

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: A COSTA
Justice

PART 61

STUYVESANT TOWN - PETER COOPER
VILLAGE, ET AL.
- v - Petitioners

INDEX NO. 107749/06

MOTION DATE _____

MOTION SEQ. NO. 01

METROPOLITAN LIFE INSURANCE,
ET AL.
Respondents

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause - Affidavits - Exhibits ...

Answering Affidavits - Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

See attached
decision

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

Petitioners' motion pursuant to CPLR Article 78 is denied, and respondents' cross-motions to dismiss is granted as per attached decision/judgment dated July 17, 2006

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

SO ORDERED

Dated: July 18, 2006


ROLANDO T. ACOSTA, s.c.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK : PART 61

STUYVESANT TOWN-PETER COOPER VILLAGE
 TENANT'S ASSOCIATION, JAMES ROTH,
 STEVEN SANDERS, and all other members of the class
 similarly situated as tenants of Peter Cooper Village,

Petitioners,

– against –

METROPOLITAN LIFE INSURANCE and ANNUITY
 CO. INC., and the NEW YORK STATE DIVISION OF
 HOUSING AND COMMUNITY RENEWAL,

Respondents.

DECISION/JUDGMENT

Index No. 107749/06

Seq. 1

Present:

Hon. Rolando T. Acosta
 Supreme Court Justice

The following documents were considered in reviewing the tenants' petition for judgment pursuant to Article 78 of the Civil Practice Law and Rules annulling and vacating the Commissioner of the New York State Division of Housing and Community Renewal's (DHCR) Order and Opinion dated April 28, 2006 and for an order preliminarily enjoining their landlord Metropolitan Life Insurance and Annuity Company (Met-Life) from barring entrance to Peter Cooper Village and laundry room door and Met Life's cross-motion for an order dismissing the petition:

Papers	Numbered
Order to Show Cause with Verified Petition and Affirmation	1 (Exhs. A-F)
Met-Life's Notice of Cross-Motion with Ansel Affirmation	2
Met-Life Memorandum of Law	3 (Exhs.A-O)
Met-Life Exhibits A through I	4
Met-Life Exhibits J through N	5
DHCR's Verified Answer with Kearns Affirmation in Opposition to Petitioner's Verified Petition	6
DHCR's Administrative Record (Three Parts)	7

Introduction

This case stems from Met Life's decision to implement a new security system in its Stuyvesant Town-Peter Cooper Village residential property, a residential complex in Manhattan comprised of twenty-one buildings and about 2480 apartments located between First Avenue and the F.D.R East River Drive between 20th and 23rd Streets; the complex contains extensive common areas, including gardens. The new system replaces the metal key used to gain access to the lobby doors with a card key that is sensed by an electronic reading mechanism. A photograph of the tenant is embossed on the card key, with the tenant's option of including his or her name. Petitioners had previously brought two

actions to prevent Met Life from implementing the new system. They are now seeking judicial review of the DHCR's April 28, 2006 administrative order which, with some modifications, permitted Met-Life to implement the card key security system at the premises. Met-Life cross moves for an order dismissing the petition.

Background

The tenants' first challenge to the lawfulness of Met-Life's new security system was first addressed by a Justice of this Court on June 29, 2004.¹ The tenants had challenged the implementation of the card key system on the grounds that it constituted a breach of their right to privacy, an illegal hardship, and violated many of their rights under their lease and the Rent Stabilization Law, including a diminution of services and a breach of the implied warranty of habitability. Justice Jane Solomon found that the new card key system did not violate the lease and that Paragraph 6 of the lease is to the contrary, requiring the tenants to observe the rules and regulations adopted by Met-Life relating to the buildings and grounds. She also found that the tenants failed to state a cognizable claim that the proposed system is an illegal hardship, a breach of privacy, or a breach of the warranty of habitability.

¹Stuyvesant Town-Peter Cooper Village Tenants' Ass'n. et al. v. Met Life, Sup. Ct. N.Y. Co., Index No. 100010/04 (Solomon, J.).

Justice Solomon, however, found that “to the extent that Tenants claim that the proposed security system represents a diminution of service, a violation of the rent laws or an unauthorized change in the rent stabilized lease, . . . the court lacks jurisdiction to consider these claims until Tenants have exhausted their administrative remedies before the DHCR.” Without Appealing Justice Solomon’s order nor exhausting their administrative remedies, the tenants filed a second action before this Court² raising many of the same challenges to the new security system, albeit cast in a different light.

