

Matter of Banyai-Elek v New York City Hous. Auth.

2009 NY Slip Op 32218(U)

September 24, 2009

Supreme Court, New York County

Docket Number: 401179/2009

Judge: Marilyn Shafer

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

PRESENT: Hon. Marilyn Shapiro
Justice

PART 8

Index Number : 401179/2009
BANYAI-ELEK, ZOLTANNE
vs.
NYC HOUSING AUTHORITY
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

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~~ *petition is dismissed*
in accord with the annexed memorandum.

FILED
SEP. 25 2009
COUNTY CLERK'S OFFICE
NEW YORK

[Signature]
J.S.C.

Dated: 9/24/09

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 — NEW YORK COUNTY

PRESENT: HON. MARILYN SHAFER PART 8
Justice

In the matter of the application of
ZOLTANNE BANYAI-ELEK,
Petitioner,

INDEX NO. 401179/2009
MOTION SEQ. NO. 001

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

-against-

NEW YORK CITY HOUSING AUTHORITY,
Respondent.

The following papers, numbered 1 to 4, were read on this petition:

	<u>PAPERS NUMBERED</u>
Notice of Petition – Petition – Exhibits	1,2
Verified Answer – Exhibits	3
Memorandum of Law	4

Cross-Motion: Yes No

Upon the foregoing papers, the petition is dismissed.

Introduction

This is a proceeding brought pursuant to Article 78 to vacate the determination of
the New York City Department of Housing Preservation and Development (“DHPD”)

finding petitioner ineligible for Section 8 benefits because her income exceeded the income limit for a one-person family. For the reasons set forth below, the petition is dismissed.

Background

Petitioner applied for Section 8 housing assistance as a one-person family. She attended an interview with the Housing Authority where it was determined, on the basis of the Statement of Earnings signed by her employer, that she was ineligible for Section 8 benefits because her annual income exceeded the admission limit. She was advised of her right to an informal hearing, which she requested.

At the hearing, petitioner testified that her employment had terminated and that she had founded her own corporation which paid her \$800 per month. She provided no verifiable proof of her current income.

Petitioner now claims, in this proceeding, that she is not working and is only receiving disability benefits. She has again failed to submit any verifiable proof of income.

Discussion

“It is well settled that judicial review in an Article 78 proceeding is limited to a determination of whether the administrative action complained of is arbitrary and capricious, or lacks a rational basis” (*In re Application of Chelrae Estates, Inc. v State Division of Housing and Community Renewal, Office of Rent Administration*, 225 AD2d

387, 389 [1st Dept. 1996]). In *Pell v Board of Education of Union Free School District*, the Court of Appeals defined arbitrary and capricious action as “action without sound basis in reason and generally taken without regard to the facts” (*Pell v Board of Education of Union Free School District*, 34 NY2d 222, 231 [1974]. An Article 78 proceeding is limited to consideration of the evidence and arguments raised before the agency when the administrative determination was rendered and “[t]he function of the court . . . is to determine . . . whether the determination had a rational basis in the record (*In re Application of HLV Associates v Aponte*, 223 AD2d 362, 363 [1st Dept. 1996] citing *Matter of Fanelli v New York City Conciliation & Appeals Bd.*, 90 AD2d 756, 757 [1st Dept. 1982])). Courts are not permitted to substitute their judgment for that of the administrative agency where the decision is rationally based on the record. (*In re Application of Royal Realty Co v New York State Division of Housing and Community Renewal*, 161 AD2d 404, 405 [1st Dept. 1990]; *Matter of Levine v New York State Liq Auth*, 23 NY2d 863, 864 [1969][“Judicial review of an administrative action is limited to the record made before the agency”])

It cannot be said from this record that the decision to deny eligibility is arbitrary and capricious or that it lacks a rational basis. Petitioner has failed to provide any verifiable basis upon which to evaluate her income.

We have considered the other arguments raised by the parties and find them to be without merit.

Accordingly, it is hereby

ORDERED that the petition is dismissed.

This reflects the decision and order of this Court.

Dated: 9/24/09

MARILYN SHAFER
J.S.C.

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

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