

DeShields v New York City Hous. Auth.

2008 NY Slip Op 32385(U)

August 21, 2008

Supreme Court, New York County

Docket Number: 0400026/2008

Judge: Lewis Bart Stone

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PRESENT: **HON. LEWIS BART STONE**

PART 507

Index Number : 400026/2008
DE SHIELDS, BERNICE
 vs.
NYC HOUSING AUTHORITY
 SEQUENCE NUMBER : # 001
 ARTICLE 78

INDEX NO. 400026-08
 MOTION DATE _____
 MOTION SEQ. NO. 4007
 MOTIONICAL NO. _____

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 denied in accordance
with the answer and Order.

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

FILED
 JUN 21 2008
 COUNTY CLERK'S OFFICE
 NEW YORK

Dated: 21 May 08

Lewis Bart Stone

 HON. LEWIS BART STONE J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 50S

-----X

BERNICE DeSHIELDS,

Petitioner,

-against-

NEW YORK CITY HOUSING AUTHORITY

Respondent.

-----X

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: DECISION AND
ORDER

:
: Index Number
: 4000

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: X

FILED
AUG 28 2008
COUNTY CLERK'S OFFICE
NEW YORK

Hon. Lewis Bart Stone, J

Petitioner Bernie DeShields ("DeShields"), pro se, commenced this proceeding under Article 78 of the Civil Practice Law & Rules ("CPLR"), to set aside the determination (the "Determination") of Respondent New York City Housing Authority ("NYCHA") made on December 26, 2007, which terminated her tenancy of Apartment 8-I (the "Apartment") in the apartment building located at 10 Catherine Slip, (the "Building"). NYCHA is the municipal agency which owns the Building, a public housing project.

DeShields has been a tenant of public housing since 2000, when she entered into a lease with NYCHA as the sole tenant of an apartment located at Ingersoll Houses ("Ingersoll") in Kings County. In 2004, NYCHA sought to terminate her tenancy after learning that police had arrested her boyfriend Rondall Huger ("Huger")

[* 3]
for selling drugs to an undercover officer in DeShields' apartment at Ingersoll on May 5, 2004.

DeShields failed to appear at the termination hearing but her application to reopen the hearing was eventually granted and on April 20, 2007, DeShields entered into a stipulation with NYCHA. Prior to the stipulation on April 1, 2007, Deshields had been administratively transferred from her two-bedroom apartment at Ingersoll to a one-bedroom apartment at Smith Houses because the Ingersoll apartment was "under occupied" as DeShields was the sole household member. DeShields, in signing the stipulation, agreed to ensure the continued absence of Huger as a condition of her continued tenancy and eligibility for public housing, and agreed to be subject to a three year probationary period. The stipulation set forth specific conditions in which DeShields agreed to prohibit Huger from residing in or visiting the Apartment or any other NYCHA apartment in which DeShields may reside, and specifically agreed that under no circumstances shall Huger be allowed entry into the Apartment and if he was found there, for whatever reasons, the tenancy would be terminated. DeShields also agreed to allow NYCHA representatives to make unannounced visits between 9:00 a.m. and 7:00 p.m. At the time of the stipulation, DeShields reported that Huger was incarcerated.

* 4]

On May 9, 2007, the stipulation for DeShields' continued tenancy was approved, making her probationary period expire on May 9, 2010.

On June 21, 2007, while conducting a random visit, NYCHA investigators found Huger in DeShields' apartment. DeShields had invited him to join her there for lunch. NYCHA notified DeShields that a hearing would be held regarding the violation and her tenancy.

Such hearing was held on October 23, 2007 before Administrative Hearing Officer Stewart G. Lawrence ("Lawrence"), DeShields appeared, made a statement and was cross examined by the NYCHA attorney. On December 14, 2007, Lawrence issued a decision to terminate DeShields' tenancy on the grounds that she violated of the terms of her conditions of probation by allowing Huger in the Apartment. NYCHA adopted Lawrence's decision as the Determination. On or about January 4, 2008, DeShields filed this Article 78 petition seeking to "overturn the decision" of NYCHA to terminate her tenancy.

It is well established that an administrative determination is not subject to judicial review where there exists a rational basis supported by substantial evidence. See Pell v. Board of Education, 34 NY2d 222 (1974). In her Article 78 petition, Ms. DeShields states that she made an "honest mistake" that "only happened once" but does not allege that the hearing was not based on "substantial evidence." Under most

* 5]
circumstances, where a determination is a result of a hearing required by law, the issue of "substantial evidence" may require referral to the Appellate Division. See CPLR §7804(g). Here, however, there is a sufficient basis founded on the admissions by DeShields to support the determination, and therefore referral is unnecessary.

DeShields admitted at the hearing that she had been placed on three years probation with conditions that included excluding Huger from any NYCHA apartment she lived in. More importantly, she admitted at the hearing that she invited Huger into the Apartment just two months after signing the stipulation. Since NYCHA's determination provides a rational basis for her termination, the petition must be denied.

This constitutes the Decision and Order of this Court.

DATED: AUGUST 21, 2008
NEW YORK, NEW YORK



Hon. Lewis Bart Stone
Justice of the Supreme Court

FILED
AUG 28 2008
COUNTY CLERK'S OFFICE
NEW YORK