

Matter of Hagood v New York City Hous. Auth.

2009 NY Slip Op 32083(U)

September 10, 2009

Supreme Court, New York County

Docket Number: 402643/08

Judge: Emily Jane Goodman

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

PRESENT: EMILY JANE GOODMAN
Justice

PART 17

Flagood, Adam

INDEX NO. 402643/08

- v -

MOTION DATE _____

Housing Authority

MOTION SEQ. NO. 01

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 ...

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion be granted

is decided per attached

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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: 9/10/09

EMILY JANE GOODMAN

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 17

-----X

In the Matter of the Application of Index No. 402643/08

ADAM HAGOOD,

Petitioner,

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

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

-----X

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).

EMILY JANE GOODMAN, J.S.C.:

Petitioner ADAM HAGOOD ("Hagood") brings this Article 78 proceeding to vacate the decision of Respondent New York City Housing Authority, ("NYCHA") to terminate his tenancy for non-desirability. The decision was rendered on default and was reopened. By decision dated July 2, 2008, the hearing officer declined to vacate NYCHA's decision, because Hagood failed to support his contention, by documentary proof, that he previously failed to appear for a hearing on May 21, 2008 because he was incarcerated, and, because he failed to provide a meritorious defense to the non-desirability charges. Petitioner lives with his brother Anthony Hagood and Petitioner's 12 year old niece Natasjia Hagood, who are authorized family members. It is not

clear whether Anthony Hagood is the father of Natasjia Hagood or whether Petitioner or Anthony Hagood have custody or guardianship of Natasjia Hagood. Neither Anthony nor Natasjia Hagood have been accused of any wrongdoing.

The specific grounds for non-desirability were that (1) Hagood was chronically delinquent in rent, (2) on January 24, 2007, numerous individuals, including Petitioner, were arrested in the apartment at issue for drug possession and (3) Hagood permitted numerous individuals to reside in the apartment, without NYCHA's consent (see notice dated May 23, 2007). On May 3, 2007, ~~prior the holding the hearing, Petitioner was arrested in the~~ apartment for drug possession, with other individuals. Petitioner plead guilty to criminal possession of a controlled substance in the 7th degree, a misdemeanor, and received time served (Ex CC and Ex DD). He was then notified that the charges were supplemented to include the May 3, 2007 incident and his alleged failure to transfer to a smaller apartment.

Petitioner claims no search warrants were shown to him, that police used excessive force, that no "large amount" of illegal substance was found, and that no drugs were being sold in the apartment. Petitioner further denies that he plead guilty to criminal possession of a controlled substance and claims, instead, that he was jailed on May 21, 2008 for unpaid tickets. He also claims the individuals in the apartment were only guests, who did

not reside there, and because he is on public assistance, he has no control over when his rent is paid.¹

Respondent did not act arbitrarily or capriciously in failing to reopen Petitioner's second default given that Petitioner did not establish good cause for reopening. Good cause requires both excusable default and a meritorious defense (see Barnhill v NYCHA, 280 AD2d 339 [1st Dept 2001]). Even if the hearing officer should have believed Petitioner's uncorroborated oral statement that he could not appear at the hearing because he was incarcerated, Petitioner has not established a meritorious defense. Although he ~~might have defenses to certain charges (i.e., to non payment of~~ rent because he was on public assistance), Petitioner has not established a meritorious defense to the most troubling of the non-desirability charges--the two instances involving drug possession in the apartment. The fact that the quantities may have been small or consisted of residue does not change the result.

Accordingly, it is

ADJUDGED that the petition is denied and the proceeding is dismissed; and it is further

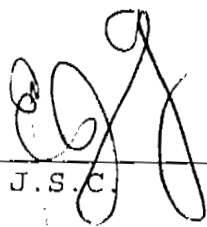
¹ Petitioner previously settled various charges in 1993, 1994 and 2005 by agreeing to probation.

ORDERED that this decision is without prejudice to Anthony and Natasjia Hagood's rights, if any, as remaining family members.²

This Constitutes the Decision, Order and Judgment of the Court.

Dated: September 10, 2009

ENTER:



J.S.C.

EMILY JANE GOODMAN

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² Although Petitioner's other brother, Michael Hagood, was arrested with Petitioner in the apartment for drug possession, Anthony Hagood was not arrested and appears not to have been in the apartment at the time of either arrest. Nothing submitted indicates that Anthony Hagood or Natasjia Hagood were involved in Petitioner's activities or that Anthony Hagood would not agree to transfer to a smaller apartment with Natasjia Hagood. Accordingly, NYCHA should evaluate whether Anthony Hagood and Natasjia Hagood are eligible to be relocated to another NYCHA apartment.