

Colon v New York City Hous. Auth.

2007 NY Slip Op 30013(U)

March 9, 2007

Supreme Court, New York County

Docket Number: 0112157

Judge: Nicholas Figueroa

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. NICHOLAS FIGUEROA
Justice

PART 46

Index Number : 112157/2006

COLON, JESSICA

vs
HOUSING AUTHORITY

Sequence Number : 001

ARTICLE 78

INDEX NO. 112157/06

MOTION DATE 11/14/06

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

The following papers, ...

motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

See accompanying decision and judgment

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or a proper representative must appear in person at the Judgment Clerk's Desk (Room 41B).

Dated: MARCH 9, 2007

[Signature]

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

JESSICA COLON/MARGARITA COLON,

Index No. 112157/06

Petitioner,

**DECISION AND
JUDGMENT**

- against -

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

Nicholas Figueroa, J.:

Petitioners seek a judgment, under CPLR Article 78, reversing and annulling respondent's July 26, 2006 final determination terminating their public housing tenancy on the grounds that they were non-desirable tenants and breached the provisions of the lease agreement.

Respondent sought petitioners' removal on the ground that they were convicted of selling narcotics. The sale took place at a location that was not on respondent's premises, and prior to the time petitioners moved into respondent's public housing facility, but after they were accepted as tenants and signed a lease. Petitioners were arrested sometime after the sale. Their arrests and convictions occurred after they took possession of the apartment.

The arrest was on March 2, 2005; however, the sale occurred on February 24, 2005. Petitioners signed the lease on February 8, 2005.

In its decision terminating the tenancy, respondent's hearing officer found that the termination was proper, "whether the drug related criminal activity took place on or off the leased premises, *Department of Housing and Urban Development v. Rucker*, 535 US 125 [2002]."

The lease petitioners signed continued the provision that they were obligated to:

"e. To comply with all obligations imposed upon tenants in the City of

New York by applicable laws, rules or regulations.

★ ★ ★

- r. To assure that the Tenant, any member of the household, a guest, or another person under the Tenant's control, shall not engage in...
 - (ii) Any violent or drug-related criminal activity on or off the Leased Premises or the Development,..."

Respondent, in a footnote to its memorandum of law, cites 24 CFR§960.204.

This regulation states that:

- “(2) *Persons engaging in illegal use of a drug.* The PHA [Public Housing Authority] must establish standards that prohibit admission of a household to the PHA's public housing program if:
 - (i) The PHA determines that any household member is currently engaging in illegal use of a drug (For purposes of this section, a household member is 'currently engaged in' the criminal activity if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current);..."

Both petitioners entered guilty pleas to attempted criminal possession of a controlled substance in the third degree (Penal Law §110, 220.16(1)) and criminal sale of a controlled substance (Penal Law §220.31). At the allocution, on September 8, 2005, petitioner Jessica Colon admitted that she was currently using marijuana.

The court directed petitioner Margarita Colon, a current methadone user, to enter a residential drug treatment program.

The standard of review in an Article 78 proceeding is whether the administrative determination was arbitrary, capricious and contrary to law. The court will uphold a determination that is rational (see *Pell v. Board of Education*, 34 NY2d 222, 237). A reviewing court may not substitute its judgment for the administrative agency unless the determination is arbitrary and unreasonable (see *Featherstone v. Franco*, 95 NY2d 550).

Respondent's determination was rationally arrived at and was not arbitrary and capricious. Therefore, it must be confirmed.

Although petitioners' drug offense took place at a location removed from respondent's housing project, respondent has the right to remove a tenant for an off-premises drug offense under its lease agreement with petitioner.

The court is mindful that the offenses took place before petitioners moved into the apartment; however, the crimes occurred after petitioners signed the lease making drug-related activity a ground for termination. Moreover, federal regulations mandate that public housing authorities bar the admission of persons who engage in illegal drug use (CFR §960.204(2)(i), *supra.*). Petitioners' guilty pleas conclusively established that they not only sold drugs after signing the lease, but were current drug users both at the time they signed the lease and at the time they took possession of the apartment. Their drug activities barred their tenancy and it was not improper for respondent to terminate the tenancy when it learned the prohibited activity. Moreover, given the circumstances of this case, the penalty of eviction was not excessive (see *Harris v. Hernandez*, 30

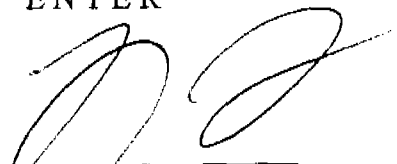
Accordingly, it is

ADJUDGED that the petition is denied and the proceeding dismissed.

This constitutes the decision and judgment of the court.

Dated: March 9, 2007

ENTER



J.S.C.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk
and is not a part of the public record. To
appear in person at the Judgment Clerk's Desk (Room
269) for entry, counsel or authorized representatives must
appear in person at the Judgment Clerk's Desk (Room
269).