

Matter of Peterson v New York City Hous. Auth.

2009 NY Slip Op 31406(U)

June 18, 2009

Supreme Court, New York County

Docket Number: 400144/2009

Judge: Carol R. Edmead

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

PRESENT: **HON. CAROL EDMEAD**

PART 35

Index Number : 400144/2009
PETERSON, ROBIN
 vs.
NYC HOUSING AUTHORITY
 SEQUENCE NUMBER : 001
 ARTICLE 78

INDEX NO. _____

MOTION DATE 6/17/09

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

n 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

The instant application is decided in accordance with the annexed Memorandum Decision. It is hereby

ORDERED and ADJUDGED that the application of Petitioner Robin Peterson for an order and judgment, pursuant to Article 78 of the CPLR: reversing and annulling the determination of respondent New York City Housing Authority, dated October 16, 2008, terminating her tenancy, is denied in its entirety, and the instant Petition is dismissed; and it is further

ORDERED that counsel for respondent shall serve a copy of this order with notice of entry within twenty days of entry on Petitioner.

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 141B).

Dated: 6/18/09

[Signature]
HON. CAROL EDMEAD 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: PART 35

_____ X
 In the Matter of the Application of
 ROBIN PETERSON,

Index No. 400144/2009

Petitioner,

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

DECISION/ORDER

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

_____ X
 EDMEAD, J.S.C.

MEMORANDUM DECISION

Petitioner Robin Peterson (“petitioner”) moves for an order and judgment, pursuant to Article 78 of the CPLR: reversing and annulling the determination of respondent New York City Housing Authority (the “Housing Authority”), dated October 16, 2008, terminating her tenancy.

Background

Petitioner was the tenant of record of 133-50 Roosevelt Avenue, Apt. 3F in the Housing Authority’s Latimer Gardens/Bland Houses public housing development in Queens, New York. On July 17, 2007, the manager of the Bland Houses development received a letter from petitioner’s neighbor Delores Goodlett (“Ms. Goodlett”) complaining that petitioner’s pit bull dog had attacked her and her dog. The manager sent a letter to petitioner asking her to visit the management office to discuss the matter. On July 24, 2007, petitioner met with the manager, admitted she had a dog, which had not been properly registered, admitted her dog attacked the neighbor’s dog, but claimed her dog did not attack the neighbor. The manager advised petitioner

that within two weeks she must provide verification that she had removed the dog. Two weeks later, petitioner said that her brother would remove the dog by the middle of September. After petitioner did not submit any verification that she had removed the dog, the manager sent an October 4, 2007 follow-up letter to petitioner advising that her file would be forwarded to the Tenancy Administrator for review and preparation of appropriate administrative charges. By Notice and Specification of Charges dated December 11, 2007, the Housing Authority charged petitioner with non-desirability and breach of rules and regulations alleging, among other things, that petitioner's dog attacked, bit or otherwise injured another resident or her dog, in July 2007. The notice set a hearing date of January 3, 2008 and advised petitioner she could be represented by counsel or representative of her choice. Petitioner appeared on January 3, 2008 and the parties agreed to adjourn the matter to February 27, 2008.

In about February 2008, the manager of Bland Houses learned that the police had executed a search warrant in petitioner's apartment on November 1, 2007, arrested petitioner and several other individuals, and discovered a loaded gun, crack cocaine and marijuana. On February 11, 2008, the manager met with petitioner to discuss the matter. Petitioner said that the drugs the police found were for her visitor's personal use. Petitioner claimed that none of the other individuals arrested, apart from her son, lived in the apartment. By Notice of Specifications dated February 28, 2008, the Housing Authority amended the charges and adjourned the hearing to April 3, 2008. After several adjournments, on September 25, 2008, petitioner appeared and acknowledged that she was prepared to represent herself.

