SUPERIOR COURT OF NEW JERSEY

HUDSON VICINAGE

CHAMBERS OF
SHIRLEY A. TOLENTINO
JUDGE

WILLIAM J. BRENNAN COURTHOUSE
583 Newark Avenue
Jersey City, New Jersey 07306

SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY LAW DIVISION

DOCKET NO.: HUD-L-3112-07

BLOOMFIELD 206 CORPORATION,
Plaintiff,

-vs

CITY OF HOBOKEN, CITY OF HOBOKEN MUNICIPAL COUNCIL, MAYOR OF THE CITY OF HOBOKEN, CITY OF HOBOKEN DEPARTMENT OF HUMAN SERVICES RENT LEVELING BOARD, JAY RUBENSTEIN, and GARY RUBENSTEIN
Defendants.

DECISION ON ORDER TO SHOW CAUSE AND TRIAL

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ARGUED ON JUNE 11, 2009
DECIDED ON SEPTEMBER 23, 2009
TOLENTINO, J.S.C.

Plaintiff, Bloomfield 206 Corporation, has filed an order to show cause seeking to enjoin the City of Hoboken and the Department of Human Services Rent Leveling Board and its Rent Leveling Officer from performing legal rent calculations, pending the disposition of the trial in this matter. In its verified complaint in Lieu of Prerogative Writ, the Plaintiff has brought suit against the Defendants for an order declaring (1) that the Board's May 4, 2007 Resolution is void and that the Defendants' actions were arbitrary, capricious and unreasonable; (2) that the Board was not

authorized under the Rent Control Ordinance to issue the Resolution and its contained rent calculation; (3) that the Rent Control Ordinance is unconstitutional on its face and as applied to Plaintiff; (4) that the actions of the City Defendants violate 28 U.S.C. 1984 et seq; (5) that the apartment unit in question, in 1991, was a new dwelling unit not subject to the Rent Control Ordinance's regulations; (6) that the Rent Control Ordinance requires the Rent Leveling Board to consider all filed Vacancy Decontrol applications; (7) that the City Defendants' enforcement of the Rent Control Ordinance is in violation of its police power as those Defendants have failed to administer the Rent Control Ordinance with administrative regularity; (8) that the Rubenstein Defendants are equitably estopped from seeking a rent calculation based upon the prior agreement entered into by and between the parties; and (9) that the Rubenstein Defendants are not entitled to a rent calculation as they are barred by virtue of the applicable statute of limitations from obtaining same. On October 1, 2007, a stipulation of dismissal with prejudice was filed only as to Defendants Gary and Jay Rubenstein.

Factual Background:

Plaintiff, Bloomfield 206 Corporation ("Bloomfield 206"), is a management company which acquired title to a multi-family property located at 206 Bloomfield Street in the City of Hoboken on October 11, 1990. Defendants Jay Rubenstein and Gary Rubenstein, (the "Rubenstein Defendants"), entered into a rental lease agreement with Plaintiff for the apartment unit known as 206 Bloomfield Street, Apartment Number "4S" (the "Subject Unit") on or about July 28, 1992 for a monthly rent of $975.00. In connection with their tenancy, on or about May 13, 1993, the Rubenstein Defendants filed a request for a legal rent calculation with the City of Hoboken's Department of Human Services Rent Leveling Board (the "Board"), but after receiving additional

information requested by the Board and submitted by the Plaintiff to the Board regarding the substantial enlargement of the size of the Subject Unit, the Rubenstein Defendants dismissed its request for a legal rent calculation.

The Rubenstein Defendants continued to rent the Subject Unit from Plaintiff and make monthly rent payments pursuant to the lease agreement, and on or about August 31, 2006, the Rubenstein Defendants filed another request for a legal rent calculation. On or about October 23, 2006, the Board calculated a projection from the Subject Unit's 1981 registered rent and issued a legal rent calculation of $286.00, representing a decrease from the then $648.00 monthly rent amount. In rendering its decision, the Board's Division Manager rejected two (2) vacancy decontrol forms filed by Plaintiff's predecessor in title for the years 1983 and 1984 and also ignored the information submitted in 1993 to the Board regarding the substantial enlargement of the Subject Unit.