On April 26, 2005, conferring preclusive effect to Justice Solomon’s order, as it must, this Court granted Met Life’s cross-motion for an order dismissing the new petition. The Court found that the doctrine of res judicata prevents a party from raising arguments which have previously been decided or which could have been raised in a prior action or proceeding. Henry Modell and Co., Inc. v. Ministers, Elders and Deacons of the Reformed Protestant Dutch Church of the City of New York, 68 N.Y.2d 458, 461 (1986)(“a party is not free to remain silent in an action in which he is a defendant and then bring a second action seeking relief inconsistent with the judgement in the first action by asserting what is simply a new legal theory”); O’Brien v. City of Syracuse, 54 N.Y.2d 353, 357 (1981)(“once a claim is brought to final conclusion, all other claims arising out of the same

²Stuyvesant Town–Peter Cooper Village Tenants’ Ass’n, et al. v. Met Life, Sup. Ct. N.Y. Co., Index No. 104220/05 (Acosta, J.).

transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy”).

Notwithstanding the unnecessary posturing that had led to the DHCR’s failure to adjudicate the issues left open by Justice Solomon, the parties consented to the April 19, 2005 order of the Court retaining jurisdiction, defining the scope of the administrative proceedings before DHCR, and setting an expedited schedule. DHCR accepted jurisdiction to decide whether the new card key security system represents a diminution of service, a violation of the rent laws, or an unauthorized change in the rent stabilized lease. Additionally, the Court directed Met-Life, inter alia, to temporarily provide tenants not already in possession of photo card keys with access to the premises with card keys not embossed with their photograph.

After consideration of the pending service complaints and supplemental submissions by the parties pursuant to the April 19, 2005 order of this Court, the Rent Administrator issued an order dated August 15, 2005 denying the tenants’ service complaints and granting Met-Life permission to implement the card key security system with some modifications. A Petition for Administrative Review (PAR) was filed by the tenants seeking reversal of the Rent Administrator’s order. Met-Life also filed a PAR seeking clarification of certain aspects of the August 15, 2005 order.

On April 28, 2006, DHCR's Commissioner issued an order denying the tenants' PAR and granting Met-Life's PAR permitting implementation of the card key security system with some modifications. The Commissioner found that the card key system was not a diminution of services, a violation of the rent laws, or an unauthorized change in the terms and conditions of the tenants' leases. The Commissioner permitted some modifications to the card key system as proposed, including giving "tenants," "legal occupants," and "guests" the option to include their names on the card key and giving Met-Life the option to require the names of "invitees" to be placed on card keys. The Commissioner further modified the Rent Administrator's order to the extent of permitting "nonsensitive information" on the card key, basing the expiration date of invitees' card keys on certain criteria, and permitting Met-Life to require individuals without a card key seeking access to the premises "to show some form of photo ID to security personnel, based upon the security needs of the subject premises." The Commissioner reasoned that inasmuch as security personnel may review the photos of card key holders through close circuit television as they enter the premises, "it is only logical to allow security personnel to be able to ask for a photo ID of non-card key holders."

On June 6, 2006, tenants filed the instant petition seeking to annul and vacate the Commissioner's April 28, 2006 order and to enjoin implementation of the card key security system in question. Oral arguments were held on June 15, 2006 and the Court permitted

DHCR to submit the official record by June 22 and its responsive papers by June 29, 2006, with the Court's promise of an expedited decision; so here it is.

Analysis

A rational and reasonable determination of DHCR within its area of expertise is entitled to deference by the courts, see Matter of West Vil. Assocs. v. Division of Hous. & Community Renewal, 277 A.D.2d 111, 112 (1st Dept. 2000), and will not be modified by this Court unless petitioners sustain their burden of demonstrating that DHCR acted arbitrarily, capriciously, or irrationally. Matter of Royal Realty Co. V. New York State Div. of Hous. & Community Renewal, 161 A.D.2d 404, 405 (1st Dept. 1990)(court may not substitute its judgment for a rational DHCR judgment); see also Matter of Ansonia Residents Assoc v. New York State Div. of Hous. & Community Renewal, 75 N.Y.2d 206, 213 (1989)("[w]here the interpretation of a statute or its application involves knowledge and understanding of underlying operational practices or entails an evaluation of factual data and inferences to be drawn therefrom, the courts regularly defer to the governmental agency charged with the responsibility for administration of the statute. If its interpretation is not irrational or unreasonable, it will be upheld), citing Kurcsics v. Mercantile Mut. Ins Co, 49 N.Y.2d 451, 459 (1980).

