

Matter of Santiago v New York City Hous. Auth.

2009 NY Slip Op 31807(U)

August 11, 2009

Supreme Court, New York County

Docket Number: 400546/2009

Judge: Jane S. Solomon

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

PRESENT: JANE S. SOLOMON

PART 55

Index Number : 400546/2009

SANTIAGO, WANDA

VS.

NYC HOUSING AUTHORITY

SEQUENCE NUMBER : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE 6/18/09

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

1-3

4-5

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

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

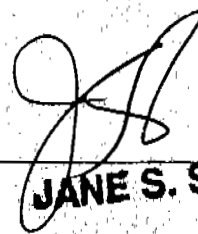
Upon the foregoing papers, it is ordered that this ~~motion~~ ^{and order} petition is decided

in accordance with the annexed memorandum decision, order and judgment.

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: 8-11-09



JANE S. SOLOMON
J.S.C.

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 55

-----x
In the matter of the Application of

WANDA SANTIAGO,

Petitioner,

Index No.: 400546/09

-against-

DECISION, ORDER, and
JUDGMENT

NEW YORK CITY HOUSING AUTHORITY

UNFILED JUDGMENT

Respondent **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).**

JANE S. SOLOMON, J.:

Petitioner Wanda Santiago ("Petitioner") was a tenant of 320 East 115th Street, Apt. 9C, New York, 10029, located in Jefferson Houses, a public housing development owned and operated by the New York City Housing Authority ("NYCHA"). NYCHA terminated petitioner's tenancy on March 31, 2009. Petitioner brought this Article 78 proceeding to challenge the termination.

After repeated delinquency in paying rent, in 2007 Petitioner entered into a stipulation with NYCHA (Stipulation) in which, among other things, she agreed to be placed on a three year probation and to pay rent when due (see Ex. G to Verified Answer). The Stipulation provided that her tenancy could be terminated if she violated the probation. NYCHA claims that Petitioner chronically failed to pay rent. It commenced an administrative proceeding to end Petitioner's tenancy due to her chronic non-payment and scheduled a hearing for May 6, 2008.

Petitioner failed to appear. The hearing officer recommended termination after her default. Petitioner applied to reopen the default, and NYCHA scheduled a second hearing for December 9, 2008. Petitioner again failed to appear. On December 10, the hearing officer again recommended termination, and on December 24, NYCHA adopted the Hearing Officer's recommendation. On January 5, 2009 petitioner applied to vacate her default, stating that she called a representative of the NYCHA Chronic Rent Delinquency Unit a day before the hearing, and left a message stating that she had paid rent in part, and would pay more if given a new "appointment" (see Ex. D to Verified Answer). NYCHA opposed Petitioner's request to vacate her second default (Ex. U to Verified Answer), and on February 13, 2009, the Hearing Officer denied the application (Ex. V to Verified Answer). Petitioner now seeks Article 78 relief vacating the termination of her tenancy on the grounds that she did not receive notice of the December 9, 2008 hearing.

CPLR 7803 authorizes a court to review an agency determination that was made in violation of lawful procedure, was affected by an error of law or was arbitrary or capricious or an abuse of discretion.

The sole issue before the court is whether the Hearing Officer's denial of Petitioner's request to reopen her second default was rational. The court may only review NYCHA's

denial of Petitioner's application to open her default, not the underlying determination (*Yarbough v Franco*, 264 A.D.2d 740 [2d Dep't 1999], *aff'd*, 95 N.Y.2d 342 [2000]). In order for the court to set aside a default in a termination-of-tenancy hearing, the defaulting party must (1) provide a reasonable excuse for failing to appear for the hearing; and (2) provide a meritorious defense to the charges against her.

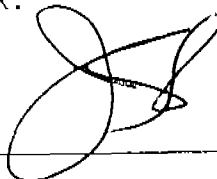
Petitioner has not provided a reasonable excuse for her default. In her petition, she states that she did not receive notice of the hearing due to mail problems. This claim is belied by her January 5, 2009 representation that she left a message with a NYCHA representative a day before her scheduled hearing, seeking an adjournment. Therefore, petitioner's claim of no notice fails because she was aware of the hearing in advance. Accordingly, the Hearing Officer properly rejected her application to vacate the disposition made upon her default in appearing on December 9, 2008.

Petitioner also has failed to establish a meritorious defense to NYCHA's claims that she is chronically delinquent in paying rent and that she violated the terms of her Stipulation. Based on the facts presented, it cannot be said that the Housing Authority's determination was arbitrary, capricious, or that it lacked a rational basis. Accordingly, it hereby is

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

Dated: August 11, 2009

ENTER:



J.S.C.

JANE S. SOLOMON
J.S.C.

UNFILED JUDGMENT

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