On or about November 6, 2006, the Plaintiff filed an appeal of the October 23, 2006 decision on the basis that (a) the Subject Unit was substantially different than the unit available in 1981 and was not subject to the Rent Control Ordinance's registration requirements; (b) the Subject Unit was properly decontrolled and registered by the Plaintiff and its predecessor; (c) the City Defendants had failed to properly maintain the rental registration and property files for the Subject Unit; (d) the Board's "roll-back" of rent to a rent amount based upon a 1981 rent was arbitrary, capricious, and unreasonable; (e) the Rubenstein Defendants' claims were barred by the doctrine of equitable estoppel since they settled their previous rent calculation claim with the Plaintiff; (f) refunds or rental credits of more than two years are void and in violation of N.J.S.A. 2A:14-1; and (h) the decision of the Board's Division Manager violated a mandatory requirement of the Rent Control Ordinance and principles of due process by failing to advise Plaintiff in the Board's

decision that there was a right to request a rehearing. The Board heard Plaintiff's appeal on March 28, 2007 and took the testimony of the Board's Division Manager. On May 4, 2007, the Board approved and issued a resolution denying the Plaintiff's appeal, affirming the Board's October 23, 2006 decision, and determining that the legal rent calculation for the Subject Unit for the year 2006 was $286.00.

<u>The Order to Show Cause:</u>

Plaintiff seeks to stop all legal rent calculations, pending disposition of the trial in this matter. Plaintiff argues that this application is necessary because of the Board's retroactive changes in the administration and policies regarding the performance of these legal rent calculations and the disparate effect of these changes upon landlords in Hoboken who have complied with the manner in which the Ordinance was being enforced for many years.

In order for the court to grant the requested injunctive relief, the following three (3) elements from Crowe v. DeGioia, 90 N.J. 126, 132-134 (1982) must be satisfied:

1) Plaintiff must demonstrate a reasonable probability of eventual success on the merits; and
2) There must be a threat of immediate and irreparable harm to the Plaintiff if the injunction is not granted; and
3) In balancing the equities, the damages to the Plaintiff in the absence of the injunction must outweigh the foreseeable harm to the Defendant.

Plaintiff argues that all of the required elements have been satisfied. With respect to, element #1, a reasonable probability of eventual success on the merits, Plaintiff contends that it will prevail in showing that the Board's retroactive requirement of filed vacancy decontrol forms is arbitrary, capricious, unreasonable, and not supported by credible evidence. Plaintiff further argues that it will prevail because the Board cannot show a rational basis in fact upon which it based its

decision to require said forms for periods when such forms were systematically not required by the City. According to Plaintiff, the Board had a public policy spanning 25 years of not requiring a property file to contain vacancy decontrol forms in order to permit a vacancy decontrol of an apartment, but on or around late 2006/early 2007, the Board changed its policy regarding rent calculations based upon the Board's interpretation of unpublished judicial decisions and began applying this new policy retroactively. As a result, according to Plaintiff, landlords are placed in the untenable position of having no certainty that their rent rolls can survive a challenge from any tenant who initiates a request for a legal rent calculation. Additionally, Plaintiff contends that a landlord cannot file forms for previous vacancies that occurred at the property during the term of the landlord's ownership or that of the predecessor in title. Plaintiff argues that this administrative catch-22 is a manifest injustice.

Regarding element #2, the threat of immediate and irreparable harm to the Plaintiff if the injunction is not granted, Plaintiff characterizes this requirement in terms of "irreparable harm to all Hoboken landlords"—not just to Plaintiff. Plaintiff contends that it has been placed in the uncertain position of not knowing whether any of the current rents will be deemed in compliance with the rent control ordinance and that such uncertainty cannot be remedied through monetary relief.

Finally, with respect to element #3, the requirement that granting the injunction must outweigh any foreseeable harm to the Defendant, Plaintiff argues that Defendants will suffer no harm if a *status quo* injunction is granted because the entire process that a landlord must follow to challenge a legal rent calculation costs the Defendant City of Hoboken thousands of dollars, and in the eyes of the Plaintiff, preventing landlords from having to undergo this arduous process would actually save the City money. Plaintiff further argues that its hardship is "sure and significant."

