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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

SHIRLEY JOAN BAHERI, Plaintiff and Appellant, v. SANTA MONICA RENT CONTROL BOARD, Defendant and Respondent.	B246972 (Los Angeles County Super. Ct. No. SS 022346)

APPEAL from a judgment of the Superior Court for the County of Los Angeles. Bobbi Tillmon, Judge. Affirmed.

Rosario Perry for Plaintiff and Appellant.

J. Stephen Lewis and Rebecca F. Sherman, Santa Monica Rent Control Board, for Defendant and Respondent.

SUMMARY

In March 2012, defendant Santa Monica Rent Control Board (the Board) made a final determination that plaintiff Shirley Joan Baheri's owner-occupancy exemption from rent control laws had lapsed by operation of law as of August 14, 2010, because plaintiff no longer resided on the property as of that date. Plaintiff did not challenge that determination. Instead, she sued for a writ of mandate (Code Civ. Proc., § 1085) enjoining defendant from enforcing one of its regulations, claiming that the regulation as applied to her by defendant violated her substantive and procedural due process rights, enabling defendant's employees to "revoke" or "terminate[]" her exemption before the defendant held a hearing. She alleged the same conduct violated her civil rights (42 U.S.C. § 1983), and sought $600,000 in damages.

Defendant demurred to the complaint, and the trial court sustained the demurrer without leave to amend, dismissing the complaint. We affirm the judgment of dismissal.

FACTS AND LEGAL BACKGROUND

Section 1801, subdivision (c) of the Charter of the City of Santa Monica (Charter section 1801(c)) defines all residential rental units in the city as controlled rental units, with certain exceptions. The exceptions include rental units in owner-occupied dwellings with no more than three units. (§ 1801(c)(4).) The owner must reside on the property as his or her principal place of residence. (§ 1801(c)(4)(i).) The exemption "shall expire by operation of law when the owner ceases to reside on the property as his or her principal place of residence; thereafter, all units on the property" are subject to the rent control provisions of the city charter. (§ 1801(c)(4)(ii).)

A regulation issued by the Board (regulation 12070) "provides the administrative process for lapse of exemptions provided pursuant to [Charter] Section 1801(c)." Regulation 12070(b) specifies (in accordance with the city charter) that "[w]hen the facts supporting an exemption no longer exist, an exemption lapses by operation of law." Regulation 12070(b)(3) states: "Upon determination by Board staff that sufficient evidence exists to make an initial determination that an exemption has lapsed, . . . a Notice of Lapse will be mailed to the exemption holder at the property address and any

other known address and to the tenants, specifying the facts upon which the initial determination was made, the date upon which the lapse is believed to have occurred, the consequences of such a lapse, and the procedures available to contest the lapse."

In this case, plaintiff purchased her three-unit property in 2001 and defendant granted her an owner-occupancy exemption in 2002. On April 11, 2011, defendant received a letter "from a disgruntled tenant alleging that [plaintiff] did not reside on the property." Ten days later, defendant's investigator visited the property to determine whether plaintiff resided on the premises. The investigator determined she did not, and on May 4, 2011, defendant, by its administrator, sent plaintiff an "Initial Notice of Lapsed Exemption," as provided in regulation 12070(b)(3).

Defendant's notice stated that an April 29, 2011 letter from plaintiff to defendant "failed to provide evidence sufficient to controvert the information found by the Agency's on-site investigation." Defendant explained that based on its on-site investigation, "staff made an initial determination that you no longer reside on the subject property as your principal place of residence, and, therefore, that your exemption has lapsed and this property is again subject to Rent Control Law." The notice told plaintiff that "[i]f staff makes a final determination that your exemption should be deemed to have lapsed, you will be billed for all registration fees that have accrued" since the date of lapse. Defendant's May 4 notice also advised plaintiff of her right to challenge "this initial determination that your exemption has lapsed," of her right to submit a written response with information to establish she still qualified for the exemption, and of her right to a full evidentiary hearing. The notice concluded, "If the exemption for this property has lapsed, this property is again subject to the Rent Control Law."

Plaintiff submitted a written response to the May 4, 2011 notice, but the information she provided was not sufficient to contravene the initial determination of lapse. Plaintiff then availed herself of her right to a full evidentiary hearing, and hearings took place on various dates from July through November 2011. During this time, on August 25, 2011, defendant's Hearings Department Manager wrote to plaintiff, saying that some tenants of plaintiff's property "may have received rent increase notices in

excess of the 3.2% general adjustment authorized by the Rent Control Board." The letter noted that the Hearings Department was "currently holding hearings" on the initial determination that plaintiff's exemption had lapsed by operation of law, and continued: "I am writing to inform you that until a final Board decision is issued the property is treated as under the jurisdiction of Rent Control, which means that rents cannot be raised beyond the 3.2% general adjustment." The letter concluded: "In addition, if the final Board decision is that the exemption did lapse by operation of law at some time in the past, the property would be considered under the jurisdiction of the Rent Control Law back to that date. Thus, any unauthorized rent increases applied on or after the date of the lapse would constitute collection of excess rent."

On March 8, 2012, the Board made a final determination that plaintiff had not resided on the property since August 14, 2010, and that her exemption had lapsed by operation of law as of that date.

