Molli v Divison of Hous. & Community Renewal
2015 NY Slip Op 31321(U)
February 27, 2015
Supreme Court, Queens County
Docket Number: 13685/2014
Judge: Thomas D. Raffaele
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MEMORANDUM

SUPREME COURT : QUEENS COUNTY
IA PART 13

ALESSANDRA MOLLI,	X	INDEX NO. 13685/ 2014
Petitioner,		MOTION SEQ. NO. 1
For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules,		BY: RAFFAELE, J.
		DATED: NOVEMBER 10, 2014
-against -		
DIVISION OF HOUSING AND COMMUNITY RENEWAL, WOODY PASCAL, DEPUTY COMMISSIONER,		
Respondent.	X	

In this Article 78 proceeding, self represented petitioner Alessandra Molli seeks a judgment vacating the decision and order issued by respondent New York State Division of Housing and Renewal (DHCR) dated July 15, 2014, which denied her petition for administrative review (PAR) and upheld the Rent Administrator's order restoring the rent, directing respondent to reopen the third compliance proceeding in order to hold a third oral hearing with respect to the owner's shoddy work and incomplete repairs, and to recover the "retro difference" in rent payments.

On December 11, 2007, Jeanne Molli, the then tenant of apartment 3, located at 21-03 45th Avenue, Long Island City, New York filed an application with the DHCR for a rent reduction based on decreased services, under docket number VL10045S. Said

apartment is subject to the Rent Stabilization Law and Code. The DHCR conducted an inspection of the apartment on May 16, 2008 and granted the tenant's application for a rent reduction in an order issued on July 18, 2008. Said order set forth a list of services that were not being maintained within said apartment, set forth the results of the inspection, determined that certain services were being maintained, and found that there was no evidence that a ceiling fixture light in the bathroom was ever provided and therefore no determination was made on that issue. On September 2, 2008 the tenant filed an affirmation of non-compliance.

On March 25, 2010, the DHCR served a Notice of Hearing and scheduled a formal oral hearing to determine whether the owner should pay a civil penalty for the failure to comply with the rent reduction order.

The DHCR's compliance unit held a hearing on May 7, 2010, that was attended by the owners and their counsel, the tenant Jeanne Molli and her daughter Alessandra Molli, representatives of the compliance unit and a DHCR inspector. The owners agreed to restore the 12 remaining required services listed in the rent reduction order and further agreed to repair other conditions that were not part of said order. The Deputy Commissioner of the DHCR, in an order dated December 17, 2010, noted that since the owners had failed to comply with the DHCR Order VL-110045-5, which directed them to restore and repair the 12 listed conditions by June 21, 2010, they had to pay a civil penalty of $3,150.00. In connection with the December 17, 2010 order, the tenant, the owners

and the DHCR's compliance attorney executed a stipulation, whereby the owner agreed to correct the cited conditions in a workmanlike manner and to pay the civil penalty. On January 5, 2011 the DHCR closed the compliance proceeding and informed the tenant that she could file a second affirmation of non-compliance in the event that all remaining conditions were not restored within 30 days.

On February 21, 2011, the tenant filed a second affirmation of non-compliance and a proceeding was opened under docket number ZB 110019 NC. While said proceeding was pending, the owner filed an application to restore the rent on March 11, 2011. The Rent Administrator in an order issued on August 19, 2011 denied the owners' application and determined that only two of the required services remained unrestored: the painting of the apartment, and defective sliding pocket doors. The DHCR thereafter issued a Notice of Hearing and scheduled an oral hearing on December 2, 2011, to determine whether the owners had violated the orders of December 17, 2010, August 19, 2011, and July 18, 2008; and whether the owners had failed to properly correct or restore the required services of apartment painting; sliding door/living room; and the following services found not maintained in the Commissioner's order of December 17, 2010: 1. Bathroom: missing ceiling light fixture, window rails to enable operation of window; leaky tub faucet; 2. Hallway: window rails to enable operation of window and splintered floor; 3. Kitchen: window rails and frame to enable operation of window; splintered floor; slanted window sill; 4. Living Room: Dimmer switch and splintered floor; 5. Front Bedroom: Splintered

floor; 6. Mud Room: Splintered floor and cracks in the ceiling and walls; 7. Back Bedroom: Splintered floor.