Plaintiff has failed to meet all of the requirements set forth in Crowe supra. As to element #1, I find that Plaintiff has shown a reasonable likelihood of eventual success on the merits under the theory that the Board could not provide a rational basis in fact as to why unpublished decisions such as Rosen v. Hoboken Rent Leveling & Stabilization Board, 2008 WL 4191134, App. Div. (decided September 15, 2008) were used as precedent for the absence of registration statements for years as far back as 1983 and 1984. It was reasonable for Plaintiff to believe that it could eventually succeed in showing that the application of such case precedent worked an injustice in the instant matter because the law in effect during 1983 and 1984 with respect to registrations, as well as the practices of the Board during those years, did not require the submission of such registrations on an annual basis.

Additionally, Plaintiff has not fully explained how being required to undergo the procedures to challenge legal rent calculations poses an immediate and irreparable harm to Plaintiff. Plaintiff implies that the procedural process to challenge the calculation is costly to Plaintiff and that having to undergo the process would be certain under scenarios where long-time tenants of Plaintiff requested a legal rent calculation.

However, this issue of Plaintiff's harm has been present since June 15, 2007, in the instant matter, when Plaintiff filed its verified complaint in Lieu of Prerogative Writ, and Plaintiff does not explain how the risk has now, even as late as the filing of its post-hearing brief in August 2009, becomes an immediate and irreparable harm. Further, Plaintiff does not list any other situations that have arisen since the filing of its complaint in 2007 where it had to undergo the purportedly arduous and costly process of defending against another tenant regarding a legal rent calculation. As a result, this Court finds that Plaintiff has failed to meet the requirement of immediate and irreparable harm.

Finally, Plaintiff has not only failed to show how its purported harm rises to the level of immediate and irreparable harm, but Plaintiff has not clearly articulated the actual harm it would suffer if this injunction were not granted. The risk that other tenants may challenge the rent being charged does not outweigh the harm to Defendant City of Hoboken and to other landlords and tenants that are not a part of the instant case. If this Court granted Plaintiff's request, potentially scores of other tenants would be delayed in getting responses to their rent challenges, pending the outcome of this case. Plaintiff has not shown how the harm to Plaintiff outweighs the harm to the City and its constituents. Further, Plaintiff's implied argument that the process that aggrieved landlords must undergo is costly and time-consuming suggests that a monetary award would be enough to compensate Plaintiff for the money spent defending against a tenant's rent challenge. Where the harm to Plaintiff may be remedied by a monetary award, Plaintiff's application sounds in law and not in equity.

For the foregoing reasons, Plaintiff's request to enjoin the City of Hoboken and the Department of Human Services Rent Leveling Board and its Rent Leveling Officer from performing legal rent calculations is hereby denied.

The Trial:

In its post-hearing submission to the court, Plaintiff's counsel emphasizes three major arguments with respect to the trial in this matter: (1) That the Board's enforcement of the current rent control ordinance in the face of a systematic, twenty-five year period policy of not requiring registration or filing of vacancy decontrol forms is an unconstitutional exercise of its police power; (2) That the Board's retroactive change in policies and enforcement of the current rent control

ordinance results in a manifest injustice which requires that this court enjoin the Board's actions; and (3) That the enactment of Regulation 10:54(A) was improper.

The Defendants' position in its post-hearing submission is that the focus of Plaintiff's case as presented to this court has centered upon past actions of the Board and the Board's interpretation of the Rent Control Ordinance, when, according to the Defendants, these matters have already been decided by the courts in decisions such as Tucci v. Hoboken Rent Leveling & Stabilization Board, et al, Docket no. L-756-95 (1998), Lewis v. Mumma et al, Docket no. L-2638-05 (2006), and Rosen v. Hoboken Rent Leveling & Stabilization Board, 2008 WL 4191134, App. Div. (decided September 15, 2008). Defendant also argues that there is no retroactive application of any laws or policies by the rent control office and that the direction and findings of the Courts have repeatedly held that the rent control ordinance is clear and unambiguous. Defendants further contend that Plaintiff has misstated the applicable laws and facts and has attempted to incorrectly persuade this court that the issue at present is a matter of first impression.

