

Matter of Springs v New York City Hous. Auth. Harlem Riv. Houses

2008 NY Slip Op 32552(U)

September 18, 2008

Supreme Court, New York County

Docket Number: 0406549/2007

Judge: Shirley Werner Kornreich

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

PRESENT: **HON. SHIRLEY WERNER KORNREICH**

PART 54

Justice

Index Number : 406549/2007
SPRINGS, AVA E.
 VS.
N.Y.C.H.A. HARLEM RIVER
 SEQUENCE NUMBER ~~000~~ |
 DISMISS

INDEX NO. _____
 MOTION DATE _____
 MOTION SEQ. NO. _____
 MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

1
 2

Cross-Motion: Yes No

UNFILED JUDGMENT

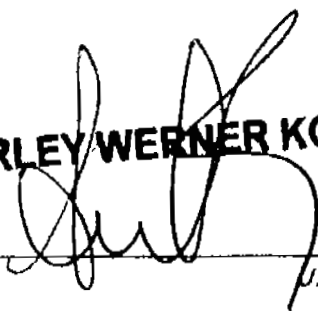
Upon the foregoing papers, it is ordered that this motion

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).

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

FOR THE FOLLOWING REASON(S):

Dated: 9/18/08

HON. SHIRLEY WERNER KORNREICH

 U.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 54

-----X
In the Matter of the Application of
AVA E. SPRINGS,

Index No.:406549/07

Petitioner,

-against-

NEW YORK CITY HOUSING AUTHORITY
HARLEM RIVER HOUSES,

DECISION &
ORDER

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 2000).

Respondent.
-----X

KORNREICH, SHIRLEY WERNER, J.:

In this Article 78 proceeding, petitioner challenges a December 10, 2003 determination of the New York City Housing Authority (NYCHA), terminating her tenancy for chronic rent delinquency and violation of a NYCHA period of probation. In her second amended petition, petitioner requests that the petition be deemed a writ of mandamus prohibiting NYCHA from bringing eviction proceedings based upon the December 2003 determination terminating her tenancy. Petitioner cites to “equity, laches, case law, [and] estoppel.” Respondent NYCHA cross-moves to dismiss the petition as time-barred. CPLR §217. Petitioner opposes dismissal, contending that NYCHA waived forfeiture of the lease by subsequently accepting rent from her; that an employee of NYCHA informed petitioner that her lease would not be terminated and “we will work something out,” thereby estopping NYCHA from terminating petitioner’s tenancy; and that petitioner’s mailbox is broken and she did not receive the final 2003 Determination of Status terminating her lease. NYCHA has answered the petition on direction of the court. For the reasons stated below, the petition is denied and the motion to dismiss the petition is denied as moot.

Facts and Procedural History

Petitioner Ava Springs has resided in Harlem River Houses, a public housing development owned and operated by the New York City Housing Authority, since 1995, pursuant to lease. The record evidences problems with rent delinquency beginning in 2001. In April 2002, NYCHA served petitioner with a hearing notice regarding termination of her tenancy and a Specification of Charges alleging chronic delinquency in the payment of rent. The charges were detailed and accompanied by a lengthy explanation of the hearing and process. Petitioner did not appear at the hearing on the charges, and a default judgment was entered on May 22, 2002, finding her ineligible for continued occupancy on the ground of chronic rent delinquency. Petitioner applied to open the default judgment, which application was denied. However, the default, subsequently, was reopened on January 31, 2003, and a Holdover proceeding brought in Housing Court was discontinued.

A second hearing for continued rent delinquency (addressing the dates February 1, 2002 through March 1, 2003) was noticed on March 10, 2003 and held on April 30, 2003. At this hearing, petitioner denied the charge of chronic rent delinquency and testified that she had difficulty paying rent on time because of her twins' graduation expenses and the need to buy eyeglasses for her daughter. She also asserted that she tried "withholding" rent in an unsuccessful attempt to get her mailbox fixed, which made it hard for her to catch up, and she further contended that she had problems getting mail, including rent bills, due to the faulty mailbox.¹ Hearing Officer Joan Pannell found

¹ Petitioner commenced an HP proceeding in Housing Court, in regard to her claim that the mailbox was faulty. A postal employee testified otherwise and the

chronic delinquency in rent payments and placed petitioner on probation for one year, explaining:

Tenant's explanation, while not compelling, was credible. It can be difficult to make the transition from public assistance to the careful budgeting required with a paycheck. Tenant must learn to keep records and to budget her earnings assiduously, planning for both foreseen and unexpected expenses. Tenant does have a feasible plan for promptly becoming current and remaining so. She must strictly adhere to her plan, since she may not expect further opportunity to save her home in public housing.

