

<b>Matter of Swinton v New York City Hous. Auth.</b>
2009 NY Slip Op 30206(U)
January 28, 2009
Supreme Court, New York County
Docket Number: 402139/2008
Judge: Walter B. Tolub
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: TOLUB  
Justice

PART 15

SWINTON, LESLIE

INDEX NO.

402139/08

MOTION DATE

- v -

NYC HOUSING AUTHORITY

MOTION SEQ. NO.

02

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

IS DECIDED

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

**FILED**

FEB 02 2009

COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 1/22/09

W

**WALTER B. TOLUB**

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: IAS PART 15

-----x  
In the Matter of the Application of  
LESLIE SWINTON

Index No. 402139/2008

Mtn. Seq. 001

Petitioner,

For a Judgment Pursuant to Article 78 of  
the Civil Practice Law and Rules

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.  
-----x

**WALTER B. TOLUB, J.:**

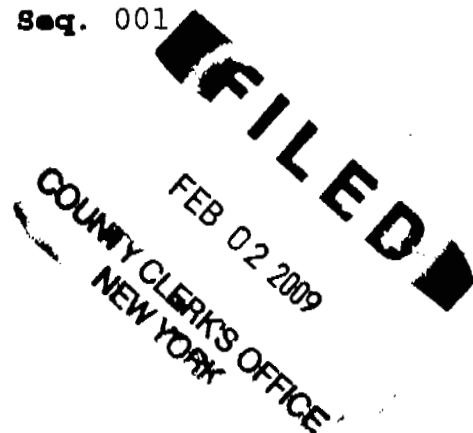
The Petition seeks to vacate Respondent's, New York City Housing Authority (Housing Authority or NYCHA), final determination dated April 30, 2008.

Facts

Petitioner became a participant in the Section 8 program in 1994, most recently residing at 1167 Stratford Avenue, Apt. 4M, Bronx, NY. On the five affidavits of income Petitioner submitted between February 2001 and January 2005, Petitioner stated that she was not employed and left all other questions about employment blank (Respondent Ex. B). Petitioner certified that the affidavits were complete and accurate.

In or around January 2005, management conducted a third-party verification of Petitioner's income in connection with her submissions of annual recertification papers.

Management received a report from HUD showing that Petitioner earned income from the third quarter of 2002 through



the second quarter of 2004, and a tax return listings from the IRS for the years 2001 through 2004, indicating that Petitioner received income or wages in each year she reported to Respondent that she was not receiving any income (Respondent Ex. D).

In June and July of 2005, management recalculated the Petitioner's subsidy to take into account her annual income. The Housing Authority overpaid the rent subsidy to the landlord on behalf of Petitioner in the amount of \$14,951 for the period from March 2001 through July 2005 (Respondent Ex. E and F).

In October 2006, the police arrested Petitioner and charged her with grand larceny in the third degree, a class D felony, in violation of Penal law section 155.35, and for offering a false instrument for filing in the first degree, a class E felony, based on her concealing income from the Housing filing of documents containing false information (Respondent Ex. G, H and I).

In October 2006, the Housing Authority's Leased Housing Department sent Petitioner a "Notice of Termination of Section 8 Subsidy" (Respondent Ex. J). In the Notice, the Housing Authority informed Petitioner of its intention to terminate her Section 8 Subsidy because she had committed fraud in connection with her participation in the Section 8 program by willfully misstating her income. The Notice also advised Petitioner that she could request an impartial hearing or an informal conference

which would result in a hearing if the problem was not resolved.

Petitioner requested and received an informal conference to contest the termination of her Section 8 Subsidy (Respondent Ex. K). The problem was not resolved at the informal conference. The Housing Authority then sent Petitioner a notice scheduling a hearing for January 29, 2008 (Respondent Ex. L).

The hearing took place before Hearing Officer Stuart G. Laurence (Hearing Officer) on March 8, 2008 after two adjournments. The Housing Authority submitted the Certificate of Disposition indicating that Petitioner had pleaded guilty to petit larceny and received a sentence of three years probation and restitution in the sum of \$14,951 (Respondent Ex. H). The Housing Authority also submitted the criminal complaint and the plea and sentencing minutes. Included in those documents were records indicating Petitioner's income during the period in question (Respondent Ex. G and I).

At the hearing, Petitioner denied committing fraud. Petitioner testified that she was not regularly employed and that her Section 8 status should not be terminated.

After reviewing the testimony and documentary evidence, the Hearing Officer sustained the charges and issued a disposition of termination of subsidy on April 30, 2008 (Respondent Ex. N). The Hearing Officer found that the Petitioner's guilty plea was dispositive and that the revocation of Section 8 benefits was

warranted. The Housing Authority then issued and sent Petitioner a final determination terminating her Section 8 benefits (Respondent Ex. A and N).

Petitioner commenced this proceeding seeking an order vacating Respondent's final determination terminating her Section 8 benefits because she and her 16 year old son are now rendered homeless.

#### Discussion

Respondent's decision to terminate Petitioner's Section 8 Subsidy is consistent with the discretion it is afforded by law and its responsibility under the law to pursue delinquent accounts. The decision to terminate Petitioner's Subsidy was based on evidence that Petitioner omitted reporting required information on income and wages.

An administrative's decision will withstand judicial scrutiny if it has a rational basis and is not arbitrary and capricious. (Pell v. Board of Edu., 34 NY2d 22, 231 [1974]).

The Housing Authority requires participants in its programs to accurately state their income. Here, the Housing Authority discovered that for years Petitioner's information was inaccurate and that Petitioner had failed to accurately state her household income. Although there is much documentary evidence of Petitioner's actions, noteworthy is that Petitioner plea of guilty to the criminal charges brought against her of defrauding

the Housing Authority. Courts have enforced determinations termination Section 8 benefits when the participant has misrepresented income (Sanchez v. Popolizio, 156 AD2d 210 [1<sup>st</sup> Dept 1989]; New York City Housing Authority v. Lawson, 79 AD2d 566 [1<sup>st</sup> Dept 1980]).

Petitioner in effect argues that pursuant to CPLR 7803[3], the measure of the penalty imposed was an abuse of discretion because "I am homeless with my sixteen year old son. . .". Although the Court is sympathetic with Petitioner's circumstances, the Court does not regard the Respondent's decision as an abuse of discretion shocking the conscious (CPLR 7803[3]; Sanchez v. Popolizio, 156 AD2d 210 [1<sup>st</sup> Dept 1989]; Pell v. Board of Edu., 34 NY2d 22, 231 [1974]).

The Housing Authority's decision to terminate the Petitioner's Section 8 Subsidy was neither arbitrary or capricious and had a valid basis. Accordingly, it is

ORDERED that the Petition is dismissed; and it is further ORDERED that the Clerk of the Court enter judgment accordingly.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 1/20/09

**FILED**  
FEB 02 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

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WALTER B. TOLUB, J.S.C.