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COURT OF APPEALS

STATE OF NEW YORK

MATTER OF BANOS

Respondent,

-against-

RHEA, et al.

No. 60

Appellants.

MATTER OF DIAL

Respondent,

-against-

RHEA, et al.

No. 61

Appellants.

20 Eagle Street
Albany, New York 12207
March 24, 2015

Before:

CHIEF JUDGE JONATHAN LIPPMAN
ASSOCIATE JUDGE SUSAN PHILLIPS READ
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY

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Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: Let's go to 60 and
2 61, Matter of Banos and Matter of Dial.

3 Counselor, do you want any rebuttal time?

4 MS. RENWICK: Three minutes, please, Your
5 Honor.

6 CHIEF JUDGE LIPPMAN: Three minutes. Go
7 ahead, counselor.

8 MS. RENWICK: May it please the court. My
9 name is Melissa Renwick. I represent appellants, New
10 York City Housing Authority.

11 This court should adopt the analysis of the
12 First Department - - -

13 CHIEF JUDGE LIPPMAN: But simplify this for
14 us. Do you have to - - - under the agreement, do you
15 have to do - - - prove all three of warning - - - the
16 warning, the number 1, the number 3? Is that, in
17 essence, what this is about? Or can you just have
18 number 3 delivered and that's enough? What's your
19 argument?

20 MS. RENWICK: Your Honor, if the Housing
21 Authority was making a statute-of-limitations
22 defense, which it did in both of these cases, it
23 needs to prove that it mailed the Housing Authority's
24 final and binding determination. And Williams
25 identifies that as the T-3 notice. If respondents

1 had timely challenged the Housing Authority's
2 termination of their Section 8 participation, the
3 Housing Authority would then have to deal with the
4 merits and would need to show that it mailed the
5 warning letter - - -

6 CHIEF JUDGE LIPPMAN: So it doesn't matter
7 - - -

8 MS. RENWICK: - - - and the T-1 - - -

9 CHIEF JUDGE LIPPMAN: - - - as long as you
10 mailed - - - or you'll tell me - - - as long as you
11 mailed the - - - the third one? That's enough, if
12 they receive it?

13 MS. RENWICK: There is a - - -

14 CHIEF JUDGE LIPPMAN: And then if you
15 appeal that, then you can go back and - - - and
16 contest the merits that you didn't do the warning in
17 the first one?

18 MS. RENWICK: There is a presumption of
19 receipt in Williams. It says if the Housing
20 Authority properly mailed the T-3 notice, which it
21 did here, in both cases, there is a presumption that
22 the person received it - - -

23 CHIEF JUDGE LIPPMAN: Then it - - -

24 MS. RENWICK: - - - five days later. If -
25 - -

1 CHIEF JUDGE LIPPMAN: Then it's final
2 forty-five days after that period?

3 MS. RENWICK: Absolutely, Your Honor. That
4 is what the - - - that is what the parties agreed to
5 in Williams.

6 CHIEF JUDGE LIPPMAN: And what do the first
7 warning and the - - - the warning and the first
8 notice go to? It's only important when you get to
9 the merits?

10 MS. RENWICK: Absolutely.

11 CHIEF JUDGE LIPPMAN: And it doesn't relate
12 to the statute of limitations?

13 MS. RENWICK: Absolutely, Your Honor. As
14 the dissent properly noted - - - noted - - - noted in
15 Banos, an agency does not have to prove everything
16 that it did leading up to determination was proper in
17 order - - -

18 CHIEF JUDGE LIPPMAN: No, but what about
19 the agreement? What's the force of the agreement?

20 MS. RENWICK: The force - - -

21 CHIEF JUDGE LIPPMAN: What is it? Is it a
22 - - - is it a contract? Is it - - -

23 MS. RENWICK: It is - - -

24 CHIEF JUDGE LIPPMAN: What is it?

25 MS. RENWICK: It's a consent judgment which

1 should be enforced as a contract, and based on the
2 plain language of Williams, the parties agree that
3 the T-3 notice was the final and binding
4 determination.

5 CHIEF JUDGE LIPPMAN: They didn't agree
6 that you have to do the warning and the - - - the
7 step one notice?

8 MS. RENWICK: The Housing Authority does
9 not dispute - - -

10 CHIEF JUDGE LIPPMAN: T-1 notice?

11 MS. RENWICK: - - - does not dispute that
12 the determination notices need to be mailed in order
13 to terminate a Section 8 participant. We are here
14 merely to enforce the statute of limitations. And
15 the T-3 notice is the - - -

16 CHIEF JUDGE LIPPMAN: And the - - -

17 MS. RENWICK: - - - agency's final and
18 binding determination.

19 CHIEF JUDGE LIPPMAN: - - - warning and the
20 T-1 have nothing to do with the statute of limit - -
21 -

22 MS. RENWICK: They have nothing to do with
23 that.

24 JUDGE RIVERA: So then why does the
25 paragraph - - - it is a contract. Why does the

1 paragraph say, "In the event that the participant
2 does not respond to the notice as provided for in
3 Section 3(b) above" - - - 3(b) above being, I
4 believe, T-1 - - - "a notice of default, in Spanish
5 and English, shall be mailed." It looks to me like
6 you cannot mail that. This T-3 is ineffective if you
7 haven't done the prior steps, what they are calling
8 this condition precedent.

9 MS. RENWICK: Well, Your Honor, paragraph
10 22(f), though, is the statute of limitations
11 paragraph. And in that paragraph it says, "For the
12 purposes of Section 217 and Article 78 of the Civil
13 Practice Law and Rules, the determination to
14 terminate a subsidy shall, in all cases, become final
15 and binding upon receipt of the T-3 notice."

16 JUDGE RIVERA: Right, but - - - but - - -

17 MS. RENWICK: And I - - -

18 JUDGE RIVERA: - - - if I - - - if I may?
19 Thank you. But I think the point is that to
20 understand what the T-3 is, you have to look
21 somewhere else.

22 MS. RENWICK: The respondents - - -

23 JUDGE RIVERA: The T-3, on its own, means
24 nothing. You have to look at some other part of the
25 contract to figure out what is a T-3.

1 MS. RENWICK: The T-3 - - -

2 JUDGE RIVERA: Because it doesn't say the
3 determination that cuts them off Section 8; it says
4 T-3. So I've got to figure out what is this T-3.

5 MS. RENWICK: Right. And - - - and what
6 the "pursuant to" in paragraph 22(f) does, is it
7 refers you back to the T-3 notice to - - - as a
8 reference, not as a condition precedent. The
9 Williams - - -

10 JUDGE RIVERA: Well, how can that be, when
11 it says, "In the event that the" - - -the
12 participation - - - "participant does not respond to
13 the notice, as provided above, a notice of default" -
14 - - this T-3 - - - "shall be mailed."

