

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3169-08T2

318-322 GLENWOOD AVENUE,  
(JEANNY SUNG KOO),

Petitioner-Appellant,

v.

TOWNSHIP OF BLOOMFIELD,

Respondent-Respondent.

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Argued January 19, 2010 - Decided February 24, 2010

Before Judges Reisner, Yannotti and Chambers.

On appeal from a Final Agency Decision by the  
Commissioner of the Department of Community  
Affairs, Docket No. OCA-326-08.

William J. Ward argued the cause for appellant  
Jeanny Sung Koo (Carlin & Ward, P.C., attorneys;  
Mr. Ward, of counsel and on the brief; Arthur G.  
Warden, III and Adam Karczewski, on the brief).

Brent T. Carney argued the cause for respondent  
Township of Bloomfield (Maraziti Falcon & Healey,  
L.L.P., attorneys; Mr. Carney, of counsel and on  
the brief; Anton L. Lendor, on the brief).

Anne Milgram, Attorney General, attorney for  
respondent the Commissioner of the Department of  
Community Affairs (Jonathan J. Greenberg, Deputy  
Attorney General, on the statement in lieu of  
brief).

PER CURIAM

Petitioner Jeanny Sung Koo, appeals from a January 16, 2009 final decision of the Commissioner of the Department of Community Affairs (Commissioner), denying her application for relocation assistance pursuant to the Relocation Assistance Act (Act), N.J.S.A. 20:4-1 to -22. We affirm.

I

This case was decided on a motion for summary disposition submitted to the Office of Administrative Law (OAL). We begin by reviewing the pertinent evidence submitted on that motion. Pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 to -49, respondent Township of Bloomfield, New Jersey (township) adopted a resolution on December 12, 2000, declaring the "Bloomfield Center" to be an "area in need of redevelopment," and resolving to act as the redevelopment entity. Bloomfield Center encompassed approximately sixty-seven properties over 13.5 acres of land. On October 14, 2003, the township adopted the Bloomfield Center Redevelopment Plan through ordinance No.03-42.

Petitioner Jeanny Sung Koo owned a multi-tenant commercial building located at 318-322 Glenwood Avenue, which was within the area designated for redevelopment. Koo operated a salon in a portion of the property, and leased the remaining commercial space to a trophy business, Crown Trophy.

On February 5, 2004, the Department of Community Affairs (DCA) approved the township's workable relocation assistance plan. The approval gave the township "the right to conduct displacement through acquisition activities" between January 2004 and December 2005, and obligated it to provide relocation assistance in accordance with the Act. The township entered into a redevelopment agreement (the Agreement) with Forest City Bloomfield, L.L.C. and Forest City Bloomfield Urban Renewal (collectively Forest City) on February 19, 2004. The Agreement reiterated the township's resolution to act as the "redevelopment entity" and designated Forest City as the redeveloper.

On October 1, 2004, Koo entered into a five-year lease for commercial space in Hoboken, New Jersey. However, she did not immediately begin relocating her business into the space, as the relocation site required renovations and permits before her business could begin operating there.

Thereafter, the township sent Koo a "notice of eligibility for relocation assistance" dated January 21, 2005, formally notifying her of the redevelopment plans but informing her that she was not required to vacate the premises at that time:

Because implementation of this [redevelopment] project will require that your business be moved from the above referenced property . . . the Township is

required to inform you that you may be eligible for relocation benefits pursuant to New Jersey Relocation Assistance Act, N.J.S.A. 20:4-1 et seq.

The Township intends to take possession of the Property on or about May 15, 2005. However, you are not required to move right now. This letter is not a notice to vacate the premises. You should continue to pay your monthly rent to your landlord, because failure to pay rent and meet your other obligations as a tenant may be cause for eviction and loss of relocation assistance.

A similar "notice of eligibility for relocation assistance" was sent to Crown Trophy, Koo's tenant.

In a separate letter to Koo's attorney, also dated January 21, 2005, the township offered to purchase Koo's property for \$450,000, based upon the value of an attached appraisal. The offer was to remain open for fourteen days and was subject to an environmental reservation. The letter also referenced the township's ability to acquire property by eminent domain, but stated that the township "would prefer to negotiate with you for the purchase of the property." The letter stated that "[i]n the event we cannot negotiate a satisfactory agreement for the sale of the Property, the Township will consider acquiring it through condemnation."

