

**Matter of Mosquita v Div. of Hous. &
Community Renewal**

2009 NY Slip Op 30968(U)

April 28, 2009

Supreme Court, New York County

Docket Number: 403149/2008

Judge: Walter B. Tolub

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

WALTER B. TOLUB

PRESENT:

PART _____

Index Number : 403149/2008
MOSQUITTA, ELOISA
vs
DIV OF HSG & COMMUNITY RENEWAL
Sequence Number : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
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
APR 29 2009
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 4/29/09

WALTER B. TOLUB J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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 **Index No. 403149/2008**
ELOISA MOSQUITA

Mtn. Seq. 001

Petitioner,

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

-against-

DIVISION OF HOUSING AND COMMUNITY RENEWAL

Respondent.

-----x
WALTER B. TOLUB, J.:

FILED
APR 29 2009
COUNTY CLERK'S OFFICE
NEW YORK

The Petitioner seeks an order annulling Respondent, Division of Housing and Community Renewal's (DHCR) decision to terminate the subsidy for her residence in apartment 1906 at 580 Main Street, New York, NY (Apartment/Premises).

Facts

Petitioner has been receiving a Section 8 subsidy in the form of an Enhanced Voucher which was conditioned on her continued residence in the Apartment and her providing all required information and documentation in connection with the annual recertification of her eligibility for the subsidy.

On July 28, 2007 Respondent mailed the Petitioner a notice, accompanied by information, forms and instructions, requiring Petitioner to submit certain information to Respondent no later than August 24, 2007. Upon Petitioner's failure to send the requested information, on September 14, 2007, Respondent mailed

Petitioner a Second Notice stating that the First Notice was sent, that the annual recertification package had to be completed and that if said documents were not provided within 10 days from the date of the letter, then on October 1, 2007, the DHCR may terminate her subsidy (Respondent Ex. 1).

On October 9, 2007, DHCR mailed the Petitioner, by certified mail, a Termination Notice stating, inter alia, that: (1) the Section 8 Housing Assistance Program had decided to terminate her voucher; (2) that the termination of housing assistance was effective as of December 1, 2007 for failure to submit the recertification package; and (3) and that Petitioner was entitled to an informal hearing so long as the request was made no later than October 30, 2007.

The Termination Notice was sent on October 9, 2007 and on October 11, 2007, the Termination Notice was acknowledged as received by Plaintiff's son (Respondent Ex. 3). Petitioner claims that her son never gave her the Termination Notice (Petition).

On October 15, 2007, DHCR received several documents from the Petitioner and more on October 23, 2007. On October 30, 2007, when DHCR did not receive all of the necessary documentation, it mailed Petitioner a Second Notice of Termination.

The Second Termination Notice stated that Petitioner had not

provided documents for her Annual Income Reexamination and that the required documents had to be submitted within ten days (Respondent Ex. 6).

Having received no further documentation from the Petitioner, the Respondent terminated the Petitioner's subsidy effective December 1, 2007.

Petitioner wrote to Ms. Cardona of the DHCR on June 6, 2008 stating that she just found out that her case had been closed and that she did not understand why because she sent out documents in a timely manner but that she did not have any copies of said documents (Respondent Ex. 7). Petitioner further asked if it would be possible for her to obtain a hearing (Id.).

Ms. Cardona replied by letter dated June 27, 2008 (Respondent Ex. 8) and stated that the decision to terminate would not be reviewed or changed. Ms. Cardona then referred the matter to the DHCR's Statewide Section 8 Program, which oversees the administration of the Section 8 Program.

On July 24, 2008, Program Representative Cynthia Kierstedt received documents from the Petitioner (Respondent Ex. 9). And on October 27, 2008, Ms. Kierstedt wrote to the Petitioner stating that the decision to terminate Petitioner's subsidy would be upheld because Petitioner failed to comply with the Program's rules and regulations (respondent Ex. 10).

Petitioner then commenced this Article 78 proceeding seeking

to annul the decision to terminate her Section 8 Enhanced Voucher subsidy.

Discussion

The DHCR's decision to terminate Petitioner's subsidy is consistent with the discretion it is afforded by law. The decision to terminate Petitioner's subsidy was based on Petitioner's failure to provide all of the documents required for her Annual Income Reexamination.

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]);

In order to set aside the DHCR's decision to terminate Petitioner's subsidy, Petitioner must demonstrate good cause for her failure to provide the required documents for her Annual Reexamination. (Barnhill v. New York Housing Authority, 280 AD2d 339 [1st Dept 2001]). Although Petitioner asserts that she did not receive the Notice of Termination from her son and that she did send all required documents, she submitted nothing more to support her claim.

Respondent's determination was neither arbitrary nor capricious and therefore the Petition must be and is dismissed.

Accordingly, it is

ORDERED that the Petition is dismissed and the determination of the DHCR to terminate Petitioner's Section 8 Enhanced Voucher

subsidy is confirmed.

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

Dated: 4/28/09



HON. WALTER B. TOLUB, J.S.C.

FILED
APR 29 2009
COUNTY CLERKS OFFICE
NEW YORK