15 MS. RENWICK: It can't - - -

16 JUDGE RIVERA: How can you mail it without
17 having complied with the prior requirements?

18 MS. RENWICK: I think because if you - - -
19 if you follow that argument to its logical
20 conclusion, you go all the way back to the beginning
21 of Williams that says that the Housing Authority has
22 to have a basis for its determination. And now
23 you're on the merits. And it's - - - and the case
24 law is that you can't consider the merits on a
25 statute of limitations motion. Moreover, in - - -

1 for an instance - - -

2 JUDGE RIVERA: No, I don't think so,
3 because this provision is only about how you inform
4 someone that the entity, the agency is going to take
5 an action.

6 MS. RENWICK: But the T-3 - - -

7 JUDGE RIVERA: The question of that action,
8 and whether or not the action is valid, is separate
9 and apart from whether or not you've taken an action.

10 MS. RENWICK: But in order for the statute
11 of limitations to run, it has to be final and
12 binding, and the person has to be aggrieved. That
13 happens when they receive the T-3 notice. We notify
14 them we are terminating your subsidy for X reason,
15 which is in the notice, and that it will happen
16 forty-five days from that date. And then they are
17 terminated from the Section 8 program.

18 JUDGE STEIN: The consent judgment actually
19 explains what the T-3 letter is, doesn't it? I mean,
20 it says that it "must advise the participant that the
21 rent subsidy will be terminated and the grounds
22 therefor and affording the participant another
23 opportunity to request a hearing". So - - - so even
24 if you didn't comply with steps one and two, we can
25 tell, by looking at that, what the T-3 is and what it

1 has to say, right?

2 MS. RENWICK: Absolutely, Your Honor. The
3 T-3 notice contains all of the information of the
4 final and binding determination. It informs them of
5 why the Housing Authority is terminating their
6 Section 8 benefits.

7 And here, and in this case, it is
8 undisputed that not only have we proven that we
9 mailed the T-3 notice, but both respondents admit
10 they knew they had been terminated from the Section 8
11 program for failure to comply with the annual
12 recertification. And then they still waited, even
13 from actual knowledge, years before they commenced
14 the Article 78 proceeding.

15 JUDGE STEIN: But my problem with the
16 actual knowledge is that they may know that their - -
17 - that their benefits were terminated, but they
18 wouldn't know that they have a right to a hearing and
19 - - - and why they were terminated and - - - and so
20 on and so forth. So - - - so to me it seems like
21 that - - - that runs a pretty high risk of
22 contravening the purpose of the consent judgment, if
23 we get to the - - - to the merits of this, which is
24 to avoid litigation and - - -and --- and give the
25 tenants an opportunity to challenge the termination

1 before they have to go find themselves a lawyer and -
2 - - and take the Housing Authority to court.

3 MS. RENWICK: Well, Your Honor, the - - -
4 the basis of our judicial system is that even pro se
5 litigants are required to know the laws and the
6 procedures as they are applied to them. Once they
7 know they are aggrieved, once they know their Section
8 8 has been terminated - - -

9 JUDGE STEIN: But here you have - - - you
10 have a specific provision in the consent judgment
11 that says this is when the statute of limitations
12 begins to run. Now you want to get around that too -
13 - -

14 MS. RENWICK: No, absolutely - - -

15 JUDGE STEIN: - - - and say, no, but - - -
16 but it can also run, even if you didn't get it, even
17 if we didn't mail it, as long as you found out
18 somehow else that - - - that your benefits were
19 terminated. That's a little more problematic, I
20 think.

21 MS. RENWICK: I mean, T-3 notice is the
22 Housing Authority's final and binding determination.
23 However, like this court has held in Pfau and like
24 the Second Department held in Bigar, actual notice is
25 important as well. If you - - -

1 CHIEF JUDGE LIPPMAN: Yeah, but counsel, I
2 think what Judge Stein is saying is aren't you
3 undermining the very purpose of this consent
4 agreement? Isn't this totally contrary to the whole
5 reason that you have this consent agreement, so that
6 people are not terminated, and you don't get into the
7 situation that these cases are in now, and that's why
8 you have the first warning and the T-1 notice, so
9 that, again, we're not here, you don't have this
10 litigation, and people are not hurt before they have
11 the opportunity to be able to say, no, don't - - -
12 don't terminate me.

13 MS. RENWICK: The Housing Authority is not
14 seeking to avoid compliance of Williams. As the
15 dissent noted in Banos, if somebody timely commenced
16 a proceeding, it's a substantive basis. So we have
17 no incentive to not comply.

18 CHIEF JUDGE LIPPMAN: What is the purpose
19 behind the consent agreement? Why - - - why did you
20 have that?

21 MS. RENWICK: The consent agreement was a
22 negotiated agreement. The people who were - - -

23 CHIEF JUDGE LIPPMAN: Right. What was the
24 purpose for that?

25 MS. RENWICK: The - - - the petitioners

1 received a very complicated notice structure which
2 the Housing Authority agreed to. And the only
3 benefit the Housing Authority received was an
4 identified final and binding determination from which
5 the statute of limitations ran.

6 If we take respondent's argument to its
7 logical conclusion, the Housing Authority could show
8 it mailed the warning letter, the T-1 notice and the
9 T-3 notice. Petitioners could admit receipt of the
10 T-1 notice and the T-3 notice and say I didn't get
11 the warning letter because I was out of the country
12 that month. And having rebutted the production - - -

13 CHIEF JUDGE LIPPMAN: Why do we have the
14 warning letter?

15 MS. RENWICK: The warning letter lets them
16 know that the Housing Authority is considering
17 terminating their Section 8 subsidy for a breach of
18 their participant obligation.

19 CHIEF JUDGE LIPPMAN: Isn't it a part of a
20 sequence that meets the objectives of the consent
21 agreement to have the warning, the T-1, and the T-3?
22 Aren't they all part of the underlying purpose of
23 what this is about so they're not terminated and
24 we're not here in court?

25 MS. RENWICK: The Hou - - - the Williams

1 judgment does require that the Housing Authority mail
2 these three notices, but it does identify one single
3 document as the final and binding determination. And
4 the Housing has authority to prove - - -

5 CHIEF JUDGE LIPPMAN: And that document is
6 in a vacuum? What is the purpose of - - -

7 MS. RENWICK: The T-3 - - -

8 CHIEF JUDGE LIPPMAN: - - - again, of the -
9 - - of the warning and the T-1, if the T-3 isn't
10 viewed in the context of these earlier steps that you
11 have to take?

12 JUDGE RIVERA: If I could ju - - - I'm
13 sorry, I'm still not clear how - - - your
14 interpretation is that you can just issue the T-3
15 because that's all that matters.

16 MS. RENWICK: Absolutely - - -

17 JUDGE RIVERA: And I don't understand how
18 you read paragraph 3 to mean that you don't have to
19 do the other steps; you only have to do this last
20 step.

21 MS. RENWICK: But that's not what we're
22 saying. We're saying these cases aren't timely and
23 we're enforcing the statute of limitations. We're
24 not saying we don't need to comply with Williams.

25 JUDGE FAHEY: You have a - - - I think, as

1 you could tell by the court's questions, it seems to
2 me that you have a statutory construction prob - - -
3 not a statutory but a contract construction problem
4 here. What is the cost of this litigation? Let's
5 say you lose; what's it going to cost you, in money
6 damages?

