

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND DEPARTMENT

68 Apartment Associates, Inc. v. New York State Division of Housing
& Community Renewal

71 A.D.3d 1031 (2d Dep't 2010) · Decided March 23, 2010

SUMMARY

The Appellate Division, Second Department, affirmed the dismissal of an Article 78 proceeding challenging a New York State Division of Housing and Community Renewal determination that reduced the rent for a rent-regulated apartment. The court held that the agency’s finding of decreased services, based on a physical inspection, had a rational basis and was not arbitrary and capricious.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Rivera, J.P.; Covello, J.; Miller, J.; Chambers, J.
JURISDICTION	New York
DECIDED	March 23, 2010
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner-landlord appealed from a judgment of the Supreme Court, Westchester County, denying its CPLR article 78 petition and dismissing the proceeding.
STANDARD OF REVIEW	Whether the agency determination had a rational basis in the record and was arbitrary and capricious.
PRECEDENTIAL VALUE	Published Appellate Division opinion
PARTIES	68 Apartment Associates, Inc. v. New York State Division of Housing & Community Renewal

TOPICS

- judicial review of agency action
- administrative law
- rent control
- appellate procedure
- standard of review

PRACTICE AREAS

- administrative law
- landlord-tenant law
- rent regulation
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Division of Housing and Community Renewal rationally determined that services to the subject apartment had decreased, warranting a rent reduction.
2. Whether the agency determination was arbitrary and capricious under CPLR article 78.

HOLDINGS

1. The determination that services to the subject apartment had decreased, warranting a rent reduction, was rationally supported by the record.
2. The agency determination was not arbitrary and capricious because it had a rational basis in the record.

KEY QUOTATIONS

“Contrary to the petitioner’s contention, the determination in this case, which was based upon a physical inspection of the premises, had a rational basis in the record, and was not arbitrary and capricious” (1032)

FACTUAL BACKGROUND

The Rent Administrator found a decrease in services in a rent-regulated apartment and directed a reduction in the rent payable. The determination was based on a physical inspection of the premises. The Division of Housing and Community Renewal denied the owner's administrative review application, and the courts upheld the agency's determination.

PROCEDURAL HISTORY

The New York State Division of Housing and Community Renewal Deputy Commissioner denied the owner's application for administrative review of a Rent Administrator order directing, among other things, a reduction in rent for a rent-regulated apartment. The owner commenced a CPLR article 78 proceeding in Supreme Court, Westchester County. Supreme Court denied the petition and dismissed the proceeding, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Clarendon Mgt. Corp. v New York State Div. of Hous. & Community Renewal, 271 A.D.2d 688, 688 (2000)
- Matter of ANF Co. v Division of Hous. & Community Renewal, 176 A.D.2d 518, 520 (1991)
- Matter of 333 E. 49th Assoc., LP v New York State Div. of Hous. & Community Renewal, Off. of Rent Admin., 9 N.Y.3d 982, 983-984 (2007)
- Matter of Stavisky v New York State Div. of Hous. & Community Renewal, 204 A.D.2d 462, 462-463

OPINION

PER CURIAM.

In a proceeding pursuant to CPLR article 78 to review a determination of the Deputy Commissioner of the New York State Division of Housing and Community Renewal dated February 8, *10322008, which, inter alia, denied the petitioner's application for administrative review of an order of the Rent Administrator dated August 23, 2007, directing, among other things, a reduction in the rent payable for a rent-regulated apartment, the petitioner appeals from a judgment of the Supreme Court, Westchester County (DiBella, J.), entered November 24, 2008, which denied the petition and dismissed the proceeding.

Ordered that the judgment is affirmed, with costs. The respondent determined that there had been a decrease in services with respect to the subject apartment, warranting a rent reduction. Reduction in services is a matter to be determined by the administrative agency (see *Matter of Clarendon Mgt. Corp. v New York State Div. of Hous. & Community Renewal*, 271 AD2d 688, 688 [2000]; *Matter of ANF Co. v Division of Hous. & Community Renewal*, 176 AD2d 518, 520 [1991]).

Contrary to the petitioner's contention, the determination in this case, which was based upon a physical inspection of the premises, had a rational basis in the record, and was not arbitrary and capricious (see *Matter of 333 E. 49th Assoc., LP v New York State Div. of Hous. & Community Renewal, Off. of Rent Admin.*, 9 NY3d 982, 983-984 [2007]; *Matter of Stavisky v New York State Div. of Hous. & Community Renewal*, 204 AD2d 462, 462-463).

The petitioner's remaining contentions are without merit. Rivera, J.P., Covello, Miller and Chambers, JJ., concur.