

Matter of Smith v New York City Hous. Auth.

2009 NY Slip Op 32242(U)

September 29, 2009

Supreme Court, New York County

Docket Number: 400242/09

Judge: Saliann Scarpulla

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

PRESENT: SALIANN SCARPULLA
Justice

PART 52

Index Number : 400242/2009
SMITH, PEARLINE
vs.
HOUSING AUTHORITY
SEQUENCE NUMBER : 002
ARTICLE 78

INDEX NO. 400242109
MOTION DATE 7/8/09
MOTION SEQ. NO. 002
MOTION CAL. NO. _____

n this motion to/for Article 78

PAPERS NUMBERED
1
2

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 cross-motion are decided in accordance with accompanying memorandum decision.

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).

This constitutes Decision and Order of the Court.

Dated: 9/29/09

Saliann Scarpulla
SALIANN SCARPULLA 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: CIVIL TERM: PART 52

----- X
In the Matter of the Application of
PEARLINE SMITH,
Petitioner,

Index Number 400242/09
Submission Date 7/8/09
Mot. Seq. No. 001, 002
**DECISION, ORDER
& JUDGMENT**

-against-

NEW YORK CITY HOUSING AUTHORITY,
Respondent.

----- X
Appearances: For Petitioner:

For Respondent:

Pro se **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 1419).

Sonya M. Kaloyanides
General Counsel, NYCHA
By Carol Polis
250 Broadway, 9th Floor
New York, NY 10007
Tel: 212-76-5183

Papers considered in review of this motion for summary judgment:

Papers	Numbered
Notice of Petition and Affidavits Annexed	1
Verified Answer, Brief	2, 3

HON SALIANN SCARPULLA, J.:

In this Article 78 proceeding, petitioner Pearlina Smith ("Smith") seeks to annul and vacate the October 10, 2008 administrative determination of respondent New York City Housing Authority ("NYCHA"), in which NYCHA denied Smith's request to vacate a default disposition of lease termination and eviction.

Smith lives in apartment 15H in the Douglas Houses, a housing development owned by NYCHA, which is located at 140 West 104th Street, New York, New York. NYCHA is a corporate governmental entity created pursuant to the New York State Public Housing Law

to provide housing for low-income families in the City of New York. Pursuant to New York's Public Housing Law and federal regulations, NYCHA is vested with the power to make and enforce procedures designed to assure the prompt payment and collection of rents. NYCHA is funded and regulated by the federal government and must annually certify its compliance with regulations concerning family income and composition set forth by the U.S. Department of Housing and Urban Development.

The present petition is the most recent development in a protracted dispute between Smith and NYCHA over Smith's failure to pay rent and NYCHA's alleged unwillingness to maintain Smith's apartment in compliance with the Housing Code. For the past several years, there have been numerous administrative and housing court proceedings concerning these issues.

Prior to the NYCHA proceeding at issue here, the most recent NYCHA administrative proceeding was concluded by decision and order dated September, 2005. In the decision and order, the NYCHA Hearing Officer awarded a modified sanction against Smith of six months' probation, stating that "Tenant has agreed that she will not again withhold rent without an order from the Court."

Smith did not abide by her alleged agreement not to withhold rent. On August 13, 2008, NYCHA served Smith with a notice of hearing, again charging her with chronic rent delinquency because of late and missing payments during the period of May 2007 through April 2008, with the date of the hearing set for September 12, 2008. Smith failed to appear

at the hearing. On September 15, 2008, the hearing officer entered disposition of termination on default.

In addition, by petition filed on August 18, 2008, NYCHA commenced a nonpayment proceeding against Smith in the Housing Part of the Civil Court of the City of New York. In the petition, NYCHA alleged that Smith had not paid full rent since March, 2006, and was currently in arrears in the amount of \$4,839.80. In her answer, dated August 29, 2008, Smith denied the allegations of the petition and alleged as an affirmative defense that there were "conditions in the apartment which need to be repaired and/or services which the Petitioner has not provided."

On September 22, 2008, Smith requested that her NYCHA case be reopened and that she be provided with another opportunity to be heard on the ground that she had not received the initial notice of hearing. As for a meritorious defense, Smith stated that she is "currently in court with NYCHA for services and damage by sewage flood among other problems."

On December 10, 2008, Smith's application to vacate her default was denied on the ground that Smith had failed to present an acceptable defense to the charge of chronic rent delinquency. In support of her decision denying vacatur, the NYCHA Hearing Officer stated that "The Housing Authority's obligation to provide services to its residents runs parallel to the Tenant's obligation to make timely rent payments; unless a court of proper jurisdiction has determined and ordered that the Tenant not pay rent. Neither party has the right to unilaterally discontinue its respective responsibilities absent court order."