7 MS. RENWICK: For these particular
8 respondents?

9 JUDGE FAHEY: Yeah, for these people.

10 MS. RENWICK: If we had to pay retros for
11 the many years that they've been off the Section 8
12 program, it's in excess of 100,000 dollars for both -
13 - -

14 JUDGE FAHEY: Okay. And what - - -

15 MS. RENWICK: - - - of these individuals.

16 JUDGE FAHEY: - - - would it have cost you
17 to make sure that they got each letter directly and
18 that you sent a, you know, return receipt requested
19 and made sure they got each letter.

20 MS. RENWICK: But we have - - -

21 JUDGE FAHEY: Instead of sending them,
22 like, in one instance I think you sent them to the
23 landlord, obviously a mistake, instead of sending it
24 to the people directly. I mean, what - - - what does
25 that cost?

1 MS. RENWICK: But in this particular
2 instance, we proved we did send the T-3 notice to
3 both respondents.

4 JUDGE FAHEY: No, no, don't answer your
5 question; answer my question. What - - - what would
6 it have cost for you to do that?

7 MS. RENWICK: But it's not merely the cost
8 of mailing; it's also the amount of litigation. Here
9 we've litigated the issue of the T-3 up through - - -

10 JUDGE FAHEY: Okay.

11 MS. RENWICK: - - - three courts, so - - -

12 JUDGE FAHEY: So it's 100,000 dollars in
13 damages to - - - to the litigants, but it's also the
14 cost of the attorneys too that we've got to include,
15 right?

16 MS. RENWICK: But it's also - - - it gives
17 them one - - - if we're looking at all three notices,
18 and the sheer amount of litigation we've had on one
19 notice, it just gives them additional ways in which
20 they can try to get out of their actual knowledge
21 that they've been terminated by the Section 8 - - -
22 from the Section 8 program.

23 CHIEF JUDGE LIPPMAN: It gives them
24 additional ways pursuant to the consent agreement
25 that was - - - you agreed to.

1 MS. RENWICK: We did agree to, but we also
2 agreed that the T-3 notice would be the final and
3 binding determination. That paragraph - - -

4 CHIEF JUDGE LIPPMAN: Okay. Okay. We're -
5 - - I think we've been going in a little circular - -
6 -

7 MS. RENWICK: Thank you.

8 CHIEF JUDGE LIPPMAN: We hear you. Let's
9 hear from your adversary. Oh, let's hear from all of
10 your adversaries.

11 Ms. Brennan, you're going to start. What's
12 wrong with the logic of your adversary? She says
13 that, yeah, you may have the three notices, but the
14 bottom line is the third notice is final, and once
15 you get that and you know it's - - - it's
16 determinative, that's the end of it. What's wrong
17 with her logic?

18 MS. BRENNAN: Because it overlooks that, as
19 a contract, which, in essence, the Williams consent
20 decree is, a contract must be read to give full force
21 and effect and full meaning to all of the language.

22 JUDGE ABDUS-SALAAM: That would be great if
23 we were talking about the merits, wouldn't it,
24 counsel? But we're talking about whether this
25 lawsuit was timely brought. And what is the trigger

1 for bringing the lawsuit? Could your clients have
2 gone in on the default notice or the warning letter,
3 or could they have gone in on the T-2 letter, or did
4 they have to wait till the 3 - - - T-3 letter for the
5 statute of limitations to start to run?

6 MS. BRENNAN: The statute of limitations
7 does not start to run until the Housing - - - unless
8 the Housing Authority has served all three notices.

9 JUDGE PIGOTT: Well, if that's true - - -
10 again, what Judge Abdus-Salaam said, you're saying
11 you can never sue us, because you never gave us those
12 notices; we're going to stay here forever. And if
13 that's true, that's probably true of the tenants that
14 were there before you. And - - a- and therefore,
15 other people who may want these apartments, who are
16 not going to get them for whatever - - - I don't
17 know, you know, what the reasons are here, but you
18 might as well just stop. I mean, isn't there a point
19 at which, T-3 being it, saying this is your notice,
20 you're in default.

21 Now, you can then answer and say, okay,
22 we'll respond to this and here is our meritorious
23 defense: you didn't give us the first notice, you
24 didn't give us the second notice, and unless and
25 until you do, we - - - you cannot move - - - you

1 cannot cut off our subsidy. And you would win.

2 But at some point, there's got to be a
3 statute that says you gotta get - - - you know, you
4 gotta respond. Don't you think?

5 MS. BRENNAN: If I may, two - - - two - - -
6 I'll answer your question in two parts. The statute
7 of limitations runs only - - - presuming somebody has
8 received a T-3 but they haven't receive the warning
9 notice and the - - - and the T-1, they can bring an
10 Article 78 to challenge it, but that does not mean
11 that the statute of limitations - - -

12 JUDGE PIGOTT: No, but if - - -

13 MS. BRENNAN: - - - has run.

14 JUDGE PIGOTT: - - - if the bank wants to
15 take my car because I'm not making the payments, I -
16 - - I don't think I can say, well, you can't sue me
17 yet, because what you didn't do is give me my toaster
18 at Christmas. I mean, they can sue you, because that
19 - - - that's the time when they can sue you. And - -
20 - and if you want to stop them, if they want to
21 default, you've got to move. You've got to move once
22 you get your notice of default. I mean, you can't
23 sit there forever and say we're not moving.

24 MS. BRENNAN: The Williams consent decree
25 was designed to provide a series of progressive

1 notices to low-income, vulnerable tenants - - -

2 JUDGE PIGOTT: Right.

3 MS. BRENNAN: - - - to assure that they did
4 not have their Section 8 subsidy terminated - - -

5 JUDGE PIGOTT: Right.

6 MS. BRENNAN: - - - prior to notice. The
7 Williams - - -

8 JUDGE PIGOTT: Right.

9 MS. BRENNAN: - - - litigation was brought
10 because the Housing Authority failed to provide
11 adequate notice.

12 JUDGE PIGOTT: No, it's because - - - it's
13 because you were in default; you had not provided
14 whatever they were requesting you to provide. And I
15 would think that if you're going to answer that - - -
16 that - - - or if you're going to - - - if you're
17 going to sue to stop them, if you're going - - - you
18 have to do it timely. You - - - you were given a
19 notice, and you didn't honor it. I don't know how
20 you can say, well, I don't have to honor the contract
21 because they didn't honor the contract.

22 MS. BRENNAN: The Williams - - - the
23 Housing Authority agreed to be bound to the Williams
24 consent decree which sets up a series of notices that
25 are condition precedent to - - -

1 JUDGE READ: But it - - -

2 MS. BRENNAN: - - - the triggering of - - -

3 JUDGE READ: - - - it does seem to make the
4 third notice the bright line. I mean, you know,
5 sometimes there's a dispute about when an agency's
6 made a final determination and it starts the statute
7 of limitations running. But this consent decree
8 says, right in the consent decree - - - it sets a
9 bright-line rule; it says with - - - with the third
10 notice. What's - - - what's wrong with that?

