

Matter of Cherry v New York City Hous. Auth.
2008 NY Slip Op 31448(U)
May 21, 2008
Supreme Court, New York County
Docket Number: 0113221/2007
Judge: Kibbie F. Payne
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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: KIBBIE F. PAYNE
Justice

PART 4

In the Matter of the Application of
CORNISHA CHERRY

INDEX NO. 113221/07
MOTION DATE 2-01-08
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

- v -

NEW YORK CITY HOUSING AUTHORITY

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

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

Petition disposed as indicated.

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SUPPORT OFFICE

Dated: May 21, 2008


J.S.C. KIBBIE F. PAYNE

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

Cornisha

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 4**

-----X
In the Matter of the Application of
CORNISHA CHERRY,

Petitioner,

For a Judgment Pursuant to Article 78 of Index No. 113221/07
the Civil Practice Law and Rules

-against-

Judgment/Decision

NEW YORK CITY HOUSING AUTHORITY,
Respondent.

-----X
KIBBIE F. PAYNE, J.:

In this article 78 proceedings pro se petitioner seeks an order annulling respondent's determination that denied her application to reopen her default in the administrative hearing that terminated her tenancy.

Petitioner resides in an apartment located in the Bronx River Housing Projects owned by respondent. In the 2001 lease agreement, petitioner listed her brother and her twin sister as family household members in the apartment. In April 2006, respondent conducted a financial review of petitioner's household which indicated an income that differed from the information petitioner reported to respondent agency. Thereafter, respondent issued three notifications for petitioner to appear at scheduled meetings for May 16, 2006, May 22, 2006 and May 20, 2006. The purpose for the meeting was to discuss the discrepancy of the family's income. Petitioner did not appear at any of the scheduled meetings. Based upon these circumstances, respondent

commenced a termination of tenancy hearing alleging that petitioner had willfully misstated or concealed income earned by her brother in 2004 and 2005 and that she had filed a false affidavit of income in July 2004. Respondent further claimed that the financial misrepresentations resulted in petitioner's failure to pay the proper rent owed to the landlord. The termination hearing was scheduled for August 30, 2006. Subsequently, the parties by agreement adjourned the hearing to November 15, 2006, but on that date petitioner failed to appear.

By decision dated November 16, 2006 the hearing officer sustained the charges upon default and concluded in the absence of any controverting evidence that the termination of tenancy was warranted. On December 6, 2006, respondent agency adopted the hearing officer's decision and issued the determination terminating petitioner's tenancy. More than five months after the hearing, on April 26, 2007, petitioner sought to vacate her default. In that application petitioner claimed that her "brother does not live with me and hasn't for a years [sic]." Additionally, petitioner asserted: "I have the proof so if anyone would like to view would be appreciated my Housing assistant was supposed to schedule a meeting regarding this matter I feel I am being harassed and people are not doing their job [sic]."

On May 30, 2007, the hearing officer denied petitioner's application to vacate and thereafter petitioner commenced the

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instant article 78 proceeding. In this petition, for the first time petitioner alleged that she was not feeling well and therefore could not make the hearing.

It is well settled that a party seeking to vacate a default judgment must demonstrate both a reasonable excuse for her default and a meritorious defense (see *Gray v B.R. Trucking Co.*, 59 NY2d 649, 650 [1983]). Here, petitioner has failed to satisfy the required prerequisites for vacatur. In the initial application to vacate her default, petitioner failed to set forth any reason for her failure to appear at the November 15, 2006 hearing. Moreover in the absence of any corroborating documentation, petitioner's self-serving declaration that the brother no longer lived at the subject premises was insufficient to warrant a meritorious defense to the termination of tenancy. Even if, the court were inclined to accept petitioner's conclusory statements as a plausible defense but it is not inclined to do so, I find petitioner's five month delay in seeking relief from her own default to be inexcusable and indefensible. With respect to petitioner's concurrent claim of illness, this court is bound by the record below, notwithstanding undocumented ailment assertions petitioner allegedly suffered on November 15, 2006 (see *Matter of Kimberly Carolyn J.*, 37 AD3d 174 [1st Dept 2007] lv dismissed 8 NY3d 968[2007]).

CPLR 7803 (3) authorizes a challenge of an agency

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determination only where it was "made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion. . . ." Judicial review in an article 78 proceeding is thus limited to whether the determination was rationally based (see generally *Matter of Hughes v Doherty*, 5 NY3d 100, 105 [2005]; see also *Matter of Pell v Bd. of Education*, 34 NY2d 222, 231 [1974]).

The record below clearly indicates that the hearing officer's determination not to vacate the default was rationally based because petitioner failed to set forth a reasonable excuse and a meritorious defense. Accordingly, it is

ORDERED and ADJUDGED that this petition is denied and the proceeding is dismissed.

The foregoing constitutes the decision and judgment of the court.

Dated: May 21, 2008

ENTER:

KIBBIE F. PAYNE

KIBBIE F. PAYNE
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 1413).