In an interview sheet dated January 26, 2005, the township relocation officer, Michael Jovishoff, indicated that he was aware Koo had retained a suitable space in Hoboken and was

waiting for permits. In a letter to Koo dated February 27, 2005, Jovishoff provided contact information for a realtor.

In another letter from its attorneys, dated February 10, 2005, the township reminded Koo's attorney that it had received no response to its initial purchase offer. The letter again noted the township's legal authority to condemn property "for the furtherance of a redevelopment project such as this one," stating:

In the event we cannot negotiate a satisfactory agreement for the sale of the Property, the Township will have no choice but to acquire the Property through condemnation. Please be advised that if we do not have a response to our offer by February 17, 2005, we will have no choice but to assume that your client rejects the offer, and we will plan to initiate condemnation proceedings at the appropriate time.

On April 20, 2005, Matt Jakubowski, a relocation consultant with Jovishoff's firm, sent Koo a letter stating, "[a]s we understand, you have identified a replacement location for your business." Jakubowski indicated that the firm had obtained a moving estimate, and that two more estimates were necessary "to determine the moving benefit." However, none of these communications stated that the township would pay the benefits, and Koo did not attest that she relied on this correspondence in relocating her business.

Koo contended that Crown Trophy relocated to another Bloomfield location in December 2005 and received relocation benefits from the township, but she offered no evidence to support this assertion beyond her attorney's certification. Koo certified that on several unspecified dates she had conversations with Jovishoff about her relocation plans, and stated that he requested invoices concerning her relocation claim. Koo's attorney certified that he forwarded that information to Jovishoff in December 2005, but received no response.

In January 2006, Koo relocated her business to the Hoboken location that she had leased in 2004. She then continued negotiating with the township for the sale of her Bloomfield property. Koo and her attorney met with Bloomfield Mayor McCarthy on April 26, 2006, and offered to sell the property to the township for \$675,000. After the township offered \$500,000, Koo lowered her demand to \$650,000, which the township rejected.

In a letter dated June 6, 2006, Koo's attorney advised the township that Koo's counter-offer of \$650,000 for purchase of the property "as is" would remain open until June 16, 2006, and, in the alternative, Koo would lease the property to the township for \$9,000 a month. The letter also stated that in the absence of an agreement upon the offer's expiration, Koo would "consider

all remedies against the Township. In addition, she will actively be seeking a tenant for the property and will hold the Township responsible for any interference she may encounter from either the Township or its redeveloper in that effort."

In a letter to Koo's attorney dated July 13, 2006, the township again offered \$500,000. In her motion response, Koo claimed that she accepted this offer, but that the township "refused to close" at its offer price. However, the only evidence in the record is a certification by Koo's attorney, which does not specify when the offer was allegedly accepted or provide any writing evidencing Koo's acceptance.

Instead of completing negotiations with the township or awaiting a condemnation action, on September 22, 2006, Koo sold her property to 318 Glenwood Avenue Associates, L.L.C. (Glenwood Associates), a private company owned by William J. Colgan, for \$500,000. On February 7, 2007, Bloomfield terminated its redevelopment agreement with Forest City.

Koo's attorney sent a letter to the township, dated November 7, 2007, submitting Koo's claim for \$173,383 in relocation costs.<sup>1</sup> In support of Koo's claim for benefits, the letter asserted that she sold the property "to William J.

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<sup>1</sup> On this appeal, Koo asserts that the township stipulated to her having filed a claim in December 2005, but the only stipulation in the record is to the timeliness of Koo's 2007 claim.

Colgan, the Developer, under the threat of condemnation." However, in the subsequent OAL hearing Koo did not present any legally competent evidence that the township designated Colgan or any other entity as the new redeveloper.

After the township denied her claim, Koo sought review of the decision by the DCA, which forwarded the matter to the OAL. Following discovery, the township filed a motion for summary disposition. At oral argument on the motion, Koo's attorney produced for the first time a copy of a letter dated November 10, 2003, from Jovishoff, the town relocation officer. The letter referred to enclosed "information regarding the relocation process and benefits for residents and businesses displaced as a result of the Bloomfield Center Redevelopment Project." The letter invited Koo to call Jovishoff if she had any questions. Koo's attorney did not submit the enclosures referenced in the letter.<sup>2</sup> As the administrative law judge (ALJ) later noted in his decision, Koo did not submit any legally competent evidence that she relied on this letter or on the enclosures in entering into the October 1, 2004 Hoboken lease.