11 MS. BRENNAN: It also says that the Housing
12 Authority "shall send" three - - - the other two
13 notices.

14 JUDGE PIGOTT: Those are the merits. Are
15 you misunderstanding that? In other words, you know,
16 if - - - if you get this third notice and it says you
17 better do something, don't you think - - - do you
18 honestly think you can sit in the apartment and say
19 they're going to have to provide me with the subsidy,
20 one way or the other, because two years ago they
21 didn't give me a notice, and so I'm not - - - I'm not
22 going to listen to them, I'm not going to - - - I'm
23 not going to move.

24 MS. BRENNAN: It goes to both. It goes to
25 both the merits and - - - may I finish?

1 CHIEF JUDGE LIPPMAN: Yes, please do.

2 MS. BRENNAN: It goes to both the merits
3 and also the triggering of the statute of
4 limitations; they're not mutually exclusive. One can
5 have a challenge to the fact that the Housing
6 Authority hasn't served the first two, but also - - -
7 but the statute of limitations may not have begun to
8 run because the Housing Authority didn't comply. And
9 in this case, the Housing Authority doesn't - - -
10 hasn't acknowledged that they served the warning or
11 the T-1, and they haven't sufficiently proven that
12 they served the T-3. As a result, the statute of
13 limitations, for Ms. Banos - - -

14 CHIEF JUDGE LIPPMAN: Okay, counselor.

15 MS. BRENNAN: - - - never began to - - -

16 JUDGE RIVERA: May I - - - can I - - -

17 CHIEF JUDGE LIPPMAN: Oh, I'm sorry. Judge
18 Rivera - - -

19 JUDGE RIVERA: Yeah.

20 CHIEF JUDGE LIPPMAN: - - - go ahead.

21 JUDGE RIVERA: I just want some
22 clarification. The D-3 - - - the T-3, excuse me,
23 that's at - - - at issue here, that is a creature of
24 the Williams - - -

25 MS. BRENNAN: Yes.

1 JUDGE RIVERA: - - - consent decree? That
2 did not exist before this consent decree?

3 MS. BRENNAN: No. These are - - -

4 JUDGE RIVERA: It has no meaning outside of
5 this consent decree?

6 MS. BRENNAN: It has no meaning - - -

7 JUDGE RIVERA: There's no other form that
8 would be used, other than this particular form, for
9 purposes of compliance with this consent decree?

10 MS. BRENNAN: No, not at all. The notices
11 - - - you're right, Your Honor; the notice was
12 created specifically with respect to the Williams
13 consent decree, as were all of the other notices.
14 And again, they were designed to provide a series of
15 notices to - - - to low-income tenants so they do not
16 - - -

17 JUDGE ABDUS-SALAAM: Counsel, why was - - -

18 MS. BRENNAN: - - - so they could - - -

19 JUDGE ABDUS-SALAAM: Why was the T-3 notice
20 then called the final and binding determination, if
21 all the - - - if the two other notices also have to
22 do with the statute of limitations?

23 MS. BRENNAN: It was - - - it was designed
24 that way, but it also presumed that the Housing
25 Authority complied with the first two. The Williams

1 consent decree is remedial, and as such, it would be
2 construed liberally to - - - to make sure that the
3 purpose and spirit and the intent of the Williams
4 consent decree is appl - - - is effectuated.

5 CHIEF JUDGE LIPPMAN: Okay - - -

6 JUDGE PIGOTT: I know your light - - -

7 CHIEF JUDGE LIPPMAN: I'm sorry.

8 JUDGE PIGOTT: Can I just ask - - -

9 CHIEF JUDGE LIPPMAN: Judge Pigott, sure.

10 JUDGE PIGOTT: How long after the forty-
11 five days is your case?

12 MS. BRENNAN: I think it was several years,
13 Your Honor. My client - - - for the record, Ms.
14 Banos does not believe she got - - - is not
15 acknowledging that she ever received a T-3.

16 JUDGE PIGOTT: But it's - - - but it's been
17 sev - - - several years, and - - - and could - - - is
18 it conceivable there are other tenants that could use
19 this same housing for which it's at least alleged
20 that your client has not complied with the - - - with
21 the income and the - - - and the filings?

22 MS. BRENNAN: This is - - - is a tenant-
23 based subsidy, so it's a private apartment, that she
24 - - - versus, receives a rental subsidy for it. Of
25 course other tenants need and should have more - - -

1 there should be more subsidized housing. But Ms.
2 Banos desperately needs - - -

3 JUDGE FAHEY: You mean if there's somebody
4 else on the Section 8 list who would receive her
5 Section 8 benefits? Is that what you mean?

6 MS. BRENNAN: I mean that there's lots of
7 tenants who - - - low-income tenants in New York who
8 do not have access to Section 8 subsidies who would
9 certainly like to have sub - - -

10 JUDGE READ: Well, there are waiting lists,
11 right?

12 JUDGE FAHEY: Yeah.

13 MS. BRENNAN: Their waiting list is closed.

14 JUDGE RIVERA: Isn't - - - I'm sorry; I'm
15 just getting too confused here. Is Ms. Banos or - -
16 - is it [Ban-os] or [Ban-yos]?

17 MS. BRENNAN: [Ban-yos].

18 JUDGE RIVERA: Thank you. Is Ms. Banos the
19 tenant who actually went to NYCHA with the forms and
20 they turned her away?

21 MS. BRENNAN: Ms. - - - Ms. Banos has had -
22 - -

23 JUDGE RIVERA: So she tried to comply?

24 MS. BRENNAN: Yes, she did. When her
25 landlord informed her of the problem, she went down,

1 even before she was about to be terminated, two days,
2 I think, before she - - - the termination took
3 effect, and she tried to submit the additional
4 documents that they had suggested in the letter to
5 the landlord; she wasn't allowed to do that. She
6 then wrote a letter.

7 JUDGE RIVERA: But I thought her position
8 was she had actually submitted the forms.

9 MS. BRENNAN: She did, but then - - -

10 JUDGE RIVERA: To begin with, the renewal -
11 - -

12 MS. BRENNAN: - - - she tried to submit it
13 again, and to address the situation. That is
14 actually the exact purpose to have all three notices,
15 so that tenants have an opportunity to rectify the
16 situation. The warning notice tells them what's
17 missing or what they need to do.

18 CHIEF JUDGE LIPPMAN: Okay, counselor.
19 Thanks. Let's get to hear your colleagues.

20 MR. WEISBERG: Good afternoon, Your Honors.
21 Michael Weisberg, South Brooklyn Legal Services,
22 counsel for petitioner-respondent, Ms. Dial.

