

Matter of Lopez v Donovan

2007 NY Slip Op 30591(U)

March 30, 2007

Supreme Court, New York County

Docket Number: 0405105/2006

Judge: Lewis Bart Stone

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

PRESENT: STONE
HON. LEWIS BART STONE Justice

PART 505

RAFAELA LOPEZ
- v -
NYC DHPD

INDEX NO. 405105/06
MOTION DATE _____
MOTION SEQ. NO. #001
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this 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

is decided in accordance with attached Decision & Order

FILED

APR 09 2007

COUNTY CLERK'S OFFICE
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: 20 March 2007

[Signature]
HON. LEWIS BART STONE J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

-----X	
In the Matter of the Application of	:
RAFAELA LOPEZ,	:
	:
Petitioner,	DECISION AND ORDER
	:
For an Order Pursuant to Article 78 of	:
the Civil Practice Law and Rules	INDEX NUMBER
	405105/06
- against-	:
	:
SHAUN DONOVAN, as Commissioner of the	:
New York City Department of Housing Preservation	:
and Development and JOHN WARRANT, Deputy	:
Commissioner, Office of Housing Operations, Division	:
of Tenant Resources, New York City Department of	:
Housing Preservation and Development	:
	:
Respondents	:
	:
-and-	:
	:
173 BROADWAY ASSOCIATES, L.L.C.,	:
c/o Cynthia Marrero, Managing Agent,	:
	:
Respondent-Landlord.	:
-----X	

Hon. Lewis Bart Stone:

Rafaela Lopez (“Lopez”) commenced this proceeding pursuant to Civil Practice Law and Rules (“CPLR”), Article 78 to set aside a determination (“Determination”) of Respondent, New York City Department of Housing Preservation and Development (“HPD”), made December 2, 2003, terminating Lopez’

"Section 8" assistance effective February 1, 2004. The Respondents were HPD and 173 Broadway Associates, LLC ("Broadway"), Lopez' landlord. On December 14, 2006, HPD cross moved to dismiss Lopez' petition for the failure to state a claim and asserted that the petition was barred by the statute of limitations. The parties, pursuant to leave by this Court, have served further responsive papers.

As the Determination was made on December 2, 2003, the usually applicable statute of limitation for the commencement of a CPLR Art. 78 proceeding would be four months from such date. CPLR §217. HPD has presented copies of two separate notices dated December 2, 2003, and uncontradicted evidence that the notices were mailed to Lopez. Such notices also advised Lopez of her right to appeal the Determination and contained the required information under Federal and City regulations. Lopez denies receiving either notice, as well as earlier requests for further information which, not being supplied, formed the basis for the Determination against her.

Following the Determination, which was received by Broadway, Broadway, not being paid its full rent, served a Three Day Notice, dated September 15, 2005, indicating that rent (which had been mostly provided through Lopez' Section 8 grant) had not been paid. On October 4, 2005, Broadway commenced a non payment proceeding explaining that arrearages were by reason of cessation of the Section 8 grants. On April 24, 2006, Lopez contacted HPD and was advised by HPD that her

subsidy had been terminated on February 1, 2004, and that she might be able to remedy such situation through an order to show cause which she apparently had returnable in Housing Court. An HPD worker who appeared in housing court in Lopez' case noted in her summary "the tenant's attorney has decided to file an Article 78 against HPD - Section 8. She states that the respondent was not notified correctly and further stated that HPD terminated her without reason."

Even if in fact Lopez did not receive the Notice of the Determination sent by HPD on December 2, 2004, Lopez should have been aware of the Determination once she received the three-day notice from Broadway on September 15, 2005, or, if not, at least by October 4, 2005, when receiving Landlord's non-payment petition, showing that Section 8 rent was no longer being paid. She was, further, in any event made actually aware of the Determination when she visited HPD on April 24, 2006 to complain.

Whether Lopez could defend by claiming non-receipt of the Determination before April 24, 2006, she no longer could after such date. It therefore took her more than four months before this Article 78 proceeding was commenced on December 1, 2006.

Accordingly, HPD's cross motion to dismiss the petition on the statute of limitation grounds is granted and the petition is dismissed.

This is the Decision and Order of the Court.

DATED: MARCH 30, 2007
NEW YORK, NEW YORK



Hon. Lewis Bart Stone
Justice of the Supreme Court

FILED

APR 09 2007

**COUNTY CLERK'S OFFICE
NEW YORK**