

**Matter of Jones v Donovan**

2007 NY Slip Op 31264(U)

May 15, 2007

Supreme Court, New York County

Docket Number: 0400003/2007

Judge: Alice Schlesinger

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

**ALICE SCHLESINGER**

PART **IA Part 16**

PRESENT: Index Number : 400003/2007

JONES, CIIA

vs

DONOVAN, SHAUN

Sequence Number : 001

ARTICLE 78

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

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

**MOTION IS DECIDED IN ACCORDANCE WITH  
ACCOMPANYING MEMORANDUM DECISION.**

**This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).**

Dated: MAY 15 2007

*Alice Schlesinger*  
**ALICE SCHLESINGER** S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

REFERENCE

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

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

-----X  
In the Matter or the Application of

CIIA JONES,

Petitioner,

For a Judgment Pursuant to Article 78 of the  
Civil Practice Law and Rules,

-against-

Index No. 400003/07  
Motion Seq. No. 001

SHAUN DONOVAN, as Commissioner of the  
Department of Housing Preservation and  
Development of the City of New York,  
DEPARTMENT OF HOUSING PRESERVATION AND  
DEVELOPMENT, and FRAWLEY PLAZA, LLC

Respondents.

-----X  
SCHLESINGER, J.:

**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 authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).*

This Article 78 proceeding is a result of confusion regarding the housing needs of the petitioner-tenant Ciia Jones and her eligibility for an "enhanced voucher" under the Section 8 rental assistance program for low-income families (42 USC §1437f). Although Ms. Jones provided all necessary documents and was initially found eligible for a voucher, she was denied rental assistance due to an obvious misunderstanding. Despite the confusion, the facts are really not disputed.

**Background Facts**

Ms. Jones, a single woman now 37 years old, has occupied apartment 17D at 1309 Fifth Avenue in upper Manhattan for 25 years. As a child, she occupied the three-bedroom apartment with her mother and her brother Christopher Jones. The apartment at that time was subsidized pursuant to the Mitchell-Lama program of the Private Housing Finance

Law, and the lease was in the name of Ms. Jones' mother. When her mother passed away in the 1990's, Ms. Jones and her brother assumed the lease and they were in fact given a lease in their own names. In 2003 Christopher Jones married. His wife moved into the apartment, and the couple resided with Ms. Jones temporarily as they searched for their own apartment.

The Mitchell-Lama program permits building owners to pay off their mortgages early, after 20 years, and to privatize the building and raise the rents of existing and new tenants to the fair market level. Here in New York City, the conversion process is supervised by respondent Department of Housing Preservation and Development (HPD). To prevent the eviction of existing low-income tenants, Congress amended the Housing Act in 1999 to provide that tenants residing in buildings being privatized would receive "enhanced voucher" assistance under the Section 8 program to replace the rent subsidy which had been provided under Mitchell-Lama. These enhanced vouchers, also known as "sticky" vouchers, are intended to help low-income tenants remain in their housing complex after the owner opts out of Mitchell-Lama. (See Section 8 Administrative Plan, quoted in HPD's Verified Answer at ¶ 48).

In or about October 2004, respondent HPD held a meeting for the tenants residing in Ms. Jones' complex. HPD explained that the owner was opting out of the Mitchell-Lama program, that HPD was supervising the transition to privatization, and that tenants could apply for a Section 8 enhanced voucher. In the case of Ms. Jones, all parties agreed that the three-bedroom apartment was underutilized and that the tenant was "over-housed." (See Admin Plan, Chapter 19, attached as Exh A to Reply). Since Christopher Jones and his wife were in the process of relocating to their own apartment and Ciia Jones would be

living alone, Ms. Jones only needed a one-bedroom apartment. Ms. Jones did everything possible to cooperate with HPD and the landlord to secure her transfer to a one-bedroom apartment with an enhanced voucher and thereby release the three-bedroom apartment to the landlord to rent at fair market to a new tenant. It is that laudable effort that led to the confusion which resulted in the ultimate denial of Ms. Jones' Section 8 application and this Article 78 proceeding.

The documentary evidence attached to the petition confirms petitioner's efforts to obtain a voucher and the unfortunate snafu which led to the denial at issue herein. Ms. Jones filed her application for a voucher on October 26, 2004 for the one-bedroom apartment she wished to occupy alone (Exh. C). HPD approved the application and issued a voucher on February 9, 2005, valid for two months (Exh. D). The issuance of the voucher confirmed Ms. Jones' income eligibility. HPD then scheduled an interview for February 28, 2005, and Ms. Jones appeared. At that time, Ms. Jones was directed to submit a new application which included her brother Christopher and his wife, even though they were seeking their own housing and did not intend to live with petitioner in her requested one-bedroom apartment or obtain the benefits of the voucher (Exh. F).