23 CHIEF JUDGE LIPPMAN: Well, go through this
24 basic issue for us about what - - - which prevails
25 here. You've got to have the three notices, or as

1 long as you have the final one, it's dispositive, end
2 of story. What's - - - which prevails - - -

3 MR. WEISBERG: Well, of course - - -

4 CHIEF JUDGE LIPPMAN: - - - on the statute
5 of limitations.

6 MR. WEISBERG: Right. Well, of course, you
7 have to have all three notices, Your Honor.

8 CHIEF JUDGE LIPPMAN: Why? Tell us.

9 MR. WEISBERG: That's because contrary to
10 what the Authority is arguing, this is not just a
11 case of - - - of simple notice, as the court in
12 Murphy v. Rhea called it. In contrast to simple
13 notice in most cases, this is a complex tripartite
14 notification scheme, designed not just to provide
15 notification to the tenant - - -

16 JUDGE STEIN: But that - - -

17 MR. WEISBERG: - - - but the notific - - -

18 JUDGE STEIN: The purpose of that is to not
19 allow the termination of benefits. We're not talking
20 about that. So - - - so theoretically here if - - -
21 if - - - if - - - if the tenant had received the T-3
22 notice and timely went to an attorney, or whatever,
23 and brought an action, and then that action went
24 before the court, she would prevail, if she
25 established that the first and second steps were not

1 followed, right?

2 MR. WEISBERG: Correct.

3 JUDGE STEIN: She would win. She would get
4 her benefits back and she would continue to live
5 there and - - - and continue to get benefits. So
6 isn't that a different question from: when does she
7 need to do something about the fact that - - - that
8 the agency is trying to terminate her benefits?
9 Isn't that when she gets T-3?

10 MR. WEISBERG: Well, like the Second
11 Department stated in its decision, and like Justice -
12 - - Judge Lippman indicated earlier, you have to - -
13 - you can't look at that one provision in a vacuum.
14 Every single notice that the tenants gets is - - -

15 JUDGE STEIN: Right, not for the - - -

16 MR. WEISBERG: - - - part and parcel of the
17 determination.

18 JUDGE STEIN: Not for whether they're
19 entitled to - - - to have their benefits continued;
20 I'm saying for the purpose of determining when they
21 have to take an action. Why - - - why aren't those
22 two different questions?

23 MR. WEISBERG: Because the T-3 has no - - -
24 is almost a nullity until you actually have service
25 of the TW-1 and the T-1.

1 JUDGE PIGOTT: I think we keep cross - - -
2 you know, going back and forth on that. There's a
3 lot of cases where NYCHA's been criticized for not
4 doing the T-1s and not doing the notices. But those
5 are timely. Some - - - someone, you know, got the T-
6 3 and said I never got the first notice, I never got
7 the - - - the warning, and the judge usually whacks
8 them for - - - for not doing it right and not making
9 - - - but those are timely. At some point, don't you
10 think, you know, that if - - - if - - - if they give
11 you a default and you're not getting your benefits,
12 you ought to do something? I mean, what - - - can
13 you sit there for two years or three years and say, I
14 know what's going to happen here; I'm going to just -
15 - - unless and until they bring this, I'm going to
16 get these subsidies. They're going to owe me big,
17 and I'm staying; I'm not doing a thing.

18 MR. WEISBERG: Well, that's not the way
19 that works, Your Honor. It's not as if the tenant is
20 continuing to get the subsidy if they sit there for
21 two years. And certainly some tenants do have the
22 wherewithal.

23 CHIEF JUDGE LIPPMAN: No, but do you
24 understand what - - - I think that you can get away
25 with the fact - - - merits are good. I mean, you

1 know, if you got a meritorious claim, if they're not
2 doing their job, absolutely, you can do that. But
3 when it says you've got forty-five days to do
4 something, and you take two years to do it, isn't
5 that a statute of limitations?

6 MR. WEISBERG: Well, I think in the
7 ordinary run of cases, not involving Section 8, it
8 would be. But because this is a rather unique
9 situation involving - - -

10 CHIEF JUDGE LIPPMAN: What are these - - -

11 MR. WEISBERG: - - - a consent judgment - -
12 -

13 CHIEF JUDGE LIPPMAN: Are these people - -
14 - are these people the kind of people that - - - that
15 would - - - would get this termination notice and
16 then go to a lawyer right away and say, ah-hah, I
17 have you on the merits, you didn't do the warning in
18 the T-1. Is that the way this works with this kind
19 of tenant who gets a subsidy? Is that a realistic
20 way to look at it?

21 MR. WEISBERG: By definition, these tenants
22 are poor, of course; they're overwhelmingly elderly.
23 And of course very many of them, including Ms. Dial
24 here, are disabled. So they're - - -

25 CHIEF JUDGE LIPPMAN: So it's not - - - and

1 - - - and - - - and I'm - - - again, I don't want to
2 put words in your mouth. It's not that they're
3 willfully saying, oh, I'm going to sit here and now I
4 have you by the legal - - -

5 MR. WEISBERG: Shoulders.

6 CHIEF JUDGE LIPPMAN: - - - technicalities
7 here. These are poor people who are getting a
8 notice, who were supposed to be protected by this
9 settlement.

10 MR. WEISBERG: Exactly.

11 CHIEF JUDGE LIPPMAN: And that's the
12 context for where we get to these kinds of
13 proceedings. And I assume that's your argument, that
14 the whole settlement was designed to protect them in
15 a way, because they're not going to go and say, I
16 have the termination notice, oh, but I'm going to go
17 on the merits, I'm going to go and say you didn't
18 give me the warning, and lawyer, tell them I didn't
19 get the warning. It's all confusing. We all don't
20 know what happened, what didn't happen. But the
21 whole purpose of this, we're to have three steps so
22 they're not going to be terminated and have to come
23 in on the merits then and try to get this reversed.

24 MR. WEISBERG: Precisely. And we can see
25 that - - -

1 JUDGE ABDUS-SALAAM: Counsel - - -

2 MR. WEISBERG: - - - that happened here.

3 JUDGE ABDUS-SALAAM: Counsel, those same
4 people who get all three notices and do nothing, are
5 you saying they can still come into court and then
6 try to get it reversed?

7 MR. WEISBERG: Well, if they get all three

8 - - -

9 JUDGE ABDUS-SALAAM: Even if they're
10 disabled and poor or elderly?

11 MR. WEISBERG: Well, they can commence a
12 case, of course, as anybody can. But in that case,
13 the Housing Authority will easily be able to show,
14 yes, we served notice 1, notice 2, and notice 3.

15 JUDGE PIGOTT: So there is no statute of
16 limitations, in your view, on these cases?

17 MR. WEISBERG: No, no, of course there is.
18 But I'm saying anybody can commence a case in the
19 Supreme Court.

20 JUDGE PIGOTT: When does the statute of
21 limitations - - -

22 MR. WEISBERG: I'm sorry, Your Honor?

23 JUDGE PIGOTT: When does the statute of
24 limitations run?

25 MR. WEISBERG: The statute of limitations

1 should start to run from when the - - - when the
2 aggrieved party receives proper written notice from
3 the agency of the aggrieved's determination.

4 JUDGE ABDUS-SALAAM: You say the T-3 notice
5 which says that there's a four-month sta - - -
6 limitations period, that that's in T-3. Doesn't it
7 say, in the T-3 notice, you have four months to
8 challenge this?

9 MR. WEISBERG: It does, Your Honor.

10 JUDGE ABDUS-SALAAM: It does say that?

11 MR. WEISBERG: It does. The - - - the
12 consent judgment does say that.

13 JUDGE ABDUS-SALAAM: And the T-3 notice
14 says that too, doesn't it?

15 MR. WEISBERG: I - - - the T-3 notice gives
16 you the opportunity to request a hearing within
17 forty-five days. I'm not sure if it says that you
18 have four months to challenge the hearing, then, if
19 you lose.