Hearing Officer Pannell ruled that petitioner's probation was subject to the following conditions: "Rent payments be made current by 5/23/03. June rent be paid by 6/6/03, and rent thereafter be paid timely each month." NYCHA issued a Determination of Status on June 18, 2003, in compliance with the hearing officer's decision, placing petitioner on one year of probation.

Petitioner's rent delinquency continued during her probationary period. As a result, on October 29, 2003, NYCHA served petitioner with a new set of charges for violation of probation and chronic rent delinquency. The hearing on these charges was held on November 18, 2003. At the hearing, petitioner admitted receiving notice of the charges, as well as her notice of the Determination of Status, and admitted the charges brought against her. She excused her continued rent delinquency by pointing to: (1) her inability to get a "one-shot deal" from Social Services; (2) "[a] lot of bills" which backed up; and (3) the fact that she had lost money from work because she had no more sick days (when asked why she had used them all up, she cited "back problems"). Petitioner did not produce any documents to support these claims.

proceeding was dismissed upon a finding that the postal mail box was proper.

A decision was issued by the Hearing Officer the following day (November 19, 2003), in which he recommended termination of petitioner's tenancy:

It was explained to the Tenant that to overcome the Housing Authority's recommended disposition, she would have to explain her continued delinquency and give convincing assurance of future compliance. She has met neither burden. Accordingly, nothing in the present record justifies continued probation.

The recommendation of the Hearing Officer was followed by a December 10, 2003 Determination of Status from the Members of the Housing Authority, terminating petitioner's tenancy on the grounds of Violation of Probation and Chronic Delinquency in the Payment of Rent. According two affidavits of NYCHA employees, the Determination of Status was mailed on January 4, 2004, in accordance with the regular business practices of NYCHA, the mailing was memorialized and it was never returned.

Meantime, between March 2000 and August 2003, NYCHA had commenced five different Non-Payment, Housing Court proceedings against petitioner. The last Non-Payment was commenced in August 2003, after petitioner violated probation and before the NYCHA termination hearing. A September 17, 2003 stipulation was entered, in which Petitioner consented to a judgment of possession in NYCHA's favor and agreed to pay \$3,775.00 on or before October 31, 2003. This stipulation set forth a payment plan and waived NYCHA's legal fees. NYCHA agreed to permit petitioner to bring one Order to Show Cause.

On December 29, 2003, petitioner sought to vacate the judgment of possession, by Order to Show Cause. In a January 16, 2004 decision, the Housing Court denied petitioner's motion, but stayed execution of the warrant of eviction to January 30, 2004, giving petitioner another chance to catch up on her rent. The order specified that the

proceedings would be dismissed if petitioner timely paid her arrears, but that NYCHA could execute a warrant of eviction upon re-mailing of notice, if petitioner failed to do so.

Petitioner brought a second Order to Show Cause on February 6, 2004, again seeking to vacate the October 31, 2003 judgment. The motion was granted to the extent of repeatedly staying the execution of the eviction warrant to February 20, February 27, and March 19, 2004 for payments by Petitioner of \$495, \$1000, and \$1865, on those respective dates. In addition, Housing Court Judge Ernest Cavallo ordered that if petitioner failed to make any of these payments on the ordered dates, NYCHA would not be required to procure a new marshal's notice in order to evict petitioner.

Petitioner then brought a third order to show cause on March 4, 2004. Judge Cavallo denied this motion, noting, "You set the payment schedule. I gave you what you wanted and told you there would be no extensions." Petitioner appealed the January 16 and February 10 Housing Court orders and moved for a stay of eviction and enforcement of the judgment until the appeal was decided.

By order dated March 18, 2004, the Appellate Term granted Petitioner's motion for a stay on the condition that she comply with a new payment schedule laid out in their order and "perfect the appeal by the September 2004 term -- filing deadline is July 8, 2004." On February 16, 2005, the Appellate Term issued a decision dismissing petitioner's appeal and affirming the January 16 and February 10, 2004 decisions. They reasoned that the Housing Court's decision was reasonable and that it "represent[ed] an appropriate exercise of discretion." The Appellate Term remarked that despite petitioner's "inadequately explained defaults in complying with the stipulation's clear and unambiguous payment provisions," the challenged judgment gave her an additional

chance to cure the rent delinquencies. Petitioner moved for an order granting reargument or, in the alternative, granting leave to appeal to the Appellate Division, First Department. This motion was denied on April 6, 2005.