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<sup>2</sup> Koo's appendix does, however, contain a copy of the information pamphlet which, among other things, advises tenants and property owners that "after the Township has acquired the property you occupy, assistance with the relocation of your business will become available."

In a written opinion, the ALJ made the following relevant findings of fact: (1) Koo began to relocate her salon to Hoboken in October 2004, and completed relocation by January 2006; (2) "Forest City was the sole designated redeveloper for the Township," (3) Koo sold her property to Glenwood Associates; and (4) Glenwood Associates was not a designated redeveloper for the Township.

The judge concluded that Koo's salon became "eligible for relocation assistance as of January 21, 2005," when Bloomfield notified Koo that the redevelopment would displace her salon and separately offered to purchase her property. However, the judge determined that Koo's salon became ineligible for relocation payments upon Koo's sale of the property to Glenwood, a private entity. In determining that a purchase offer made pursuant to an approved redevelopment plan did not guarantee relocation assistance, the judge concluded:

[C]ontinued eligibility for relocation assistance requires the actual acquisition of the real property by a State agency, unit of local government, or publicly funded private entity. To hold otherwise would guarantee relocation payments whenever any State Agency, unit of local government, or publicly funded entity notifies individuals and businesses that it considers displacing them without doing so.

The judge also found that Koo was not a "displaced person" under N.J.S.A. 20:4-3(c) or N.J.A.C. 5:11-1.2 because the township did not acquire her property or order her to vacate.

The judge rejected Koo's contention that Bloomfield was equitably estopped from denying relocation assistance. He determined that Bloomfield's notification that Koo's property was eligible for relocation assistance did not amount to a misrepresentation that she would receive relocation payments. Without any misrepresentation that Koo would receive payments, the judge found Koo's reliance on the statement of eligibility was not reasonable, given that she had not been approved to receive benefits.

The Commissioner adopted the initial decision as his final decision on January 16, 2009.

## II

We evaluate the agency's summary disposition decision using the principles applicable to summary judgment motions articulated in Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). Nat'l Transfer, Inc. v. N.J. Dep't of Env. Prot., 347 N.J. Super. 401, 408 (App. Div. 2002). As with a trial court's summary judgment order, we review de novo the agency's determination that no genuine dispute of material fact precluded summary decision. Prudential Prop. & Cas. Ins. Co. v.

Boylan, 307 N.J. Super. 162, 167 (App. Div.), certif. denied, 154 N.J. 608 (1998). A trial court's interpretations of the law are not entitled to any special deference, Manalapan Realty L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995); however, "interpretation by an administrative agency of the statute it is responsible to administer is entitled to some weight, with due regard to the agency's expertise, but it must be consistent with the policy and language of the legislation." Haddock v. Dep't of Cmty. Dev., 217 N.J. Super. 592, 596-97 (App. Div.), certif. denied, 108 N.J. 645 (1987).

Having reviewed the record with those standards in mind, we find no basis to disturb the Commissioner's final determination, which adopted the ALJ's well-reasoned initial decision. As we observed in Marini v. Woodstown, 146 N.J. Super. 235 (App. Div. 1976), the Relocation Assistance Act, adopted in 1972, was modeled on federal legislation that required states to provide relocation assistance to persons and businesses displaced in connection with the acquisition of private property for redevelopment. Id. at 240-41. Consequently, the right to relocation assistance is keyed to the expressed purpose of the law:

The purpose of this act is to establish a uniform policy for the fair and equitable treatment of persons displaced by the acquisition of real property by State and

local land acquisition programs, by building code enforcement activities, or by a program of voluntary rehabilitation of buildings or other improvements conducted pursuant to governmental supervision.

[N.J.S.A. 20:4-2 (emphasis added).]

The definition of "displaced person" reflects this requirement that the displacement result from the government's acquisition of the property or a government order to vacate the premises.<sup>3</sup> The definition provides, in pertinent part:

"Displaced person" means any person who, on or after the effective date of this act, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a taking agency.

[N.J.S.A. 20:4-3(c)(emphasis added).]

The agency's implementing regulations reflect the same definition of "displaced" person:

"Displaced" means required to vacate any real property lawfully occupied pursuant to

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<sup>3</sup> The Relocation Assistance Law of 1967, N.J.S.A. 52:31B-4(a) likewise requires the payment of relocation assistance to displaced persons or businesses, "[w]henver any . . . unit of local government displaces, or causes to be displaced" such entities "on account of the acquisition of real property for a public use." That Act also defines "displaced" as "required to vacate any real property, or any tenancy therein, pursuant to any lawful order or notice . . . on account of the acquisition of any real property for a public use." N.J.S.A. 52:31B-3.

any order or notice of any displacing agency on account of a program of acquisition, code enforcement proceedings or voluntary rehabilitation of buildings.