Additionally, the Defendants argue that the facts in the instant matter and Boylan v. Crespo HUD-L-815-08 (2009), which this Court decided earlier this year, are similar in that, here, the landlord admits at various times throughout his testimony that he was aware of the ordinance and its requirements, but chose to ignore them. Defendants also state that Plaintiff's property manager gave testimony that for a period of at least seven (7) years, Plaintiffs, either personally or through their staff, never once did any investigation into whether the rents being charged were legal or illegal, nor, according to Defendants, did anyone meet with the rent control office to ensure that the rents being charged were legal. As a result, Defendants contend strongly that this court should rule just as it did in Boylan—that the Board's action was proper and that Plaintiff-Landlords are charged

with the obligation to know the provisions of the ordinance, including the legality of the existing rents, at the time of their purchase of the property in Hoboken.

The Court has carefully considered the evidence and arguments of counsel produced at trial, and this Court makes the following findings: Basically, I find the evidence submitted by both the Plaintiff and the Defendant to be credible with respect to the most significant facts of this case. However, with respect to the due diligence performed by Plaintiff, the court is more persuaded by the testimony of Plaintiff-Landlord's officer and/or agent, Mr. Steven Silverman, who was called as a witness for the Defendants. Although the Defendants contend in their post-hearing brief that the landlord admits at various times throughout his testimony that he was aware of the ordinance and its requirements "but chose to ignore them," (Defendants' Post-Hearing Brief at 11), Mr. Silverman testified on direct examination that his support staff handles the day-to-day operations of the properties and that, in pertinent part:

> ...as a prerequisite to purchasing a property, I would meet with the rent control officer…and we would sit down…basically look at the rent registration forms…and the rents that are being charged. (emphasis added) (Transcript of Order to Show Cause, June 4, 2009, at Page 224).
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> And she [the rent control officer] would pull out a paper and pencil and say if there's a decontrol here…and do quick calculations, nothing formal, but would let you know that, yeah, these look like good rents or there's a problem. (Id.)
>
> ...
>
> Sometimes we talked about putting it in writing and I was told we can't do that unless the tenant would be notified. (emphasis added) (Transcript of Order to Show Cause, June 4, 2009, at Page 229).

Even though, as argued by Defendants, Plaintiff's property manager and/or agent, Ms. Maryann Bagan testified on cross-examination that "[I] never proactively asked them if there was anything that I was not aware of that I should be doing" (emphasis added) (Transcript of Order to Show Cause, June 4, 2009, at Page 208), the court finds, based on the foregoing testimony of Mr.

Silverman, that the Plaintiff-Landlord did not ignore the City of Hoboken's rent control ordinance and its requirements prior to purchasing the Subject Property.

Rent Regulations must be fair and reasonable in application, non-confiscatory, rational and without arbitrariness or discrimination. The New Jersey Supreme Court has stated that, in order to pass constitutional muster, "not only must a rent control Ordinance be facially nonconfiscatory,...but it must also be nonconfiscatory as applied." Brunetti v. Borough of New Milford, 68 N.J. 576, 595 (1975). When determining whether the Board's action was arbitrary and capricious, a court must examine: (1) whether the action violates express or implied legislative policies as set forth in the Ordinance; (2) whether the record below contains sufficient evidence to support the Board's findings and conclusions; and (3) whether the Board clearly erred in the application of its findings to the Ordinance. Brady v. Dept. of Personnel, 149 N.J. 244, 256 (1997). It is well established that courts have only a limited role in reviewing the decision of an administrative agency. Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980).

Rosen supra held, in pertinent part, that:

> When reviewing an agency's interpretation of a statute, 'substantial deference' is accorded to the interpretation of the agency charged with enforcing it and the 'agency's interpretation will prevail provided it is not plainly unreasonable.' Merin v. Maglaki, 126 N.J. 430, 436-37, 599 A.2d 1256 (1992) (citing Metromedia Inc. v. Dir., Div. of Taxation, 97 N.J. 313, 327, 478 A.2d 742 (1984)).
>
> However, we are 'in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue.' Mayflower Sec. Co. v. Bureau of Sec. 64 N.J. 85,93, 312 A.2d 497 (1973).