At the December 2, 2011 hearing, the owner, tenant Alessandra Molli and the DHCR compliance unit entered into a stipulation whereby the owners agreed to paint the following areas: the entire kitchen, and to repair the area around the window prior to painting; the bathroom wall near the pipe; the living room, around windows; the sliding doors between the living room and dining room after the doors were repaired; the hallway wall on the right side as one enters the space; and the dining room wall showing marks from the table. The parties agreed that with respect to these items that they would be bound by the DHCR's Inspector Awofeso's determination. It was agreed that the damaged floor planks, baseboard moldings and trim throughout the apartment would be repaired by replacing the full length wooden planks, made of pine to match the existing floor, when determined as necessary by Inspector Awofeso; the replacement of baseboard moldings and trim when determined as necessary by Inspector Awofeso; the sanding of floors when the DHCR inspector determined that sanding as opposed to plank replacement is sufficient to satisfactorily correct a specific floor area; staining of floors and moldings and trim such that all floors throughout the apartment shall be uniform.

It was also agreed that the sliding doors between the living room and dining room, which do not move freely, would be repaired and the Inspector Awefeso would determine the best method to be used to enable the doors to move freely. The parties and the tenant

agreed to be bound by the inspector's determination.

On March 20, 2012, the DHCR's Deputy Commissioner issued an order assessing a civil penalty against the owners in the amount of $1,000.00, as they had failed to comply with the Commissioner's order of December 17, 2010. The owners were also ordered to correct all outstanding conditions in the subject apartment, as detailed in the stipulation. On June 6, 2012 the second compliance proceeding was closed, and Alessandra Molli was advised that she could request a third hearing, if warranted.

On July 6, 2012, Alessandra Molli filed a third affirmation of non-compliance, stating that she had not received a copy of the order of March 20, 2012; that the owner had failed to nail floorboards; that some floors were never treated with a protective coat or polyurethane; "that the old/worn sliding doors aligned before twisted to force them to slide"; that the damaged floor board and trim had not been replaced; that the kitchen floor stain was not uniform and that two different colors were used.

The owner in response stated that services had been restored, and that the tenant did not allow the complete repairs of the services and that this was witnessed by the inspector. The subject apartment was inspected on September 26, 2012, at which time the inspector found that all of the items set forth in the stipulation had been repaired or painted with the following exceptions: the baseboard trim on the wall to the left of the kitchen window needed to be cut even; the work performed on the floor planks in front of the refrigerator and stove needs to be done in a workmanlike manner, in that the floor

needed to be properly nailed down; that he could not ascertain the uniformity of the staining of the floor as the tenant stopped the work and did not want the floor stained; that the sliding door between the living room and dining room was a little off track after being repaired, but that they were operating properly and sliding in an out of the pocket. The inspector noted that the "[s]liding door was not closing tight because of the age of the door wood/mechanism at the last inspection on 4/10/12" and that "[f]or tenant to have perfect sliding door, the whole sliding door needs to be replaced. As per Tenant she does not want replacement and the age of the door will not give her a perfect door through repairs".

DHCR Inspector Awefeso thereafter inspected the apartment on January 29, 2013, and found that there was no evidence that the kitchen window screen was not working or that the plastic frame around the window was falling apart; that there was no evidence of a plumbing leak under the kitchen sink; that there was no evidence of missing/loose wall tiles or missing/loose grouting on the bathroom wall; that there was no evidence of broken hot/cold water handle from the bathroom's main line; that there was no evidence of a defective light fixture over the bathroom sink; that there was no evidence of a plumbing leak from the bathroom sink; that there was no evidence of cracks in the ceiling/walls of the back bedroom; that there was no evidence of a defective switch or inoperative ceiling light in the back bedroom; that there was no evidence of a hole in the floor of the back bedroom; that there no evidence of a missing light fixture/hole/hanging

wire in the ceiling of the front bedroom; that there were no defective windows in the living room; that there was no evidence of cracks on the ceiling/walls of the living room; that there was no evidence of cracks on the apartment hall ceiling/walls; that there was no evidence of inoperative windows in the apartment hall; that the apartment was last painted in 2012; and that a carbon monoxide detector was provided. With respect to the sliding doors, the inspector found that the sliding doors were not properly aligned and noted that "Sliding door appeared old, creating difficulty in repair after several attempts by the owner. Tenant refused a new sliding door replacement from the owner."

