

Matter of Clark v New York City Hous. Auth.

2008 NY Slip Op 33346(U)

December 12, 2008

Supreme Court, New York County

Docket Number: 401767/08

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

ARETHA CLARK and TARAS CLARK

INDEX NO. 401767/08

MOTION DATE 12-08-08

- v -

MOTION SEQ. NO. 001

NEW YORK CITY HOUSING AUTHORITY

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion for Article 78

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

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, the petition is decided in accordance with the annexed Judgment/Decision.

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 1418).

Dated: December 12, 2008

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 4

-----X
In the Matter of the Application of
ARETHA CLARK and TARAS CLARK,

Petitioners,

For an Order Pursuant to Article 78
of the Civil Practice Law and Rules,

Index No. 401767/08

Judgment/Decision

-against-

NEW YORK CITY HOUSING AUTHORITY,

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
1418).

KIBBIE F. PAYNE, J.:

In this article 78 proceeding, petitioners Aretha and Taras Clark challenge a determination of respondent New York City Housing Authority ("NYCHA") dated June 4, 2008, which terminated their tenancy at 2815 Dewey Avenue, Bronx, New York (the "Building"). Respondent NYCHA opposes the petition, on the grounds that the termination was an appropriate sanction based on substantial evidence and that the instant proceeding improperly seeks to collaterally attack an order of the Civil Court of the City of New York.

Petitioners are tenants in the Building, which is a NYCHA development. It is undisputed that petitioners have a history of rent delinquency that extends back to 2006. Petitioners claim that their delinquency was due to "financial difficulty," with no further specification. The petition seeks "more time to pay rent", and a temporary restraining order to prevent the eviction

of petitioners.

After a hearing held on May 20, 2008, NYCHA's hearing officer found that petitioners did not submit evidence that would "suggest any concrete plan to pay the rent arrears" (Petition, Ex. A). At the time of the May 20th hearing, petitioners owed a total of \$4,493.65 in back rent for the period from October 2007 through May 2008. The hearing officer issued a decision upholding the chronic rent delinquency charges and recommending the termination of petitioners' tenancy. On June 4, 2008 the respondent agency approved the hearing officer's decision and issued a final determination that terminated petitioners' tenancy.

NYCHA, in opposition to the petition, maintains petitioners' tenancy was terminated after an impartial hearing, and that such determination was based on substantial evidence. NYCHA submits numerous documents demonstrating that petitioners were consistently delinquent in their payment of rent since May 2005, often failing to pay their monthly rent altogether.

The record indicates that NYCHA sent petitioners a May 2006 letter warning them that it was considering terminating their lease due to "Chronic Delinquency in Payment of Rent" (Answer, Ex. C). NYCHA offered petitioners the opportunity to discuss the matter, but petitioners did not avail themselves of that opportunity. Thereafter, in a letter dated August 10, 2008, NYCHA informed petitioners that it was recommending termination

of their tenancy, based on their chronic delinquency in paying rent. Specifically, in the "specification of charges" included with the letter, NYCHA contended that rent was paid late in eleven of the previous twelve months and that for four of those months, rent was not paid at all (*id.*, Ex. D). NYCHA in September 2006, and in August 2007 NYCHA had sent petitioners sent prior warning letters, which offered them the opportunity to meet with the Building Management Office; petitioners again failed to respond.

In December 2006, NYCHA rescheduled the hearing on petitioners' case for February 1, 2007. NYCHA also forwarded along an updated "specification of charges", which detailed unpaid rent for June 2006 through December 2006. The hearing was again postponed until May 15, 2007, as detailed in an April 2, 2007 letter to petitioners. On the day of the scheduled hearing, petitioners and NYCHA executed a stipulation of settlement, in which petitioners agreed to be on probation for a period of two years. Petitioners also committed to paying rent by the fifth of each month and not to breach the Tenancy Termination Procedures by, among other things, being chronically delinquent in the payment of rent (Answer, Ex. G). However, by August 2007, petitioners had already violated their probation by failing to make timely rent payments (*id.*, Ex. H).

Petitioners delinquent payment of rent continued through 2008; petitioners were again charged with that delinquency and an

administrative hearing was held. As discussed above, after the hearing, the NYCHA hearing officer determined that termination of petitioners' tenancy was appropriate, and on June 4, 2008 the NYCHA Board adopted that decision.

Prior to the agency final determination, on or about January 11, 2008, NYCHA commenced a separate non-payment proceeding against petitioners in the civil court. The parties entered into a stipulation of final judgment by which the petitioners agreed to pay all outstanding rent by March 28, 2008. NYCHA contends that petitioners failed to pay those arrears—a claim undisputed by petitioners.

At the outset, the court notes that neither party has requested to transfer the proceeding to the Appellate Division pursuant to CPLR 7804 (g), on the ground that an issue of substantial evidence is presented. Nor does the petition raise an issue of substantial evidence. Thus, the instant matter presents a justiciable controversy for determination here.

The standard of review in an Article 78 proceeding is whether the administrative determination was arbitrary and capricious. The court must confirm it if it is rationally based on the facts in the record (*see Matter of Pell v. Board of Education*, 34 NY2d 222, 233 [1974]; *Matter of 1171 Owners Corp. v. New York City Dep't of Hous. Preservation & Dev.*, 190 AD2d 441, 446 [1st Dept 1993]; *Matter of Montgomery v. New York City Hous. Auth.*, 56 AD2d 778 [1st Dept 1977]). Where an agency's

determination is founded on a rational basis, it should be affirmed (*Matter of Colton v. Berman*, 21 NY2d 322, 334 [1967]), even if the court would have come to a different conclusion (*Matter of Mid-State Mgt. Corp. v New York City Conciliation and Appeals Bd.*, 112 AD2d 72, 76 [1st Dept], *affd* 66 NY2d 1032 [1985]).

NYCHA's Termination of Tenancy Procedures provide that "[t]he repeated failure or refusal of the tenant to pay rent when due" is grounds for termination of tenancy (Answer, Ex. A, ¶ 1.D). In the instant proceeding, it is undisputed that petitioners-as they admit-were delinquent in their rent payments for an extended period of time. Thus based upon the evidence adduced at the April 22, 2008 hearing, NYCHA's decision to terminate their tenancy cannot be said to be arbitrary, capricious, or lacking a rational basis (*see Davis v. Hernandez*, 13 AD3d 90, 91 [1st Dept 2004]; *Moise v. Christian*, 97 AD2d 536 [2d Dept 1983]).

With respect to that branch of the petition seeking temporary restraining order that application must be denied. Respondent correctly argues that petitioners cannot collaterally attack a summary nonpayment proceedings pending in the civil court judgment (*see McLaughlin v. Hernandez*, 16 AD3d 344, 346 [1st Dept 2005]). It appears that petitioners commenced this article 78 proceeding to avoid compliance with a stipulation to final judgment with a stay of eviction upon payment of all

arrears. The nature of an article 78 proceeding is provide relief previously obtain by writs of certiorari to review, mandamus or prohibition. CPLR 7801 in pertinent part expressly provides: "Except where otherwise provided by law a proceeding under this article shall not be used to challenge a determination: which is not final **or can be adequately reviewed by appeal to a court...**" Here, petitioners' remedy was to seek an appeal of the civil court judgment. Accordingly, it is

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

The foregoing constitutes the decision and judgment of the court.

Dated: December 12, 2008

ENTER:



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 1415).