

**Matter of Rivera v New York City Dept. of
Hous. Preserv. & Dev.**

2008 NY Slip Op 31449(U)

May 16, 2008

Supreme Court, New York County

Docket Number: 0113472/2007

Judge: Judith J. Gische

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

PRESENT: JUDITH J. GISCHE
Justice

PART 10

Sandra Rivera

INDEX NO.

113472107

- v -

MOTION DATE

NYC Dept of HPD
et al

MOTION SEQ. NO.

001

MOTION CAL. NO.

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

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

*(Transfer to Appellate
Division, First Department)*

Dated: May 16, 2008

J. GISCHE
HON. JUDITH J. GISCHE

J.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: PART 10

-----X

In the matter of the application of

Sandra Rivera,

Petitioner,

for a judgment pursuant to
Article 78 of the CPLR

DECISION/ORDER

Index No.: 113472/07

Seq. No.: 001

-against-

Present:

Hon. Judith J. Gische

**New York City Department of
Housing Preservation and
Development, and
IPN Stellar Management,**

Respondents.

-----X

Recitation, as required by CPLR § 2219 [a], of the papers considered in the review of
this (these) motion(s):

Papers	Numbered
N//P w/ver Pet, exhs	1
Ver Answer w/exhs	2

Upon the foregoing papers, the decision and order of the court is as follows:

Petitioner Sandra Rivera is a participant in the Housing Choice Voucher Program operated by the U.S. Department of Housing and Urban Development, administered locally by respondent New York City Department of Housing Preservation and Development ("section 8 program"). Petitioner seeks an order reversing the respondent's Notice of Termination after Informal Hearing dated June 7, 2007 ("termination decision"). Petitioner, who is self represented, contends the respondent's decision is not rationally based.

Respondent has answered the petition. It contends that its decision, made after its investigation and an informal hearing, should be upheld because it is reasonable and supported by the record as a whole. Respondent seeks the dismissal of the petition without a hearing. CPLR § 7804 (g). Alternatively, respondent requests an order transferring this proceeding to the Appellate Division, First Department so that it can decide the substantial evidence claims petitioner has raised. CPLR § 7804 (h).

The petition was scheduled for oral argument on March 20, 2008. Respondent was present, but failed to appear. The other named respondent, IPN Stellar Management, has not appeared in this action nor taken any position in connection with the petition.

The court's decision follows:

Facts Considered and Arguments Presented

Petitioner qualified for section 8 benefits in 2004. She listed herself and her nephew, Paul Martinez ("nephew") on the application as members of her household. Her nephew was subsequently incarcerated from January 2006 through March 2007. Meanwhile, petitioner filed for recertification of her subsidy on May 3, 2006. She listed herself and her nephew as the only household members. She also included an unemployment form for her nephew and an authorization for the release of information. The unemployment form and the authorization were signed by the nephew and dated May 3, 2006.

Through a series of events, respondent learned of the nephew's incarceration and conducted an investigation which concluded with respondent send petitioner a notice that her section 8 benefits were being terminated because she had failed to

report a change in the composition of her household (Notice of August 31, 2006).

Petitioner asked for an administrative review of that decision which was granted, and a testimonial hearing was held on March 29, 2007. Petitioner and her nephew attended the hearing. They submitted evidence and testified.

At the hearing the nephew was asked how he was able to sign the two documents while incarcerated. Though he could not recall exactly when, he testified that his aunt "must have brought them on a visit or mailed them to him." Petitioner was asked the same thing and she said she had brought her nephew "a whole lot of different packages . . ." possibly the documents as well. When pressed further, and asked how she could travel to the Willard Correctional Facility in Willard, New York, some 250 miles away, yet come back in time to file the forms the same day, petitioner said it was possible, but could not remember doing so.

Petitioner was also asked why she submitted an application identifying her nephew as a household member although he was incarcerated. She testified that someone in the management office of her building told her it was alright for her to put her nephew on the form because he had not moved out but was expected to return upon his release. This person, Ms. Quarshi, is employed by Stellar Management, also a named respondent in this proceeding. Petitioner testified she also explained the situation to "Amy," also employed by management.

Following the hearing, the hearing examiner decided that there were two bases to terminate petitioner's section 8 subsidy, and that petitioner had failed to disprove either one. The first basis was that she had failed to report a change in her household composition; the second that she had submitted what appeared to be a falsified

statement. The hearing officer did not find her testimony or that of her nephew credible. He also did about how the forms had been signed. The officer also disbelieved petitioner's account of having asked management for advice on how to complete the decertification form since her nephew was in jail.

Discussion

Where a hearing is held, the determination of an administrative agency must be supported by substantial evidence. CPLR 7803[4]; Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 NY2d 222, 231 (1974); Verdell v. Lincoln Amsterdam House, Inc., 27 A.D.3d 388, 390 (1st dept 2006). Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact. 300 Gramatan Ave. Assoc. v State Div. of Human Rights, 45 NY2d 176, 180 (1978). If a substantial evidence analysis is required, then this case must be transferred to the Appellate Division, First Department in accordance with CPLR §§ 7803 (4) and 7804 (g). Al Turi Landfill v. N.Y. State Dep't of Env. Conserv., 98 NY2d 758, 760 (2002).

Petitioner is self represented, and she has presented an oversimplified petition. She has not, therefore, articulated the basis for her challenge to respondent's decision. A petitioner can either challenge the decision as not being supported by substantial evidence, or that it is not rationally based, and therefore arbitrary and capricious. Mason v. Department of Buildings, 759 NYS2d 470, 472 (1st Dept 2003).

Affording the petition its broadest interpretation, petitioner's contention is that the respondent's decision to terminate her section 9 benefits is against the weight of the evidence. Therefore, a substantial evidence analysis is required, and this case must be

transferred to the Appellate Division, First Department in accordance with CPLR §§ 7803 (4) and 7804 (g). Al Turi Landfill v. N.Y. State Dep't of Env. Conserv., supra.

Petitioner shall serve the Clerk of the Court with a copy of this Order with Notice of Entry; upon doing so, the Clerk shall transfer the file to the Appellate Division, First Department.

Conclusion

In accordance with the foregoing,

It is hereby

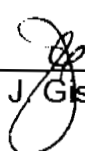
ORDERED that the Clerk of the Court is directed to transfer the file to the Appellate Division, First Department, upon service of a copy of this Order with Notice of Entry; and it is further

ORDERED that any relief requested that has not been addressed has nonetheless been considered and is hereby expressly denied; and it is further

ORDERED that this constitutes the decision order and judgment of the court.

Dated: New York, New York
May 16, 2008

E N T E R:



Hon. Judith J. Gische, JSC

For the Court's use only. This document has not been entered by the County Clerk and a copy of entry cannot be served thereon. To obtain entry, signed or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1612).