20 JUDGE RIVERA: Coun - - -

21 MR. WEISBERG: But to get back to the - - -

22 JUDGE RIVERA: Counsel, let me get out of
23 the circle, for one moment, that we've been on with -
24 - - with all of you, and let me ask a hypothetical.
25 Perhaps it is ridiculous, considering the way these

1 payments work out, but just to help me understand,
2 theoretically, where both of you are, and I'm going
3 to ask NYCHA when the - - - the 8 entity when they
4 get back up.

5 Okay. So take an individual, a tenant, who
6 - - - a Section 8 tenant, who does, indeed, get the T
7 - - - T-3, doesn't get the other two notices but just
8 the T-3, but the Section 8 money is not cut off for
9 those four months. Let's say it's cut off in six
10 months. Are they barred from bringing a lawsuit?
11 Are they time barred because they didn't go four
12 months from T-3?

13 MR. WEISBERG: Arguably, the continual
14 payment of the subsidy might create some sort of
15 ambiguity that should be construed against the
16 Housing Authority. That's not these facts, of
17 course, but it's theoretically possible.

18 JUDGE RIVERA: Okay.

19 MR. WEISBERG: If I may get back to Judge
20 Lichmann - - - Judge Lipmann's - - -

21 CHIEF JUDGE LIPPMAN: Last point, counsel.
22 I think we've been - - -

23 MR. WEISBERG: - - - what you were saying
24 is precisely what happened here. Ms. Dial got
25 notification about the subsidy from her landlord who

1 told her, hey, I'm no longer getting any subsidy
2 payment. So then she did all that she knew to do,
3 because that's all the information she had, which was
4 write a letter to the Housing Authority. If she had
5 gotten the T-1, the T - - - the TW-1, the T-1, or the
6 T-3, she would have had more specific and correct
7 instructions as to what to do. Because all she had
8 was that simple notice from the landlord - - -

9 JUDGE RIVERA: If she only got the T-1 and
10 got cut off at that point - - -

11 MR. WEISBERG: I'm sorry?

12 JUDGE RIVERA: If she only got T-1 and got
13 cut off, when does the time start running?

14 MR. WEISBERG: If she only got the - - - I
15 mean, under our - - -

16 JUDGE RIVERA: They cut her off at T-1,
17 they didn't waste time with T - - - whatever, T-3.

18 MR. WEISBERG: I mean, that would just be a
19 complete violation of the Williams consent decree.

20 JUDGE RIVERA: No, I understand that, but
21 the question is the statute of limitations.

22 CHIEF JUDGE LIPPMAN: Okay.

23 JUDGE FAHEY: Just, what - - -

24 CHIEF JUDGE LIPPMAN: Go ahead. Answer
25 that, and one last question - - -

1 MR. WEISBERG: I don't think it - - -

2 CHIEF JUDGE LIPPMAN: - - - Judge Fahey.

3 MR. WEISBERG: It would not have started to
4 run.

5 JUDGE RIVERA: It would not start to run;
6 she could complain whenever - - - or he.

7 MR. WEISBERG: More or less, yes, Your
8 Honor.

9 CHIEF JUDGE LIPPMAN: Okay, Judge Fahey,
10 last question.

11 JUDGE FAHEY: Yeah, thanks, Judge.

12 Assuming that the proceeding is not time
13 barred, do you concede that the Housing Authority
14 should be able to answer? Your situation's a little
15 bit different, Dial from Banos?

16 MR. WEISBERG: The Supreme Court's
17 decision, in this case, to preclude the answer, did
18 seem a little bit strange.

19 JUDGE FAHEY: Yeah, I just wanted to
20 clarify that. Thank you.

21 CHIEF JUDGE LIPPMAN: Okay. Let's go to
22 your last colleague.

23 MR. GORDON: Robert Gordon for 690 Gates.

24 I'm actually the landlord in this.

25 Everyone forgets about the landlord. The landlord

1 relies - - -

2 CHIEF JUDGE LIPPMAN: So what's your
3 position as the landlord? Let's hear.

4 MR. GORDON: Look, well - - -

5 JUDGE RIVERA: You want to get paid; that's
6 your position.

7 MR. GORDON: Yeah, well, it's not just
8 that. My - - - my company is in the business of
9 providing low-income housing. The way they're able
10 to structure being able to operate and take care of
11 buildings like this one that were dilapidated when
12 the prior owner was there - - - we weren't the owner
13 in 2007, by the way - - - is to be able to get funds
14 and be able to get NYCHA funds for Section 8-eligible
15 tenants. So when tenants get cut off, well, yes, the
16 tenants owe us money because the lease rent is still
17 owed and there's no subsidy, but all we're in a
18 position to do is bring a housing court case, like we
19 did here, and evict the tenant, and we get possession
20 of the apartment. But whatever period of time that
21 there's a loss of funds, the tenant can't really
22 afford to pay the rent, so we're not going to get it
23 from anybody.

24 CHIEF JUDGE LIPPMAN: So based on that, how
25 do you view this - - - what we've been going around

1 and talking about, with the three notices versus the
2 third notice that, theoretically, is the final one.

3 MR. GORDON: Well, actually, we divided our
4 time so I would discuss the T-3 notice, because I
5 think, in all events - - -

6 CHIEF JUDGE LIPPMAN: Go ahead.

7 MR. GORDON: - - - in all events, there's
8 inadequate proof in this record of the NYCHA serving
9 the T-3 notice.

10 CHIEF JUDGE LIPPMAN: If there was proof,
11 is that dispositive?

12 MR. GORDON: I go along with the other
13 respondents - - -

14 CHIEF JUDGE LIPPMAN: Okay.

15 MR. GORDON: - - - in saying all three - -
16 -

17 CHIEF JUDGE LIPPMAN: Go ahead.

18 MR. GORDON: - - - are required under the -
19 - - under the consent decree.

20 CHIEF JUDGE LIPPMAN: Okay. So you're of
21 the same view of this, but tell us why, in this case
22 - - -

23 MR. GORDON: Okay.

24 CHIEF JUDGE LIPPMAN: - - - there's no
25 proof. Go ahead.

1 MR. GORDON: Keeping in mind there's a
2 statute of limitations, so the burden of proof is on
3 the party who wants to prevent Ms. Dial from having
4 her day in court. Okay. They have to produce, in
5 their motion, what proof they have that they served
6 the T-3. Look at the record; 227 to 231, there's an
7 affidavit from Ms. Pettway. Very conveniently she
8 says, with the certified mail version, I did this and
9 I did that. But when it comes to the other required
10 regular mail notice, all of a sudden it shifts very
11 vaguely in the third person, "It was put in an
12 envelope."

13 JUDGE PIGOTT: Was that argued in the
14 Supreme Court?

15 MR. GORDON: Yes, it was.

16 JUDGE PIGOTT: And what did the court say?

17 MR. GORDON: And the court - - - the
18 Supreme Court said there's an adequate proof of
19 service of the T-3 as well as the T-1.