On February 14, 2013 the DHCR's compliance unit closed the third non-compliance proceeding on the basis that the inspection record showed that all of the repairs had been completed and the owner had fully complied with order number VL-110045-S.

On March 28, 2013, in a related rent restoration proceeding, the rent for the subject apartment was restored, under docket number BN 110021 OR.

Alessandra Molli filed a petition for administrative review (PAR) on May 3, 2013, in which she alleged the owner had failed to repair hairline cracks in two rooms, the grout in the bathroom, the sliding doors, the floors and the baseboards. She stated that she did not want the floors stained; that new sliding doors were not the solution; that plaster rather than grout was used in bathroom and that it was brittle and falling off; the leaky tub faucet was unsuccessfully fixed twice; and that the toilet base seal was broken when the

toilet was moved to install the hot and cold handles. She asserted that in response to the DHCR's directives of June 6, 2012 and October 18, 2012, she requested a third non-compliance hearing which was never held. She also asserted that the DHCR in its letter of February 14, 2013 closing the compliance proceeding never mentioned the service deficiencies listed in the October 18, 2012 letter.

The Deputy Commissioner, in an order dated July 15, 2014, denied the tenant's PAR and modified the Rent Administrator's order. The Deputy Commissioner reviewed the procedural history of the case and found that: "the Rent Administrator determined in the underlying rent reduction Order under Docket No. VL110045S on July 18, 2008 that the living room ceiling and walls were maintained. The sole remaining service deficiencies listed in the rent reduction Order under Docket No. VL110045S, except the living room sliding doors and apartment painting, were restored on August 19, 2011 under Docket No. ZC110071OR."

The Deputy Commissioner determined that "[the tenant's PAR did not establish a basis to reverse the Administrator's determination, which was based upon the inspector's January 29, 2013 inspection report in the related non-compliance proceeding under Docket No. AS110005NC, finding that all of the service deficiencies which formed the basis for the rent reduction Order issued on July 18, 2008 under Docket No. VL110045S were restored. Therefore, the Commissioner finds that the Rent Administrator correctly relied upon the inspection results to determine that the owner restored requisite services.

The Commissioner notes that the tenant failed to allege in the July 6, 2012 *Tenant Affirmation* of *Non-Compliance* ("*Tenant Affirmation*") under Docket No. AS1100005NC that the owner failed to repair the grout in the bathroom and the cracks."

The Deputy Commissioner further determined that "[the tenant's claim that the living room sliding doors are not aligned because the tracks are defective, and replacement sliding doors would not solve the problem, is insufficient to disturb the Rent Administrator's determination. The Commissioner notes that the evidence below discloses that the tenant alleged in the *Tenant Affirmation* that "old/worn sliding doors aligned before twisted to force them to slide." The evidence also reveals that the inspector, in the related non-compliance proceeding under Docket No. AS110005NC, conducted an inspection on September 26, 2012, and reported, in pertinent part, that the living room sliding doors were off-track and were not closing tight because of the aged doors, wood and mechanism. The inspector also reported that replacement sliding doors were needed to correct the deficiency, but the tenant indicated that she did not want the sliding doors replaced. A subsequent inspection in the related non-compliance proceeding on January 29, 2013 revealed, in relevant part, that the living room sliding doors were not properly aligned, that the sliding doors appeared old, and that after several attempts, the doors could not be repaired. The inspector again reported that the tenant refused replacement sliding doors." The Deputy Commissioner found that based upon the evidence in the record below, the Rent Administrator "correctly deemed the living room

sliding doors restored based upon the inspector's reports that after several attempts, the living room sliding doors needed to be replaced, and the tenant refused to allow the sliding doors to be replaced." The Deputy Commissioner, thus, modified the rent restoration order "in order to reflect that the Rent Administrator deemed the living room sliding doors restored based on the results of the September 26, 2012 and January 29, 2013 inspections conducted in the relate non-compliance proceeding under Docket No. AS110005NC."