Detective Keith Adamisyn (the "Detective") testified that he executed a search warrant after a confidential informant made three controlled buys of crack cocaine from an individual

called "Raz" in petitioner's apartment on October 4, 2007, October 9, 2007 and October 19, 2007 and one purchase from Raz in the lobby of petitioner's building on October 12, 2007. The Detective found six zip-lock bags of marijuana on the headboard/shelf of the bed where petitioner and Kevin Readus ("Readus") were sitting; and remnants of marijuana cigarettes in petitioner's bedroom; in a lock box in another bedroom, the Detective found a loaded gun with five bullets in the cylinder, together with 29 bullets of a different caliber [the gun tested inoperative]. Readus wrote a statement about the gun, declaring in part that he put the gun, which he purchased from a "crack head" in a lock box in his girlfriend's son's room "in the project where he lives." Another officer on the team searched Mandel Turner ("Turner") and discovered 10 zip lock bags of crack cocaine and five zip lock bags of marijuana in Turner's sock. Turner also identified himself as living in petitioner's apartment.

Petitioner testified that she was unaware of the gun and any drug activity in her apartment. She also testified that Readus stays with her "off and on" and "two weeks a month" to help her and her son.

After reviewing the testimony and evidence presented, the hearing officer sustained the drug and gun charges, with respect to petitioner, Readus and Turner. The hearing officer also sustained the unauthorized occupancy charge with respect to Readus; and sustained the charge alleging petitioner failed to refrain from illegal activity and violating her lease, and failed to cause the individuals on the premises with her consent to refrain from illegal activity and violating the lease.

On October 16, 2008, the Housing Authority's Board adopted the hearing officer's decision and disposition and issued a Determination of Status terminating petitioner's tenancy.

Petitioner's Contentions

Petitioner states that she has never been in any trouble with the Housing Authority before, and for a first time, this determination is very harsh. Also, the criminal charges against petitioner, Readus, Marquis McKinney and Jeffery Towler, were dismissed. Turner was the only one charged with anything. Also, Readus and Turner do not reside in her apartment. And, the identification on these individuals was for addresses other than petitioner's address. As to the gun, because petitioner was not in the house when it was searched, she does not really know where the gun was found and if it was even in her apartment. And, the housing manager has something against petitioner and Black people.

Petitioner states that she has lived in this apartment since 1977 and that she took over her mother's lease when her mother died in 2002. This is the home of petitioner and her son, and they have nowhere else to go. Petitioner regrets that her dog caused problems, but it cannot be said that she does not clean up after her dog or that she does not keep him on his leash.

Respondent's Opposition

Petitioner's claim that she was unaware of the drug activity in her apartment was rejected by the hearing officer as not credible. As the hearing officer noted, four controlled buys were traced back to Readus, three of which occurred inside petitioner's apartment. When the warrant was executed, the police found Readus there (with a loaded gun he had put in petitioner's son's room), together with Turner who had 10 zip lock bags of crack cocaine and five zip lock bags of marijuana in his sock.

In sum, the criminal activity in petitioner's apartment and irresponsible behavior with respect to the dog threatened the safety of other residents and Housing Authority employees. As

such, termination of this tenancy is more than warranted; it is mandated in order to protect petitioner's law-abiding neighbors and Housing Authority employees.

Analysis

CPLR 7803 states that the court review of a determination of an agency, such as NYCHA, consists of whether the determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty imposed. CPLR 7803(3) (*see Windsor Place Corp. v New York State DHCR*, 161 A.D.2d 279 [1st Dept.1990]; *Mazel v DHCR*, 138 A.D.2d 600 [1st Dept.1988]; *Bambeck v DHCR*, 129 A.D.2d 51 [1st Dept.1987], *lv. den.* 70 N.Y.2d 615 [1988]). An action is arbitrary and capricious, or an abuse of discretion, when the action is taken "without sound basis in reason and ... without regard to the facts." *Matter of Pell v Board of Education*, 34 N.Y.2d 222, 231(1974). Rationality is the key in determining whether an action is arbitrary and capricious or an abuse of discretion. *Matter of Pell v Board of Education*, 34 N.Y.2d, at 231. The court's function is completed on finding that a rational basis supports NYCHA's determination (*see Howard v Wyman*, 28 N.Y.2d 434 [1971]). Where the agency's interpretation is founded on a rational basis, that interpretation should be affirmed even if the court might have come to a different conclusion (*see Mid-State Management Corp. v New York City Conciliation and Appeals Board*, 112 A.D.2d 72 [1st Dept.], *aff'd* 66 N.Y.2d 1032 [1985]).

