apartment. There is nothing in the record indicating that this mailing was returned to DHCR.

On February 12, 2002, the Administrator sent directly to the tenant by regular and (*5)certified mail another copy of the owner's petition for deregulation and an answer form. The record indicated that these notices were sent to the correct address and there is no indication that either of these two mailings was returned to the agency by the United States Postal Service.

Petitioner failed to respond to the Deregulation Petition and/or submit the answer form provided by DHCR. Thereafter, on June 3, 2002, the Rent Administrator issued an order deregulating Apartment 47G, stating that the apartment would be deregulated upon the expiration of petitioner's existing lease because the tenant had failed to respond to the owner's petition and failed to provide the required income verification information to DHCR.

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On July 8, 2002, petitioner filed a Petition for Administrative Review("PAR") and moved for reconsideration challenging the determination of the Rent Administrator's June 3, 2002 Order upon the grounds that the total household income of the apartment is below $175,000 annually. Petitioner further asserted that his accountant submitted a timely answer in the proceeding below to the original notice of petition by submitting a letter in response to the owner's petition. A copy of the accountant's letter together with affidavits concerning the mailing of this letter were submitted with the PAR.

On August 8, 2002, the Commissioner issued an Order denying petitioner's PAR in its entirety, finding that the Rent Administrator had "properly found the tenant to be in default." As stated by the Commissioner, "The tenant was given notice of his obligation to respond to the subsequent notices and was advised of the consequences if he elected to (*6)disregard these notices."

The Commissioner further noted that the record did not contain a copy of the accountant's letter and that the letter did not provide all the necessary income verification information required by the answer form nor did it include copies of the first page of the tenant's tax returns or the preprinted mailing labels which petitioner was explicitly required to submit to DHCR. Moreover, two other notices were sent to petitioner and, despite being warned of the consequences, petitioner never responded to either of these two subsequent notices and never provided the required income verification information or submitted the specified required documents in the proceedings before DHCR.

The instant CPLR Article 78 proceeding ensued.

It is well established that judicial review of an administrative determination pursuant to CPLR Article 78 is limited to the review of the record before the DHCR and the question of whether its determination was arbitrary and capricious (see Matter of Windsor Place Corp. v. DHCR, 161 A.D.2d 279, 280 [1st Dept. 1990]). In other words, whether the action in question was taken "without sound basis in reason and ... without regard to the facts" (Matter of Pell v. Board of Educ., 34 N.Y.2d 222,2321[1974]; see also Matter of Tener v. DHCR, 159 A.D.2d 270 [1st Dept. 1990]). In order to maintain the limited nature of this review, the court must defer to the agency's construction of the statutes and regulations that it administers as long as that construction is not irrational or unreasonable (see Matter of Gaines v. New York State Div. Of Hous. and Community Renewal, 90 N.Y.2d 545, 548- 49[1997]; Application of Kenton Associates, Ltd. v. New (*7)York State Div. of Hous. and Community Renewal, 225 A.D. 349 [1st Dept. 1996]; Matter of Metropolitan Assoc. Ltd. Partnership v. New York State Div. of Hous. & Community Renewal, 206 A.D. 251, 252[1st Dept. 1994], citing Matter of Salvati v. Eimicke, 72 N.Y.2d 784, 791).

The Rent Regulation Act of 1993 ("RRRA"), Chapter 253, Laws of 1993, became effective July 7, 1993. The RRRA provides for deregulation of high rent accommodations upon vacancy or when occupied by high income tenants. It affects all four regulatory systems: the Rent Stabilization Law ("RSL"); the

Emergency Tenant Protection Act ("EPTA"); and the City and State Rent Control Laws. The RRRA added sections 26-504.1 through 26-504.3 to the Rent Stabilization Law. These sections exempts from rent regulation, housing accommodations which rent for $2,000.00 per month or more and which are occupied by persons whose total income exceeded $175,000 in each of the two calendar years preceding the owner's petition for a determination of whether the housing accommodation qualifies for deregulation.

According to petitioner, he entrusted the handling of the proceeding to his accountant. In the PAR, the tenant submitted both the affidavit from the accountant, dated July 3, 2001, swearing that the accountant timely filed the answer to DHCR as well as a copy of the answer, dated June 18, 2001, and a July 3, 2002 affidavit from the employee of the accountant who allegedly physically mailed the answer to DHCR on June 18, 2001.