20 JUDGE PIGOTT: All right. And how - - -
21 how are we to review that? Are you saying that, as a
22 matter of law, there is not an affidavit of service
23 that demonstrates that the T-3 was delivered?

24 MR. GORDON: I would say there needs to be
25 some quantum of proof in order to either establish

1 actual service of the T-3 or an office practice,
2 neither one of which was presented. In fact, when
3 both Ms. Dial and I criticize, in our opposition to
4 the motion to dismiss, about no proof, inadequate
5 proof, they came back with a reply, in page 440, that
6 just talks about, oh, well, the law was - - - was
7 intended for one person versus another person. And
8 they never got to the point of having any actual
9 proof, either Ms. Pettway saying who mailed the
10 notice in this case, or established and articulated
11 what constitutes, you know, an office practice, which
12 shows a methodology that's done uniformly in all
13 cases, as - - - as I cited in my brief.

14 JUDGE ABDUS-SALAAM: Counsel, that's what
15 Ms. Pettway says in her affidavit that you pointed
16 to, on the record - - - at the record, page 228.
17 She's talking about the regular business practice of
18 the Housing Authority, and saying, following regular
19 business practices, at paragraph 5, after she takes
20 responsibility for doing the certified mail, she
21 says, "And another copy of the T-3 notice was
22 prepared for regular mail by inserting it into a
23 window envelope so the address showed through the
24 window." And at paragraph 6, "The envelopes were
25 then deposited into an 'out box'. From the 'out

1 box', the envelopes were picked up" by the mailroom
2 employees and one was sent regular mail and one by
3 certified mail. So she's attesting to the business
4 practices of NYCHA.

5 MR. GORDON: I - - - with all due respect,
6 I would submit that that is an interesting construct
7 of a sentence where they start out by saying this is
8 the off - - - we have an office practice, and
9 consistent with our office practice and - - - but
10 then state, in very general terms, what was done.
11 This is - - -

12 JUDGE PIGOTT: Well, it's pretty standard,
13 you know, when you do a nail and mail, you know, you
14 say you nailed it and you put it in a post office
15 box, and we kind of presume UPS is going to get it
16 there.

17 MR. GORDON: I only know that, as a lawyer,
18 I make a point, anything related to the statute of
19 limitations, I preserve my affidavit of service; I
20 preserve my certificate of mailing. We would not be
21 here, as was suggested earlier, if they just had
22 proper adequate registers they would keep for T-3.

23 I just want to add one thing, very
24 important on the - - -

25 CHIEF JUDGE LIPPMAN: One thing, go ahead,

1 counselor.

2 MR. GORDON: - - - rebutting the
3 presumption of receipt, as the Futterman case says
4 and the State of Texas Bank (sic) says, is there can
5 be evidence contrary to it. In this case, because we
6 operate low-income housing, we have certifications
7 that we do every year.

8 We have Ms. Dial coming in every year,
9 timely, and never missed a year where she had to
10 recertify. She produced records about her income.
11 She only makes 7- or 8,000 dollars a year from Social
12 Security. She obviously vitally needs her Section 8
13 subsidy. She is going to be lost and she's going to
14 be homeless without it.

15 And third, there's no earthly reason why
16 she would not come in and recertify if she had gotten
17 the T-3 notice from NYCHA. I think, based upon that,
18 that rebuts any presumption of receipt that would
19 exist.

20 CHIEF JUDGE LIPPMAN: Okay, counselor,
21 thank you.

22 Counselor, rebuttal.

23 MS. RENWICK: Absolutely, Your Honor. Just
24 a few quick points. In response to my colleague's
25 questions about the Housing Authority's proof that it

1 mailed the T-3 notice - - -

2 JUDGE PIGOTT: In response to what? I'm
3 sorry.

4 MS. RENWICK: The proof that we mailed the
5 T-3 notice, we have submitted accountable mail logs
6 that were stamped by the United States Postal
7 Service. So they were delivered by the United States
8 Postal Service and are presumed to have been
9 delivered five - - -

10 CHIEF JUDGE LIPPMAN: Slow down a little,
11 counsel.

12 MS. RENWICK: Sorry.

13 CHIEF JUDGE LIPPMAN: Go ahead.

14 MS. RENWICK: - - - five days later. In
15 Banos, we even have a track-and-confirm that
16 indicates that the U.S. Postal Service left her a
17 notice.

18 JUDGE PIGOTT: The U.S. Postal Service left
19 her - - -

20 MS. RENWICK: A notice to claim - - -

21 JUDGE PIGOTT: - - - a notice.

22 MS. RENWICK: - - - the certified mail.

23 I also want to talk to you - - -

24 CHIEF JUDGE LIPPMAN: Counselor, let me ask
25 you a question.

1 MS. RENWICK: Yes, Your Honor.

2 CHIEF JUDGE LIPPMAN: The issue that was
3 raised before, how does this work in practice? If
4 you prevail, what are we accomplishing vis-a-vis the
5 agreement that was reached? You're going to have all
6 these poor people who are going to be terminated, who
7 are not able to come back in and say, gee, look, on
8 the merits, you know, I didn't get warning 1. You
9 see how complicated it is to prove the different
10 notices, whether they got it, whether they didn't get
11 it.

12 Is - - - if you prevail, are you
13 accomplishing the purposes behind this agreement, or
14 are you really making a bad situation worse in that
15 people who, the whole idea was that they should not
16 be terminated without being able to have notice, what
17 - - - what is the final product that you're achieving
18 here? What's - - - what's good about the position
19 you're taking, from a policy perspective, of what was
20 trying to be achieved by this agreement?

21 MS. RENWICK: Absolutely. If the Housing
22 Authority upholds the analysis - - - I mean, if this
23 court upholds the analysis of the First Department -
24 - -

25 CHIEF JUDGE LIPPMAN: Yeah, what happens?

1 MS. RENWICK: - - - then the Housing
2 Authority is able to preserve its Section 8 program
3 for future generations. This is about - - -

4 CHIEF JUDGE LIPPMAN: Yeah, but what about
5 all these people? You're preserving the program;
6 what about all these people who are out on the
7 street? What are you doing?

8 MS. RENWICK: They have not timely
9 challenged an agency determination - - -

10 CHIEF JUDGE LIPPMAN: I understand your
11 position that they not timely challenged it. I'm
12 asking you, from a policy perspective, what are you
13 achieving - - -

14 MS. RENWICK: We're ach- - -

15 CHIEF JUDGE LIPPMAN: - - - in light of
16 this agreement, that you, you know, said we want to
17 do because we understand what the purpose is.

18 MS. RENWICK: The Section 8 program is a
19 very limited program in New York City. We administer
20 nearly 90,000 vouchers, but we have very limited
21 funding. HUD has reduced our funding almost every
22 single year.

23 CHIEF JUDGE LIPPMAN: How does it help your
24 funding to - - -

25 MS. RENWICK: We're - - -

1 CHIEF JUDGE LIPPMAN: - - - to get these
2 people on the street who are poor people who can't
3 afford the rent without the subsidy. How do - - -
4 how do you help this program that you want to
5 preserve for future generations?