On judicial review of an agency action under CPLR Article 78, the courts must uphold the agency's exercise of discretion unless it has "no rational basis" or the action is "arbitrary and capricious." *Pell v Board of Ed. Union Free School District*, 34 NY2d 222, 230-31, 356 NYS2d 833, 839 (1974) "The arbitrary and capricious test chiefly 'relates to whether a particular action

should have been taken or is justified . . . and whether the administrative action is without foundation in fact.' Arbitrary action is without sound basis in reason and is generally taken without regard to the facts." 34 NY2d at 231, 356 NYS2d at 839 *See also Jackson v New York State Urban Dev Corp.*, 67 NY2d 400, 417, 503 NYS2d 298, 305 (1986) (on review of agency action under CPLR Article 78, the courts may not "second guess the agency's choice, which can be annulled only if arbitrary, capricious or unsupported by substantial evidence").

Moreover, where, as here, the agency's determination involves factual evaluation within an area of the agency's expertise and is amply supported by the record, the determination must be accorded great weight and judicial deference. *See Flacke v Onondaga Landfill Systems, Inc.*, 69 NY2d 355, 363, 514 NYS2d 689, 693 (1987). Courts are required to "resolve [any] reasonable doubts in favor of the administrative findings and decisions" of the responsible agency. *Town of Henrietta v Department of Envtl. Conservation*, 76 A.D.2d 215, 224, 430 NYS2d 440, 448 (4th Dep't 1980). *See also Jackson*, 67 NY2d at 417, 503 NYS2d at 305; *City of Rome v Department of Health Dept.*, 65 A.D.2d 220, 225, 441 NYS2d 61, 64 (4th Dep't 1978), *lv. To app. denied*, 46 NY2d 713, 416 NYS2d 1027 (1979).

And, "Where evidence conflicts, issues of credibility are the province of an administrative hearing officer, since 'the decisions by an Administrative Hearing Officer to credit the testimony of a given witness is largely unreviewable by the courts.' " *Wooten v Finkle*, 285 AD2D 407, 408 (1st Dept 2001) (*quoting Berenhaus v Ward*, 70 NY2d 436, 443 (1987), and the courts may not weigh the evidence or reject the conclusion of the administrative agency where the evidence is conflicting and room for choice exists (*Berenhaus*, 70 N.Y.2d at 444, 522 N.Y.S.2d 478, 517 N.E.2d 193; *Matter of Stork Rest. v Boland*, 282 N.Y. 256, 267, 26 N.E.2d

247 [1940]; *Matter of Acosta v Wollett*, 55 N.Y.2d 761, 447 N.Y.S.2d 241, 431 N.E.2d 966 [1981]; *Matter of Verdell v. Lincoln Amsterdam House, Inc.*, 27 A.D.3d 388, 390, 813 N.Y.S.2d 68 [2006]).

In the instant case, this court finds that on the entire record the Hearing Officer's determination is supported by substantial evidence, including police reports, complaints of misconduct, and testimony from the police. Respondents have met the minimal burden required to support the charges. The Hearing Officer's recommendation and the Housing Authority's Board's determination to terminate petitioner's tenancy was not arbitrary or capricious.

This court recognizes that petitioner has mitigating circumstances, and that this decision creates a hardship for petitioner and her son. However, those circumstances are far outweighed by the substantiated charges in support of terminating petitioner's tenancy.

Conclusion


Based on the foregoing, it is hereby

ORDERED and ADJUDGED that the application of Petitioner Robin Peterson for an order and judgment, pursuant to Article 78 of the CPLR: reversing and annulling the determination of respondent New York City Housing Authority, dated October 16, 2008,

terminating her tenancy, is denied in its entirety, and the instant Petition is dismissed; and it is further

ORDERED that counsel for respondent shall serve a copy of this order with notice of entry within twenty days of entry on Petitioner.

Dated: June 18, 2009



Carol Robinson Edmead, J.S.C.

HON. CAROL EDMEAD

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 141B).