

**Matter of De La Paz v New York City Hous.
Auth.**

2007 NY Slip Op 31266(U)

May 15, 2007

Supreme Court, New York County

Docket Number: 0403110/2006

Judge: Joan A. Madden

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

PRESENT: HON. JOAN A. MADDEN

J.S.C.
Justice

PART 11

RAMONA SERRANO DE LA PAZ

INDEX NO. 403110/06

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

- v -
NEW YORK CITY HOUSING AUTHORITY,

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~~ Article 78 proceeding is determined in accordance with the annexed decision, order 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 authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: May 15, 2007

HON. JOAN A. MADDEN
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):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

-----X
In the Matter of the Application of RAMONA
SERRANO DE LA PAZ,

INDEX NO. 403110/06

Petitioner,

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

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

-----X
JOAN A. MADDEN, J.:

In this Article 78 proceeding, petitioner *pro se* Ramona Serrano De La Paz seeks to vacate the determination of respondent New York City Housing Authority (NYCHA) denying her grievance to be deemed a remaining family member and to succeed to the tenancy of her deceased mother's apartment. The petition states that such relief is sought on two grounds. First, petitioner contends that she was not given a full and fair hearing, as she was denied an adjournment to obtain an attorney to represent her, and she was not adequately able to represent herself due to medical conditions which impaired her ability to communicate, understand and concentrate. Second, petitioner contends that the hearing officer's decision was arbitrary and capricious, since NYCHA presented no witness to rebut her submissions or testimony regarding her relationship to the apartment.

"While an indigent tenant does not have a constitutional right to assigned counsel, a private citizen may not be deprived of continued tenancy in a public housing project, without

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[* 3]

affording him or her adequate procedural safeguards.” Brown v. Popolizio, 166 AD2d 44, 54 (1st Dept 1991)(citations omitted). To that effect, NYCHA’s Termination of Tenancy Procedures, directs the hearing officer to be “[l]iberal in granting reasonable adjournments requested by the tenant . . . for good cause shown, to assure that there be no doubt that the tenant is afforded every due process right.” Id.

Petitioner submits a sworn petition stating that on the day of the hearing, “I voiced a desire to have an attorney” and “[t]he effort was denied and I was expeditiously thrown in a room where an attorney for the city [NYCHA] was present along with the administrative law judge [hearing officer].” According to the transcript of the hearing, the hearing officer began by asking petitioner if she was representing herself. Petitioner answered “yes,” with a long explanation as to how she wanted to hire a lawyer, but had an accident at work where she burned her foot. The hearing officer responded that he “kind of lost the thread of how it effects your not having a lawyer,” and petitioner answered “[b]ecause . . . in the last three weeks, I [have] been up with my . . . both legs, and I couldn’t . . . get around.” In response, the hearing officer simply said “certainly [you] can represent yourself, and I’m not your lawyer, but I want us to go as slowly as possible, and I want you to understand everything that’s happening.” Petitioner then added that prior to the accident, “I couldn’t get a lawyer from Legal Aid, because they’re not taking the Housing cases, unless they could win,” and the hearing officer responded “[i]t makes sense, when you think about it.” The hearing officer continued by asking who was representing NYCHA, and attorney Irene Campos identified herself and noted the presence of Housing Assistant Victor Gonzalez of Douglass Houses. The hearing officer proceeded by marking as an exhibit the Project Grievance Summary, and explaining to petitioner that she had the burden “to

show me why you're entitled to a lease," and that she could testify, call witnesses and present documents. At that point, petitioner was sworn on her own behalf, and she basically testified by responding to questions from the hearing officer. The attorney for NYCHA briefly cross-examined petitioner, asking only about the date she moved back to her mother's apartment and for her to identify her mother's signature on certain income affidavits, and requested that those documents from 1997 through 2003 be admitted into evidence. The hearing officer issued a decision that petitioner "failed to make out a prima facie case of residual tenancy," finding that she "was able to produce no documentation supporting her claim of living with her mother prior to her demise, nor any showing that management granted permission for her return, nor, indeed, any showing that her presence was even known."

Although the transcript of the hearing does not specifically indicate that petitioner requested an adjournment, the sworn petition states that on the day of the hearing, she "recall[s] seeking time to produce other evidence on this first occasion the hearing was scheduled" and "I was informed I could not obtain a postponement." Further, petitioner's request for an adjournment may be reasonably implied from her assertion on the record that she wanted to have a lawyer represent her. See Brown v. Popolizio, supra. The hearing officer's failure to accommodate petitioner by granting an adjournment the first time the matter was on, so that she could obtain counsel, was arbitrary and capricious, in light of the NYCHA's clear and express policy as quoted above as to the liberal granting of reasonable adjournments requested by the tenant "to assure that there be no doubt that the tenant is afforded every due process right." Id. Moreover, a review of the transcript lends support to petitioner's assertion that she was not adequately able to represent herself on the day of the hearing, as her testimony was disjointed,

confusing, rambling, contradictory and, at times, incomprehensible. The hearing officer expressed his own frustration with petitioner's inability to focus on the relevant issues, when he noted that "[i]t's getting a little bit too torturous for me." The transcript also reveals that petitioner may have tried to submit documents which she referred to as "notify letters" from "other people" in the building, to show that she was living in her mother's apartment. The hearing officer, however, was unresponsive and dismissive during this portion of petitioner's testimony, and did not give her an opportunity to place those documents into evidence. Under the totality of the circumstances, where the matter was on for the first time and petitioner expressed a desire to have a lawyer, the hearing officer abused his discretion in proceeding with the hearing rather than granting an adjournment. On that basis, petitioner is entitled to a hearing *de novo*. See Brown v. Popolizio, *supra*.

Petitioner also objects that NYCHA presented no testimony "in rebuttal" to her own, and that NYCHA had a witness at the hearing who never testified. However, pursuant to NYCHA's Termination of Tenancy Procedures, at the hearing before the hearing officer, petitioner had the burden of proof to "clearly demonstrate that (s)he meets the standards for 'remaining family member' and is 'otherwise eligible' for public housing." NYCHA Management Manual Termination of Tenancy, Chapter VII. (Answer, Exhibit 3). Thus, as petitioner had the burden of proof at the hearing, NYCHA was not obligated to present any testimony. Any issue as to whether petitioner sustained her burden of proof at the hearing raises a question of substantial evidence which must be transferred to the Appellate Division. See CPLR 7804(g); Brooks v. Wagner Houses, 1 AD3d 284 (1st Dept 2003). However, since the matter is being remitted for a new hearing, any question as to substantial evidence has been rendered moot.

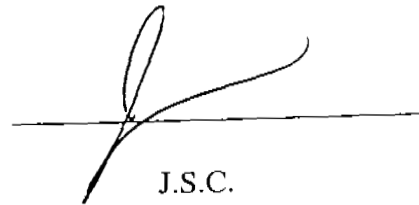
Accordingly, it is hereby

ORDERED AND ADJUDGED that the petition is granted to the extent of remitting the matter to respondent New York City Housing Authority for a *de novo* hearing.

This constitutes the decision, order and judgment of the court.

DATED: May ¹⁵~~10~~, 2007

ENTER:


J.S.C.

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 1415).