The Deputy Commissioner determined that the tenant's claim that the owner failed to repair floors and the baseboards was not a relevant consideration in determining whether the Rent Administrator correctly restored the tenant's rent. He noted that "although the tenant alleged in the July 6, 2012 *Tenant Affirmation* under Docket No. AS110005NC that the owner failed to comply with the Commissioner's March 20, 2012 Order under Docket No. ZB110019NC and repair, in relevant part, the baseboards and floors, the baseboard and floors except the hole in the back bedroom, were not included in the Order to reduce the rent under Docket No. VL110045S." He, therefore, found that this claim was without merit. It was noted that if the owner had not restored the floors and baseboards, the tenant could files a new application for a rent reduction, if the facts so warrant.

The Deputy Commissioner found that the tenant's claim that she requested a third hearing that was never held, and that the DHCR in its letter of February 14, 2013 closing

the non-compliance proceeding never mentioned the service deficiencies listed in the October 18, 2012, did not state a legal basis for revoking the Rent Administrator's order. It was noted that the letters of June 6, 2012 and October 18, 2012, concerned the floor planks that needed to be properly nailed, which were not included in the rent reduction order. The Deputy Commissioner thus noted that the tenant's request for a third hearing was not relevant in determining whether the Rent Administrator correctly determined that the owner corrected the deficiencies enumerated in the rent reduction order under Docket No. VL110045S.

Finally, the Deputy Commissioner determined that the tenant in her PAR had alleged for the first time on appeal that the toilet base seal was broken when the toilet was moved to install the cold and hot water handles, that there was a large crack on the wall behind the tank, and the leaky tub faucet was repaired twice unsuccessfully, and that these service complaints were not included in the rent reduction Order under Docket No. VL110045S. It was noted that if these deficiencies exist, the tenant could file a new application for a rent reduction.

Self represented petitioner Alessandra Molli alleges in her petition that the Commissioner's order and modification issued on July 15, 2014, is wrong in that the DHCR closed her case and ordered the rent restored although not all of the work or related work was done. She seeks to have "all of the items and redoes" done in one case; claims that there has been confusion about the list of items to be fixed; and claims that

except for the January 18, 2013 inspection notice, she was not given a list of the items the inspector was to inspect, and questions whether she should have been given such lists for all inspections. Petitioner complains about her inability to communicate with an individual at the DHCR's compliance unit, and that as more time passes, more defects "pop up," which she attributes to shoddy work, which she seeks to have repaired.

Respondent DHCR, in opposition, asserts that its determination is neither arbitrary nor capricious and is supported by the evidence in the record and the law, and that petitioner has not articulated any basis to vacate its order of July 15, 2014.

The court's power to review an administrative action is limited to whether the determination was warranted in the record, has a reasonable basis in law and is neither arbitrary nor capricious (*Matter of Heinz v Brown*, 80 NY2d 998, 1001[1992]; *Matter of Colon v Berman*, 21 NY2d 322 [1967]; *Matter of Tockwotten Assoc. v New York State Div. of Hous. & Community Renewal*, 7 AD3d 453, 454 [1st Dept 2004]; *Melendez v NY State Div. of Hous. & Cmty. Renewal*, 304 AD2d 580, 581[2d Dept 2003]). Where such rational basis exists, an administrative agency's construction and interpretation of its own regulations are entitled to great deference (*see Matter of Salvati v Eimicke*, 72 NY2d 784, 791 [1988]; *Matter of Arif v New York City Taxi & Limousine Commn.*, 3 AD3d 345, 346 [1st Dept 2004]). Moreover, "[j]udicial review of administrative determinations is confined to the facts and record adduced before the agency" (*Featherstone v Franco*, 95 NY2d 550, 554 [2000], *quoting Matter of Yarbough v Franco*, 95 NY2d 342, 347 [2000],

quoting Matter of Fanelli v New York City Conciliation & Appeals Bd., 90 AD2d 756, 757[1st Dept 1982], *affd* 58 NY2d 952 [1983]).