[N.J.A.C. 5:11-1.2 (emphasis added).]

The regulations likewise tie entitlement to compensation to a governmental acquisition of the property or an order to vacate:

(a) Whenever any State Agency (except the New Jersey Department of Transportation), unit of local government or publicly funded entity acquires real property that causes the displacement of people, businesses, or farm operations, the said State Agency, unit of local government or publicly funded entity shall provide relocation payments and assistance as provided in N.J.A.C. 5:11-3 and 4; . . .

(b) The State Agency, unit of local government or publicly funded entity shall not be relieved of its obligation of providing payments and benefits as provided hereinafter by requiring the owner of a building to cause it to be vacated prior to the acquisition.

(c) The eligibility date for this section shall be the date of the first written offer to purchase the property.

[N.J.A.C. 5:11-2.2 (emphasis added).]

In an effort to bring her application within the ambit of the regulations, Koo relies on subsection 2.2(c), quoted above, which addresses the earliest date when a property owner or tenant can become eligible for relocation benefits. However, we

agree with the ALJ that this subsection does not vitiate or subsume the other statutory and regulatory prerequisites for eligibility: namely, the government agency must acquire the property or order the tenant to vacate the property.

According to Koo's submissions, her tenant, Crown Trophy, relocated in "December 2005," more than a year after Koo signed the Hoboken lease. The case of 214 Corp. v. Casino Reinvestment Development Authority, 280 N.J. Super. 624 (Law Div. 1994), on which Koo relies, confirms the township's right and obligation to notify tenants of their possible displacement and right to relocation benefits "at the earliest possible date once it has determined that its activities will cause a displacement." Id. at 632. However, the giving of notice does not automatically entitle a tenant to relocation benefits unless the other statutory requirements are met.

Here, the fact that the tenant moved out without waiting for an order to vacate does not entitle Koo to relocation benefits for her business.<sup>4</sup> Moreover, the fact that the township paid the tenant approximately two thousand dollars in relocation benefits, without waiting to issue an order to vacate or

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<sup>4</sup> Had Koo held her property until the township proceeded with condemnation, the date her tenant moved out might have been a factor in determining the valuation date for a condemnation award. Id. at 634.

litigating the issue of that tenant's entitlement to benefits, does not support Koo's constitutional equal protection claim to almost \$200,000 in benefits.

Because the township never ordered Koo or her business to vacate the premises, and Koo sold her property to a private entity, neither she nor her salon business were entitled to relocation benefits. See Marini, supra, 146 N.J. Super. at 242 (holding that a tenant became eligible for benefits, but later lost eligibility after the government agency revoked an order to vacate the premises). We find no error in the agency's construction of its regulations in this case. See Haddock, supra, 217 N.J. Super. at 596-97.

We also find no merit in Koo's remaining appellate contentions, which warrant no discussion here beyond the following comments. R. 2:11-3(e)(1)(E). On this record, Koo did not provide legally competent evidence that Glenwood Associates, the corporation to which she sold her property, was the designated redeveloper.<sup>5</sup> She also did not provide evidence


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<sup>5</sup> With our permission, Koo supplemented the record with information that in November 2009, three years after she sold her property, the township conditionally designated Bloomfield Center Urban Renewal, L.L.C. (BCUR) as the redeveloper. This information does not affect the result we reach here. Koo did not sell her property to BCUR. Nor did she sell to the public entity or to the then-designated redeveloper acting on its behalf. Glenwood Associates was not the redeveloper when it  
(continued)

to support a claim of equitable estoppel. We agree with the ALJ that she did not attest that she relied on the 2003 letter from Jovishoff in entering into the 2004 Hoboken lease. She signed that lease long before she received the township's 2005 letter offering to purchase her property, and without having received an order to vacate the premises. There is no evidence that the township agreed to pay her relocation benefits or that Koo relied on such agreement in signing the lease or relocating her business.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION

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(continued)

bought her property in 2006. The fact that an individual named William J. Colgan is a member of the BCUR L.L.C. and is also an officer of Glenwood, is irrelevant. Neither entity was the redeveloper when Koo sold her property.