Here, I find that the Board erred in its application of Rosen to the instant matter. The Board found that Plaintiff's property did not have registration statements on file for the years 1983 and 1984 and that, as a result, the corresponding vacancy decontrol certificates for those same years could not be considered because, under Rosen and similar unpublished decisions, the Board was

required to have both a registration statement and corresponding decontrol form in the file before granting the 25% decontrol. I find that the instant case is distinguishable from the facts of Rosen and Boylan in that the instant case involves periods of missing registration statements and/or decontrol certificates going back as far as the early 1980s while Rosen and Boylan addressed missing statements and/or certificates beginning in 1996 and 2000, respectively. The Rosen court construed some of the provisions of the City of Hoboken's Municipal Rent Control Ordinance, §§ 155-1 to 155-34, and provided, in pertinent part, that:

> The Ordinance, which was adopted in 1973, **provides** that the owner of the dwelling must file a registration statement...every year by October 1st. Hoboken Gen. Ord. § 155-30A. (emphasis added).

In Rosen, the court addressed what the construed ordinances provided as of 2008, the year when that case was decided on appeal, and its opinion does not address the history of how the rent control ordinance evolved into its then current form.

Specifically, Rosen does not squarely address the primary issue raised by Plaintiff in the instant matter, which is that in 1983 and 1984, the ordinance in effect at that time did not require that a registration statement be filed annually. Plaintiff has argued and provided evidence that the rent control ordinance, as enacted in 1973, did not require landlords to register rent amounts charged, but that in 1981 the ordinance was amended to require a one-time registration and that in 1985, the 1981 ordinance was repealed and rescinded—resulting in the 1985 ordinance being transferred into Chapter 155 of the Hoboken Municipal Code and requiring the filing of annual registration statements, effective October 1, 1985. In Rosen, that court was not presented with the issue of missing statements/forms prior to 1985, and neither was this court when it decided Boylan. The instant matter is distinguishable because its seeks an interpretation of the applicability of Rosen to the period prior to 1985.

"A retroactive statute is one which 'operates on transactions which have occurred, or rights and obligations which have existed, before the passage of the act.'" Prudential Ins. Co. of America v. Mayor and Board of Council Guttenberg, et al, 196 N.J. Super., 482, 485, 483 A.2d 417, 419; citing Weinstein v. Investors Savings and Loan Assn., 154 N.J. Super. 164, 167, 381 A.2d 53 (App.Div. 1977). "If they arose before the effective date of the statute its application thereto would be retroactive. If after, it would be prospective." Id. Here, the regulations in question, as related to the applicability of Rosen, are the post-1985 §§ 155-1 to 155-34 of the City's Rent Control Ordinance. Plaintiff's rights and obligations with respect to the Subject Unit began when it purchased the multi-dwelling property in 1990, which was after the effective date of the regulations. However, the reason that Plaintiff was denied the 25% vacancy decontrol was due to the absence of registration statements for years prior to 1985, so the practical effect is that Plaintiff is being held accountable for rights and obligations connected to the Subject Unit before Plaintiff acquired it. I find that §§ 155-1 to 155-34 are not, in and of themselves, retroactive regulations, but that the Board's interpretation of those statutes is misplaced in the instant matter.

In Boylan, this court found that Plaintiff-Landlord was charged with the obligation to know the provisions of the ordinance in question in that case, including the legality of the existing rents, at the time of their purchase of the subject property. In that case, the Plaintiff acquired the subject property in 2001 with an existing tenant residing in the property since 2000, and the issues raised by the Plaintiff related to Regulation 18:66, which was promulgated later in October 2007. But, this court found in Boylan that §§ 155-31 and 155-33, as construed by Rosen, governed.