In the present case, this Court will not substitute its judgment for DHCR inasmuch as the Commissioner's order is not irrational, arbitrary, or capricious. Contrary to the

tenants' claim, the Commissioner's order is a detailed, well reasoned, and a rational interpretation and application of the rent laws and regulations. That reasonable people may disagree with the Commissioner does not constitute a valid ground to annul his order. Matter of Royal Realty Co. v. New York State Div. of Hous. & Community Renewal, 161 A.D.2d 404, 405 (1st Dept. 1990); Krakower v. DHCR, 137 A.D.2d 688 (2nd Dept. 1988). Therefore, the petition is denied and Met-Life's cross-motion to dismiss is granted.

Tenants' multi-layered contentions to the contrary, DHCR carefully considered the voluminous submissions of the parties and rationally addressed each of the parties arguments, including those related to the nature of the new card key security system and the implications related to required services, the rent laws, and the terms and conditions of the tenants' leases. Indeed, the Rent Administrator's seventeen-page fact-laden order and the Commissioner's twelve-page order, incorporating the Administrator's order with minor modifications, were framed to specifically respond to the issues raised by the parties. The Commissioner's conclusion that the card key system replacing metal keys is simply a mere utilization of previously unavailable technology to provide required security for the residential complex is rational and will not be disturbed.

For example, one of the tenants' core concerns with the card key system relates to the embossing of a tenants photograph on the card key which, combined with the data in Met-Life's possession gathered under the new system, allegedly creates an unacceptable

risk of identity theft or criminal conduct by Met-Life employees or others. DHCR, however, specifically accepted Met-Life experts' opinions that the photograph on the card keys are a crucial security measure and a critical component to the system, and properly rejected the tenants expert's alleged risks as speculative. In addition, DHCR reasonably pointed out that Met-Life would not obtain additional information from the residents of the complex that it does not already have or is now entitled to request.

Specifically, Met-Life submitted affidavits of two independent security experts, including a former FBI special agent with significant counter-intelligence and advance security systems experience, who, after reviewing the existing security procedures, recommended replacement of the antiquated metal key locks with card key access to the common areas of the Village. In addition, the New York City Police Department, through its 13th Precinct and the Crime Prevention Office, also concurred with the two experts. In recommending the card key system, the NYPD opined, inter alia, that

today the function of any security system is to help minimize personal injury and increase the structural security of the premises to discourage and deter unlawful activity. A major component of any security system is access control. Maximizing the use of updated electronic technology, access control cards contribute to a safer environment by limiting the number of persons at a given location, allowing only authorized entry. Access control cards equipped with photo identification capability increases the level of security, allowing immediate, positive verification of the card holder. A database record of access cards allows the issuer the ability to void a card in the event it is reported lost or stolen. This feature allows for the integrity of the entire system to be maintained. (Emphasis added).

In properly crediting Met-Life's submissions to justify the enhanced security system, the Commissioner cited to successful implementation of the card key system in other residential complexes in New York City and to the failure of the tenants to introduce any actual instance, anecdotal or otherwise, when the system either performed less efficiently than the metal key lock system or resulted in any occurrences of identity theft. Indeed, the Commissioner found that Met-Life had taken sufficient precautions in minimizing any risk of identity theft by not placing any confidential personal information (e.g. birth date, Social Security number, bank or credit account numbers, and mother's maiden name) on the card key, or the photographic database used in connection with the card key system.

In short, there is nothing in the record which permits this Court to disturb the Commissioner's finding that the new card key security system does not represent a diminution of service, a violation of the rent laws, or an unauthorized change in the rent stabilized lease. Therefore, the petition is denied and Met-Life's cross-motion to dismiss is granted. Accordingly, it is

ORDERED that the tenants' petition for judgment and injunctive relief is denied; and it is further

ORDERED that Met-Life's cross-motion to dismiss is granted.

This constitutes the Decision and Judgment of the Court.

Dated: July 17, 2006

ENTER

SO ORDERED



Hon. Rolando T. Acosta, J.S.C.
ROLANDO T. ACOSTA
 J.S.C.

To: Jack L. Lester, Esq.
Law Offices of Jack L. Lester
880 Third Avenue, Suite 900
New York, NY 10022
Attorney for Petitioners

Daniel J. Ansell, Esq.
Steven Kirkpatrick, Esq.
Greenberg Traurig, LLP
200 Park Avenue
New York, NY 10166
Attorneys for Respondents Metropolitan
Life Insurance and Annuity Company

David B. Cabrera, Esq.
New York State Division of Housing and Community Renewal
25 Beaver Street, Room 707
New York, NY 10004
Roderick J. Walters, Esq.
Susan Kerns, Esq.
Of Counsel
Attorneys for Respondent DHCR