The Rent Stabilization Law requires DHCR to reduce the rent of a stabilized apartment to the level in effect prior to the most recent guidelines increase when it finds that an owner has failed to maintain required services. Section 2520.6® of the Rent Stabilization Code defines required services as "[t]hat space and those services which the owner was maintaining or was required to maintain. . . . These may include, but are not limited to . . . repairs. . . .". If it is determined that the owner has restored services, then the rent will be increased back to the level in effect prior to the rent reduction (*see* Administrative Code § 26-514; Rent Stabilization Code 2523.3).

It is well established that "it is for the [DHCR] to determine what constitutes a required service and whether that service has been maintained" (*Matter of Rubin v Eimicke,* 150 AD2d 697 [2d Dept 1989]; *see also, Matter of Oriental Blvd. Co. v New York City Conciliation & Appeals Bd.*, 92 AD2d 470 [1st Dept 1983] *affd* 60 NY2d 633 [1983]). In making such a determination, the DHCR is entitled to rely upon the reports of its inspectors (*see Matter of Howard-Carol Tenants' Assn. v New York City Conciliation & Appeals Bd.*, 64 AD2d 546[1st Dept 1978], *affd* 48 NY2d 768[1979]; *Sherman v* Commissioner, N.Y. State Div. of Hous. & Community Renewal, 210 AD2d 486 [2d Dept 1994]; *Matter of Aguayo v New York State Div. of Hous. & Community Renewal*, 150 AD2d 565, 566[2d Dept 1989]).

In the instant proceeding, this court finds that there was a rational basis supporting the determination that services had been restored and the legal regulated rent should be increased to the level in effect prior to the rent reduction. The DHCR properly relied upon its inspector's reports which found that the conditions itemized in the prior orders had been restored or repaired in making its determination. The Commissioner deemed the sliding living room doors to be restored, based on the inspector's report that after several attempts, the doors could not be repaired and needed to be replaced. Petitioner, however, refused the replacement of the doors, although she had agreed to be bound by the inspector's determination in this regard. As the tenant refused the repair of the doors, she was not entitled to a continued rent reduction and further was not entitled to a third non-compliance hearing.

The DHCR was not required to serve a copy of its inspection report on the tenant or the owner, nor was it required to provide the tenant with an advance copy of the items to be inspected (*Empress Manor Apartments v New York State Div. of Housing & Community Renewal*, 147 AD2d 642 [2d Dept 1989]). Petitioner was well aware of the services that needed to be repaired or restored.

This court finds that the DHCR properly determined that vacating the Rent Administrator's order restoring the rent was not warranted, as the inspector determined that the floors and baseboards were repaired, and the only condition pertaining to the floor mentioned in the rent reduction order was found to have been restored in the

DHCR's August 19, 2011 order. To the extent that petitioner in her PAR and in the within petition alleges the existence of new conditions needing repair, she is required to file a new application for a reduction of rent based upon the failure to provide essential services.

To the extent that petitioner seeks a judgment in the nature of mandamus directing the DHCR to hold a third compliance hearing, such relief is unavailable. "[M]andamus does not lie to enforce the performance of a duty that is discretionary, as opposed to ministerial" (*New York Civ. Liberties Union v State of New York*, 4 NY3d 175, 184 [2005]). The DHCR has the authority to issue orders it deems appropriate to enforce the Rent Stabilization Law. Petitioner does not dispute that she was informed that the DHCR *may* hold a third hearing, and whether to issue a notice to schedule a formal oral hearing and seek civil penalties against an owner is within the DHCR's discretion. It was not an abuse of discretion to close the tenant's non-compliance complaint, as all of the conditions previously complained of had been remedied, and the tenant had refused to permit the owner to replace the living room doors (*see generally Dibbs v Mulholland*, 292 AD2d 164, 164-165 [1st Dept 2002]). There is nothing in the Rent Stabilization Law or Code which permits a tenant to add on new conditions that she claims to have "popped up" to proceedings that have been concluded before the agency.

In view of the foregoing, petitioner's request for a judgment vacating DHCR's decision and order of July 15, 2014, directing respondent to reopen the third compliance

proceeding, and to recover the difference in the amount paid for restored rent, is denied and the petition is dismissed.

Settle judgment.

Dated: February 27, 2015

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Thomas D. Raffaele, J.S.C.