As petitioner points out, Rent Stabilization Code states that DHCR may, at "any (*8)stage of a proceeding...for good cause shown, except where prohibited by the Rent Stabilization Law, accept for filing papers, even though not filed within the time required by this Code" (9 NYCRR 2527.5[d]; see also 9 NYCRR 2507.5[d]; 9 NYCRR 2210.1). Thus, where good cause is shown, DHCR has the discretion to permit a late filing either before or after the Rent Administrator has issued a deregulation order, until the Commissioner has taken final action (see Dworman v. New York State Division of Hous. and Community Renewal, 94 N.Y.2d 359, 373-4 [1999]). DHCR may reasonably interpret "good cause" to mean more than "any cause" (see Dworman v. New York State Division of Hous. and Community Renewal, 94 N.Y.2d, at 374). As noted by the Court of Appeals in Dworman v. New York State Division of Hous. and Community Renewal, "by fixing timetables for income verification and deregulation, the Legislature made plain its desire that these proceedings not languish but that they be conducted, and resolved, expeditiously. While ameliorating undue severity, DHCR's discretion to excuse a default should not be viewed as an invitation to ignore filing deadlines or as a prescription for laxity. DHCR is within its discretion to hold that a tenant who does not demonstrate good cause is simply not entitled to relief" (Dworman v. New York State Division of Hous. and Community Renewal, 94 N.Y.2d, at 374).

Here, DHCR considered petitioner's argument that his household income is less than $175,000.00 annually and that his accountant had allegedly submitted a timely answer in the proceeding below to the original notice of petition by submitting a letter in response to the owner's petition. However, as the Commissioner noted, the letter from (*9)the accountant did not provide all the necessary income verification information required by the answer form and that it did not contain either copies of the first page of the tenant's tax returns or the preprinted mailing labels, which Items 5 and 6 of the answer form mailed to the tenant on May 8, 2001 explicitly required the tenant to submit to DHCR. Petitioner was sent at least two additional notices advising petitioner that he was required to provide the specified income verification information and submit the specified documents or his apartment could be deregulated. According to the record, petitioner never responded to either of the two subsequent notices and never provided the required income verification information or specified

required documents in the proceeding below. Based on these facts, the Commissioner held that the Rent Administrator properly found the tenant to be in default, properly relied on petitioner's default in granting the owner's petition for high income rent deregulation and "that the tenant offered insufficient reason to disturb the rent Administrator's determination." DHCR was within its discretion to conclude that, absent any allegation of good cause, the policy of deciding cases on their merits does not override the statutory mandate that information be provided expeditiously (see Seymour v. New York State Div. of Hous. and Community Renewal, 94 N.Y.2d, at 375).

Moreover, the requisite information and documents were never submitted to DHCR and may not be submitted for the first time upon judicial review (see Gilman v.New York State Div. of Hous. and Community Renewal, 99 N.Y.2d 144 [2002]; Fannelli v. New York City Conciliation and Appeals Bd., 90 A.D.2d 756 [1st Dept. 1982], (*10)aff'd 58 N.Y.2d 952 [1983]). In this case, petitioner did not provide the required income verification information or submit the specified required documents to enable DHCR to obtain the tax ;returns from the State Department of Taxation during the entire time the administrative proceedings were pending. By the time the Commissioner's August 8, 2002 order was issued, the tenant was eleven (11) months late and still had not submitted an answer. [1] Petitioner's delay clearly cannot be considered as de minimis (see Seymour v. New York State Div. of Hous. and Community Renewal, 94 N.Y.2d, at 375). Therefore, because DHCR reviewed and considered petitioner's assertion that there was good cause for the delay and expressly found that there was none, this Court cannot say that DHCR's actions were either arbitrary or capricious. Thus, the order of deregulation was rationally based upon the administrative record and applicable law. Accordingly, it is ORDERED and ADJUDGED that the petition is denied and dismissed in its entirety.

This constitutes the decision and order of this Court.

(*11)

1. Petitioner's federal adjusted gross income for 1999 of $25,635.72 is less than the total amount of rent that petitioner paid for the apartment that year, $25,635.72.