6 MS. RENWICK: Absolutely. The repose that
7 the Section 8 - - - that the statute of limitations
8 gives to an agency is what the legislative intended.
9 It intended for there to be a short period so
10 agencies could budget and allocate - - -

11 CHIEF JUDGE LIPPMAN: That's not what I
12 asked you.

13 JUDGE READ: Well, how long are your - - -

14 CHIEF JUDGE LIPPMAN: I asked you - - -

15 JUDGE READ: How long are your - - -

16 CHIEF JUDGE LIPPMAN: - - - assume - - -

17 JUDGE READ: - - - waiting lists? How long
18 are your waiting lists?

19 MS. RENWICK: The Housing Authority Section
20 8 waiting list has tens of thousands of individuals
21 on it. We have not opened it in recent years,
22 because we haven't had the funds to do so.

23 CHIEF JUDGE LIPPMAN: Okay. But I asked
24 you, pursuant to your agreement, what have you
25 achieved?

1 MS. RENWICK: We are - - - we are
2 preserving our funding for individuals who want to
3 comply with the program's - - -

4 CHIEF JUDGE LIPPMAN: By putting these - -
5 -

6 MS. RENWICK: - - - obligations.

7 CHIEF JUDGE LIPPMAN: - - - other people on
8 the street?

9 MS. RENWICK: It is a limited resources; it
10 is not - - -

11 CHIEF JUDGE LIPPMAN: Whether or not they
12 got enough notice to avoid termination?

13 MS. RENWICK: They received the final and
14 binding determination, and if you're not - - - the
15 Section 8 program has obligations. You have to
16 recertify your income.

17 JUDGE RIVERA: But counsel, the tenant
18 Banos walked in with documents before your own time
19 limit. Let's assume that - - - that everything you
20 say is true. The tenant walks in with the documents;
21 they don't even accept them to review them.

22 MS. RENWICK: She actually - - -

23 JUDGE RIVERA: What is that furthering?

24 MS. RENWICK: She - - -

25 JUDGE RIVERA: But let me go back to the

1 question I promised I ask you, because I asked your
2 opponent.

3 MS. RENWICK: No, absolutely.

4 JUDGE RIVERA: No, because I really do want
5 to underst - - - it's a genuine question; all my
6 questions are genuine - - -

7 MS. RENWICK: Absolutely.

8 JUDGE RIVERA: - - - but this one in
9 particular. If, indeed, the T-3 gets sent and it's
10 received, but more than four months expire before you
11 actually terminate the individual, when does that
12 clock run?

13 MS. RENWICK: I think the perfect case to
14 look is Shamblee. And that's the - - -

15 JUDGE RIVERA: Okay.

16 MS. RENWICK: - - - First Department
17 decision. And in the First Department, Shamblee
18 admitted receipt of the T-3 notice. She had been out
19 of state, she'd come back, she admitted receipt of
20 the T-3 notice on a later date, but then she argued,
21 but NYCHA continued to pay subsidies to my landlord.
22 And the First Department said, okay, if there was an
23 ambiguity, it stopped when your landlord brought a
24 holdover proceeding against you, based on the
25 termination of your Section 8 subsidy, because you

1 knew, or should have known, at that point, that you
2 had been aggrieved, you had been terminated, and you
3 needed to commence a - - - you needed to commence a
4 proceeding against the Housing Authority.

5 JUDGE RIVERA: So it can be more - - - let
6 me - - - okay. So your point is it can go beyond
7 four months after the T-3.

8 MS. RENWICK: If there was - - -

9 JUDGE RIVERA: So it is not necessarily the
10 T-3.

11 MS. RENWICK: The T-3 is the final and
12 binding determination. If there is an ambiguity, it
13 can be resolved - - -

14 JUDGE RIVERA: But I don't have a - - -

15 MS. RENWICK: - - - at a later date.

16 JUDGE RIVERA: - - - basis to sue you if
17 you haven't cut me off - - -

18 MS. RENWICK: You do - - -

19 JUDGE RIVERA: - - - correct?

20 MS. RENWICK: Not - - - if you got the T-3
21 notice and it has - - - and it has been more than
22 forty-five days - - -

23 JUDGE RIVERA: Yes.

24 MS. RENWICK: - - - and you can assume that
25 you have been terminated, you can bring an Article 78

1 proceeding. The payments are made directly to the
2 landlord; they are not made to the Section 8
3 participant to then pay the landlord. So the cutting
4 off of the subsidy is not something that a Section 8
5 participant would necessarily have any knowledge of.

6 JUDGE ABDUS-SALAAM: Or if you have gotten
7 a T-3 passed and you haven't requested a review in
8 forty-five days, according to the 3-T - - - T-3
9 notice, you can do that after forty-five days, but
10 you have to show good cause to challenge the
11 determination or the termination. And if you don't
12 like the decision, it says, "If the hearing officer
13 does not reopen your case and you want to go to
14 court, you must do so within four months of the date
15 of this notice."

16 MS. RENWICK: Absolutely, that language is
17 on the T-3 notice. It's the language that the
18 parties agreed to in Williams. It is there for them
19 to receive, so they know they have to go to court
20 within four months.

21 JUDGE RIVERA: So if you cut them off - - -

22 CHIEF JUDGE LIPPMAN: Last question, Judge
23 Rivera.

24 JUDGE RIVERA: Sorry.

25 MS. RENWICK: Okay.

1 CHIEF JUDGE LIPPMAN: Go ahead.

2 MS. RENWICK: That's okay. Thank you.

3 JUDGE RIVERA: If you cut them off after
4 the T-1, if you don't do a T-3, which is a creature
5 of the Williams, right, consent decree, it doesn't
6 exist otherwise. There's no such thing otherwise.

7 MS. RENWICK: Um-hum.

8 JUDGE RIVERA: Okay. You cut them off
9 after T-1. When - - - when does the clock start
10 ticking, since you've never issued a T-3. I assume
11 it's because you've actually cut them off, and
12 they've suffered a loss?

13 MS. RENWICK: I mean, if there was a
14 situation in which all that we had sent was a T-1
15 notice, and then at some later date they became
16 aggrieved because they had found out their subsidy
17 had been terminated, it would have been four months
18 from when they knew, or should have known, that there
19 had been a final and binding determination to turn
20 off that subsidy.

21 JUDGE RIVERA: Regardless of whether or not
22 you sent a T-3.

23 MS. RENWICK: Regardless of whether or not

24 - - -

25 JUDGE RIVERA: Because it's the action

1 itself.

2 MS. RENWICK: It's the action itself of
3 terminating the subsidy.

4 CHIEF JUDGE LIPPMAN: Okay, thanks,
5 counsel.

6 MS. RENWICK: Thank you.

7 CHIEF JUDGE LIPPMAN: Thank you all.
8 Appreciate it.

9 MS. RENWICK: Thank you.

10 (Court is adjourned)

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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Banos v. Rhea, No. 60, and Matter of Banos v. Dial, No. 61, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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