Then on April 25, 2006, NYCHA commenced a Holdover proceeding based upon the 2003 lease termination. It was discontinued due to service problems. Two subsequent Holdover proceedings also were discontinued for the same reason. Finally, a fourth Holdover proceeding was started on September 10, 2007. The Holdover has been marked off the Housing Court calendar pending the outcome of this proceeding, which was commenced by petitioner on October 4, 2007.

Conclusions of Law

Motion to Dismiss

CPLR § 217(1) provides that "..., a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner..." The four month period begins to run when petitioner is "aggrieved" and receives notice of the determination. *Biondo v. New York State Bd. of Parole*, 60 NY2d 832, 834 (1983).

Here, respondent submitted two affidavits demonstrating that the determination was mailed to petitioner's address on January 4, 2004, pursuant to the regular business practices of NYCHA, that the mailing was then memorialized and that the mailing was never returned to NYCHA. Petitioner, however, claims she never received the determination because her mail box was broken at the time. Since NYCHA bears the burden of establishing the requisite notice of the determination [*see Bludson v. Popolizio*, 166 A.D.2d 346 (1st Dept. 1990), *lv. denied* 78 N.Y.2d 854 (1991)], and as there is a

factual dispute as to whether petitioner received such notice, a hearing would be required to determine the issue. CPLR §7804(h).

Petition

However, the court need not decide the dismissal motion, since upon reviewing the Article 78 petition and answer, it determines the petition should be denied. To begin, the only issue before this court is the Hearing Officer's determination. The question of whether NYCHA's actions subsequent to the determination vitiated that decision may be argued to the Housing Court, but is not before this court.

A court must uphold an administrative determination "unless there is no rational basis for the exercise of discretion or the action complained of is 'arbitrary and capricious.'" *Pell v. Bd. of Ed.*, 34 N.Y.2d. 222, 231 (1974). "It is the settled rule that judicial review of an administrative determination is limited to the grounds invoked by the agency." *Scherbyn v. Wayne-Finger Lakes Bd. of Coop. Educ. Servs.*, 77 N.Y.2d. 753, 758 (1991).

In the instant case, NYCHA's decision to terminate petitioner's tenancy after numerous instances of rent delinquency was neither arbitrary nor capricious. NYCHA's decision was based solidly on its statutory duty under Federal law to "ensure the prompt payment of rent and the termination of tenancies of those who fail to meet their rent payment obligations." The decision to terminate petitioner's tenancy fully comported with the agency's own termination procedures, which, in turn, have been held to comport with Constitutional due process requirements, as set forth in *Escalera v. New York City Hous. Auth.*, 425 F.2d 853 (2d Cir. 1970). There were no unduly harsh exercises of discretion, and certainly none so extreme as to "shock one's sense of fairness" and thus

constitute an abuse of discretion as a matter of law. *See Pell v. Bd. of Ed., supra* at 237. In fact, petitioner was given numerous chances to cure her rent delinquencies, but consistently failed to make payments in a timely fashion.

Moreover, the record does not support petitioner's assertion that the determination to terminate her tenancy for rent delinquency and violation of probation was arbitrary and capricious. Finally, there is no indication of impropriety in the decision. The hearing officer did not rely on evidence dehors the record *Butler v. Christian*, 88 A.D.2d 952, 952 (2d Dept. 1982)], nor was Petitioner prevented from offering mitigating evidence. *Robertson v. Popolizio*, 179 A.D.2d 809 (2d Dept. 1992). Accordingly, it is

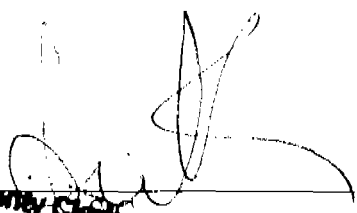
ORDERED ADJUDGED, and DECREED that the New York City Housing Authority's cross-motion to dismiss is denied as moot; and it is further

ORDERED ADJUDGED, and DECREED that the Article 78 petition of Ava E. Springs against New York City Housing Authority is denied and dismissed with prejudice; and it is further

ORDERED that the clerk is directed to enter judgment accordingly.

Dated: September 18, 2008

ENTER:



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 1412).