

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D32750
W/ct

_____AD3d_____

Argued - September 30, 2011

WILLIAM F. MASTRO, J.P.
DANIEL D. ANGIOLILLO
ARIEL E. BELEN
PLUMMER E. LOTT, JJ.

2010-11507

DECISION, ORDER & JUDGMENT

In the Matter of Oswald D. Bond, respondent, v
Howard Houses (NYCHA), appellant.

(Index No. 23924/09)

Sonya M. Kaloyanides, New York, N.Y. (Nancy M. Harnett and Byron S. Menegakis
of counsel), for appellant.

In a proceeding pursuant to CPLR article 78 to review a determination of the New York City Housing Authority dated May 6, 2009, which adopted the recommendation of a hearing officer dated April 22, 2009, made after a hearing, finding that the petitioner was ineligible for continued occupancy in a public housing development on the ground of, inter alia, nondesirability, and terminated his tenancy, the appeal is from a judgment of the Supreme Court, Kings County (Solomon, J.) dated March 9, 2010, which granted the petition and annulled the determination.

ORDERED that the appeal is dismissed, and the judgment is vacated; and it is further,

ADJUDGED that the determination is confirmed, the petition is denied, and the proceeding is dismissed on the merits; and it is further,

ORDERED that one bill of costs is awarded to the appellant.

“Since the petition raises the question of whether the challenged determination is supported by substantial evidence, the Supreme Court should have transferred the proceeding to this Court (*see* CPLR 7804[g]). Nevertheless, because the record is now before this Court, we will treat

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the matter as one initially transferred here and will review the administrative determination de novo” (*Matter of Blake v New York City Hous. Auth.*, 78 AD3d 1175, 1175).

The determination under review was supported by substantial evidence. The record supports the conclusion that the petitioner engaged in “drug-related criminal activity” (42 USC § 1437d[1][6]; 24 CFR 966.4[f][12][i][B]) in violation of section 12(r)(ii) of his lease (*see generally Matter of Walker v Franco*, 96 NY2d 891; *Matter of Bradford v New York City Hous. Auth.*, 34 AD3d 463). The penalty of lease termination was not “so disproportionate as to shock the conscience” (*Matter of Bradford v New York City Hous. Auth.*, 34 AD3d at 464) or one’s sense of fairness (*see Matter of Bellamy v Hernandez*, 72 AD3d 814; *Matter of Kerney v Hernandez*, 60 AD3d 544; *cf. Matter of Stroman v Franco*, 253 AD2d 398), thus constituting an abuse of discretion as a matter of law (*see Matter of Bellamy v Hernandez*, 72 AD3d at 814).

MASTRO, J.P., ANGIOLILLO, BELEN and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court