Smith then commenced this proceeding to annul and vacate NYCHA's decision to deny vacatur of Smith's default. However, on January 27, 2009, after a full trial, the Housing Court (Marton, J.) issued a decision in favor of NYCHA in the nonpayment proceeding. Judge Marton found that Smith owed rent arrears in the amount of \$5,075.10, and he entered a money judgment against Smith in that amount, together with a judgment of possession. Judge Marton also fully considered Smith's affirmative defense of breach of the warranty of habitability, including her claims of lack of services and damage from sewage and vermin. With respect to this defense, Judge Marton found that "much of [Smith's] testimony was not credible" and that Smith had failed to submit "detailed proof as to the nature and extent of the conditions complained of." [citation omitted]. Judge Marton therefore declined to award Smith any rent abatement.

The parties now submit this Article 78 proceeding to me for determination.

Discussion

It is a well-settled rule that judicial review of administrative determinations is limited to the grounds invoked by the agency. *Matter of Aronsky v Board of Educ.*, 75 NY2d 997 (1990). The court may not substitute its judgment for that of the agency's determination but shall decide if the determination can be supported on any reasonable basis. *See Matter of Clancy-Cullen Storage Co. v Board of Elections of the City of New York*, 98 AD2d 635, 636 (1st Dept. 1983). Because here NYCHA made the determination of eviction on default, with no hearing held, the question for the Court is whether the hearing officer's denial of Smith's

application to vacate the default was made in violation of lawful procedure, was affected by an error of law or was arbitrary or capricious. CPLR 7803(3).

The test of whether a decision is arbitrary or capricious is “determined largely by whether a particular action should have been taken or is justified . . . and whether the administrative action is without foundation in fact.” *Matter of Pell v Board of Educ.*, 34 N.Y.2d 222, 232 (1974). An arbitrary action is without sound basis in reason and is generally taken without regard to the facts. *Matter of Pell*, 34 N.Y.2d at 232. The burden is “squarely on the petitioner” to demonstrate entitlement to Article 78 relief. See *Matter of Che Lin Tsao v Kelly*, 28 A.D.3d 320, 321 (1st Dept. 2006); see also *Miggins v City of N.Y.*, 286 AD2d 258 (1st Dept. 2001).

Pursuant to Paragraph 8 of NYCHA’s termination of tenancy procedures, an application to vacate a default may be granted for good cause shown if made within a reasonable time of default. The “good cause” requirement is similar to the “excusable default” requirement under CPLR 5015(a)(1) for vacating a judicial order which requires the showing of an excuse for the default and a meritorious defense to the proffered charges. See *Daniels v Popolizio*, 171 A.D.2d 596 (1st Dep’t 1991); Siegel, *New York Practice*, sec 108 (4th ed. 2005).

Here, Smith can not show a meritorious defense to the proffered charges as a matter of law because there has already been an adjudication on the merits rejecting Smith’s proffered defense. In Housing Court, Smith was afforded a full and fair opportunity to present evidence of her claim of breach of the warranty of habitability and lack of services.

After trial Judge Marton found that Smith had failed to prove this defense and declined to award her any rent abatement.

I am conclusively bound by the Housing Court's determination that Smith's proffered defense to nonpayment of rent has no merit. Pursuant to the doctrine of collateral estoppel, I may not arrive at a different result. *See e.g., Schwartz v Public Admin. of County of Bronx*, 30 A.D.2d 193 (1st Dep't 1968). Because Smith has not alleged a meritorious defense to NYCHA's claim of chronic nonpayment of rent, NYCHA's denial of Smith's request to vacate her default was not arbitrary or capricious. Smith's Article 78 petition is therefore denied, as Smith has not and can not show that she has a meritorious defense sufficient for me to overturn NYCHA's decision to deny vacatur of Smith's default in the NYCHA administrative proceeding. At this point, Smith's only remedy is to appeal to the Supreme Court, Appellate Term, pursuant to Civil Court Act §§ 1701 and 1702, from the decision of the Housing Court.

In accordance with the foregoing, it is

ORDERED and ADJUDGED that the petition of Pearline Smith application to set aside the administrative determination issued by respondent New York City Housing

Authority dated December 10, 2008 is denied in its entirety, and this Article 78 petition is dismissed.

This constitutes the decision, order, and judgment of the Court.

Dated: New York, New York
September 29, 2009

ENTER

Saliann Scarpulla
Hon. Saliann Scarpulla, J.S.C.

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 1210).