Here, Plaintiff Bloomfield 206 is distinguishable because requiring this Plaintiff to conduct due diligence would not have proven beneficial since Plaintiff's rights and obligations began in 1990 when he acquired the Subject Property. It is not reasonable to expect Plaintiff to conduct due

diligence as to the law regarding registration statements for the years 1983 and 1984; when Plaintiff did not own the building at that time and when the ordinance in effect at that time did not require the filing of an annual registration.

For the foregoing reasons, I find that: (1) the Board's May 4, 2007 Resolution with respect to Plaintiff is void and that the Board's actions were arbitrary, capricious, and unreasonable, and (2) that the rent control ordinance is unconstitutional as applied to Plaintiff in that the Board's application and carrying-out of the meaning of the ordinance was arbitrary, capricious, and unreasonable.

I also find that (3) the Board was authorized under Hoboken's rent control ordinance to issue the Resolution and its contained rent calculation, because, I also find, that the enactment of Regulation 10:54(A) was proper. Although the evidence and testimony presented before this court show that the 1981 rent control ordinance and the current rent control ordinance did not and do not provide a procedure for calculating legal rents in the City of Hoboken, the Board was acting within the scope of its power when it promulgated Regulation 10:54(A) in 1987. Regulation 10:54(A) provides, in pertinent part, that:

> 01 – The Rent Board Administrator shall have the jurisdiction to calculate legal rents. A tenant may request a legal rent calculation where the tenant's rent is believed to be excess of the legal rent as established pursuant to the ordinance. Section 18:56(B). The tenant shall provide the Administrator with a statement explaining the reason for the calculation request and shall supply any supporting materials deemed necessary to the resolution of the matter. Likewise, a landlord may request a legal rent calculation where it has insufficient information upon which to establish the legal rent for one of its rental units.

Pursuant to the current rent control ordinance, the rent leveling board is authorized:

> [t]o issue and promulgate such rules and regulations **as it deems necessary** to implement the **purposes** of this chapter, which rules and regulations shall have the force of law until revised, repealed, or amended from time to time by the Board in the exercise of its discretion, provided that such rules are filed with the Municipal Clerk. (emphasis added). See Plaintiff's Exhibit 2 at Rent Control Ordinance §155-19(A).

The purpose of this chapter is to protect tenants through regulating the amount of rents being charged. In order to fulfill this purpose, the Board, or is administrator, must be able to calculate legal rent amounts.

Plaintiff argues that the regulation, as currently promulgated, does not provide a landlord or tenant with a right to a hearing or other due process safeguard as required both under the rent control ordinance and constitutional law. The essential components of due process are adequate notice, opportunity for a fair hearing, and availability of appropriate review. <u>See</u> <u>Matter of Kavalsky</u>, 195 N.J. Super. 91. Here, the notice requirement is satisfied since this is a public ordinance whereby plaintiff could readily obtain information about and/or copies of the content of the ordinance. Second, there is an opportunity for a fair hearing since Plaintiff may appeal the determination of the rent control administrator, where a full hearing before the Board would become available to Plaintiff. Lastly, the requirement of the availability of appropriate review is satisfied since the administrator's determination may be reviewed by the Board, and then the Board's determination may be reviewed via an action in lieu of prerogative writ. I find that Plaintiff's due process rights have not been violated with respect to Regulation 10:54(A).

I find that **(4)** Plaintiff has not shown any specific violations of 28 <u>U.S.C.</u> 1984 <u>et</u>. <u>seq</u>. which are applicable; and that **(5)** Plaintiff has not shown that the apartment in question, in 1991, was a new dwelling unit that would deem it as not being subject to the rent control ordinance's regulations. I further find that **(6)** the City Defendants' enforcement of the Rent Control Ordinance is in violation of its police power in that the City Defendants have failed to administer the Rent Control Ordinance with administrative regularity.

(7) I make no findings with respect to the general construction of § 155-31 of the rent control ordinance, as that regulation was already construed in Rosen supra. (8) I make no findings regarding the Rubenstein Defendants since they were dismissed from the suit on October 1, 2007.

This matter is remanded to the Board for a determination consistent with this Decision.

Shirley A. Tolentino, J.S.C.

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