In the ensuing months, Ms. Jones timely complied with all HPD requests for additional information and continued to pay her rent as she awaited the requested transfer to a one-bedroom apartment (see, e.g., Exh. G). The waiting continued for a year.

Finally, on or about March 14, 2006, HPD called Ms. Jones into its offices and presented her with a form document entitled "Notice: Enhanced Section 8 Denial of Assistance" (Exh. H). A box was checked on the form stating the reason: "You are not income eligible." Obviously, HPD had included in its calculations the incomes of

Christopher Jones and his wife, even though neither had any intention of occupying the one-bedroom apartment with Ms. Jones.

Ms. Jones promptly requested a review of the denial and met on her own with an HPD representative. She again explained to HPD ( in writing on the request form and orally at the meeting) that she would be occupying the one-bedroom apartment alone. Ms. Jones further provided a letter from her brother dated March 15, 2006 confirming that he and his wife would not be moving into the one-bedroom apartment with petitioner but would instead be occupying their own apartment outside the complex at 2000 Valentine Avenue in the Bronx (see Exh. L to HPD Answer). These facts were reiterated when Ms. Jones appeared, again on her own, at a hearing before HPD on June 8, 2006 to appeal the denial.

Four months later, petitioner received a decision dated October 13, 2006 confirming HPD's denial of petitioner's application for an enhanced Section 8 voucher based on the finding of income eligibility made after the informal review (Exh A to HPD Answer). This Article 78 proceeding ensued. HPD answered, asserting that its decision was rational. The landlord answered as well, taking no real position on the merits of the Article 78 proceeding but advising the Court that, without the requested Section 8 subsidy, Ms. Jones had not been able to pay her rent in full after the apartment had been privatized and her brother had moved out.

### **Discussion**

These facts compel the conclusion by this Court that HPD's October 13, 2006 decision must be annulled as arbitrary and capricious. Ms. Jones did all she could to make it clear that she intended to occupy the requested one-bedroom apartment alone. She applied alone, and HPD confirmed Ms. Jones' limited income and issued a voucher based

on a finding of income eligibility. Rather than proceed based on that determination, HPD compelled Ms. Jones to apply anew with her brother and sister-in-law included, even though the couple was in the process of relocating to their own apartment. HPD then denied Ms. Jones' voucher request based on an erroneous income calculation which included individuals who were not to be residing in the apartment or receiving the benefits of the voucher.

Ms. Jones fits squarely into the category of low-income tenants whom the law was designed to protect. She has resided in the complex with a subsidized rent since her childhood. Her income is limited and, as HPD first determined, makes her eligible for an enhanced voucher to prevent her eviction. Further, by granting Ms. Jones an enhanced voucher for a one-bedroom apartment, HPD will allow the return to the landlord of Ms. Jones' three-bedroom apartment. The landlord will then be allowed to charge a new tenant a significant fair market rent, consistent with the goals of the conversion from Mitchell-Lama to privatization under HPD's supervision.

In sum, HPD's denial of Ms. Jones' application for a Section 8 enhanced voucher can only be viewed as arbitrary and capricious, considering the particular facts and circumstances of this case. Therefore, the decision must be annulled, and HPD must consider Ms. Jones' initial application anew, based on Ms. Jones' request for a one bedroom apartment to be occupied by her alone, with a rent subsidy calculation effective April 1, 2006.

### **Conclusion**

For all the foregoing reasons, it is hereby

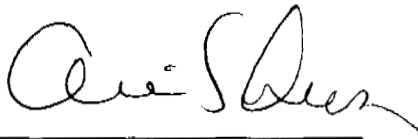
ADJUDGED that the petition is granted and the October 13, 2006 decision by respondent HPD denying petitioner's application for a Section 8 enhanced voucher is hereby annulled; and it is further

ORDERED and ADJUDGED that the matter is remanded to respondent HPD for a new determination consistent with the terms of this decision.

This constitutes the decision and judgment of this Court.

Dated: May 15, 2007

MAY 15 2007

  
ALICE <sup>J.S.C.</sup> SCHLESINGER

**UNFILED JUDGMENT**  
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