Instead of appealing defendant's determination, plaintiff filed this lawsuit, seeking a writ of mandate enjoining defendant from enforcing regulation 12070(b)(3) – the regulation allowing defendant's staff to make an initial determination that an exemption has lapsed. Plaintiff's complaint alleged, in substance, that defendant's employees "revoked" her exemption *before* the Board held a hearing, and that defendant's regulation violated her "right to procedural and substantive due process" and was "invalid facially, and/or as applied to [plaintiff] . . . ." Plaintiff also asserted a violation of federal civil rights laws (42 U.S.C. § 1983) "through the enactment of the challenged regulation, and through the custom, pattern, and practice of routinely enforcing the challenged regulation against all Housing Providers in the manner they did against [plaintiff]." (Fn. omitted.)

Defendant demurred to the complaint, and the trial court sustained the demurrer without leave to amend. The court entered a judgment of dismissal and this appeal followed.

DISCUSSION

A demurrer tests the legal sufficiency of the complaint. We review the complaint de novo to determine whether it alleges facts sufficient to state a cause of action. For purposes of review, we accept as true all material facts alleged in the complaint, but not contentions, deductions or conclusions of fact or law. We also consider matters that may be judicially noticed. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Plaintiff contends that defendant's employees "revoked" her exemption before conducting any hearings, and this "pre-hearing deprivation of her occupancy exemption" violated her right to procedural due process under the federal and state Constitutions. She contends she "clearly showed," by defendant's August 25, 2011 letter, "that the revocation occurred prior to the completion of the hearings," and that in any event, "the timing of the revocation was, at best, a contested issue of fact." She contends her right to procedural due process is not an abstract right, "especially since she is challenging the legality of [defendant's] staffers' routine practice of revoking exemptions prior to a hearing."

Plaintiff's claims are entirely without merit.

First, there is nothing in defendant's regulation that violates due process. The regulation provides for notice to the owner of an initial determination of lapse, together with a description of the reasons for and consequences of a lapse, and procedures available for contesting the determination. Plaintiff has identified no due process flaw in regulation 12070(b)(3), and we see none.

Second, there was no "revocation" of plaintiff's owner-occupancy exemption by defendant's staff. The staff did precisely what defendant's regulation requires. Indeed, defendant's administrative procedures gave plaintiff an opportunity to file a written response to its initial notice of lapse, and to include "any and all relevant documents" that might show the facts on which the staff relied for its initial determination were "inaccurate, incomplete, or otherwise in error," in which case the exemption "will be deemed not to have lapsed, and the owner and tenants will be so notified." (Reg. 12070(c)(2).) Only when an owner's response "fails to resolve the issues of law or

fact" in the initial notice does the matter proceed to a hearing. (Reg. 12070(e).) In short, plaintiff had the opportunity, well before hearings began, to show the staff's initial determination was erroneous, and failed to do so.

Third, plaintiff's reliance on the August 25, 2011 letter as constituting a "revocation" of plaintiff's exemption is misplaced. The staff has no authority to "revoke" an owner-occupancy exemption, which expires by operation of law. The August 25 letter was sent after plaintiff had failed to make an informal showing that the staff's initial determination was "inaccurate, incomplete, or otherwise in error" (reg. 12070(c)(2)), and while formal evidentiary hearings on the lapse of plaintiff's exemption were taking place. The letter served at most as a warning that, if plaintiff did not reside on the property, she could not increase rents by more than the statutory maximum.

Fourth, plaintiff's exemption expired by operation of law as a result of plaintiff's own conduct in ceasing to reside on the property, an event which occurred, as defendant later confirmed, as of August 14, 2010. Plaintiff does not challenge that determination, and as defendant aptly points out, it is hard to see how plaintiff can be "deprived" of a property right that did not exist (as she well knew) once she no longer resided on the property.

Finally, even if we assume the staff's August 25, 2011 letter warning plaintiff not to increase rents constituted a deprivation of a property interest in advance of a hearing, plaintiff cannot prevail. Due process does not always require a pre-deprivation hearing, and it does not in this case. In *Mathews v. Eldridge* (1976) 424 U.S. 319, 349, the high court held that an evidentiary hearing was not required before the termination of disability benefits; administrative procedures that included a hearing after benefits were terminated "fully comport[ed] with due process."

Deciding what process is due generally requires consideration of three factors: the private interest affected; the risk of an erroneous deprivation of that interest through the procedures used and the probable value of additional procedural safeguards; and the government's interest. (*Mathews v. Eldridge, supra,* 424 U.S. at p. 335.) None of these factors weighs in plaintiff's favor in a case where a property interest expires by operation

of law based on the property owner's own conduct. The private interest affected – plaintiff's interest in maintaining a rent control exemption for which she could not make an informal showing that she still qualified – is slight, and the government's interest in regulating rents is strong. And, as this case shows, there is little risk that defendant's procedures will result in an erroneous deprivation of the exemption. In short, "'[d]ue process is flexible and calls for such procedural protections as the particular situation demands.' [Citation.]" (*Id.* at p. 334.) Plaintiff has received all the process that was due in this case.

DISPOSITION

The judgment is affirmed. Defendant shall recover its costs on appeal.

GRIMES, J.

We concur:

BIGELOW, P. J.

FLIER, J.