

**Matter of Santiago v New York City Hous. Auth.**

2009 NY Slip Op 32243(U)

September 29, 2009

Supreme Court, New York County

Docket Number: 401464/09

Judge: Eileen A. Rakower

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

**HON. EILEEN A. RAKOWER**

PRESENT:

PART 5

Justice

Index Number : 401464/2009

**SANTIAGO, JEANETTE**

VS.

**NEW YORK CITY HOUSING AUTHORITY**

SEQUENCE NUMBER : # 001

ARTICLE 78

INDEX NO. 401464-09

MOTION DATE

MOTION SEQ. NO. #001

MOTION CAL. NO.

were read on this motion to/for

PAPERS NUMBERED

1

2

3

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

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER**

**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: 9/29/09

**HON. EILEEN A. RAKOWER**

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  
COUNTY OF NEW YORK: PART 5

-----X  
In the Matter of the Application of  
JEANETTE SANTIAGO,

Index No.  
401464/09

Petitioner,

DECISION  
and ORDER

-against-

NEW YORK CITY HOUSING AUTHORITY

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appear in person at the Judgment Clerk's Desk (Room  
141B).  
Respondent

-----X  
HON: EILEEN A. RAKOWER:

Petitioner Jeanette Santiago ("Petitioner"), acting *pro se*, brings this Article 78 Petition seeking to annul the determination of Respondent New York City Housing Authority ("NYCHA"), made after Petitioner's third consecutive failure to appear for an administrative hearing, to terminate Petitioner's tenancy in a residential building unit owned and operated by NYCHA. Petitioner has resided in Apartment GG in 2-10 27<sup>th</sup> Avenue, a NYCHA-owned building in Queens, NY, since 2001.

NYCHA was established by the New York State Legislature in order to provide safe, decent, and sanitary housing for low-income families in the City of New York (*see* N.Y. Pub. Hous. Law §2) ("PHL"). To that end, NYCHA is empowered to make rules and regulations not inconsistent with the PHL (*see* PHL §37(1)(w)). NYCHA operates primarily from federal funding from the United States Department of Housing and Urban Development ("HUD"). In addition to applicable state laws and regulations, NYCHA complies with the United States Housing Act ("Housing Act"), as well as with federal rules and regulations promulgated by HUD (*see* 42 U.S.C. §1437).

Of particular relevance to the petition at bar, the Housing Act requires that public housing authorities utilize leases which :

Provide that any criminal activity which threatens the health, safety, or right to peaceful enjoyment of the

[\* 3 ]

premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy

(see 42 U.S.C. §1437d(l)(6)).

In adherence to the Housing Law §1437d(l)(6), as well as HUD-promulgated regulations (see 24 C.F.R. §966.4(f)(4)(11-12)), Paragraph 12 of the NYCHA Resident Lease Agreement (which was entered into by Petitioner) provides

It shall be the Tenant's obligations:

- e. To comply with all obligations imposed upon tenants in the City of New York by applicable laws, rules or regulations;
- q. To act, and cause other persons who are in the Leased Premises with the consent of the Tenant to act, in a manner that will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the Development in a decent, safe and sanitary condition;
- r. To assure that the Tenant, any member of the household, a guest, or another person under the Tenant's control, shall not engage in:
  - (i) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the Development by other residents or by the Landlord's employees...

NYCHA first brought charges against Petitioner on May 3, 2006 for chronic rent delinquency. Prior to the commencement of charges, and in accordance with NYCHA procedures, NYCHA attempted to schedule an informal meeting between Petitioner and management to discuss the matter. However, despite making two attempts to arrange for a meeting, Petitioner failed to respond. During the pendency of the charges against Petitioner, NYCHA amended the charges three times to reflect Petitioner's continuing rent delinquency.

Petitioner failed to appear at her administrative hearing on May 31, 2007. Hearing Officer Ester Tominic Hines deemed NYCHA's allegations against Petitioner admitted based upon Petitioner's failure to appear, and recommended termination of Petitioner's tenancy by decision dated June 14, 2007.

However, Petitioner requested a new hearing on June 27, 2007, stating that she was "[at] work at the time" of the May 31<sup>st</sup> hearing. Hearing Officer Hines granted Petitioner's request, and a new administrative hearing was rescheduled for November 30, 2007. Prior to the hearing, NYCHA brought new charges against Petitioner, alleging that, on or about August 17, 2007, Petitioner's son Justin Reyes, an authorized occupant of Petitioner's apartment, unlawfully trespassed on NYCHA property and unlawfully entered a NYCHA building with the intent to commit a crime. It was also alleged that Reyes forcibly removed the property of an individual known to NYCHA on June 15, 2006, and that Reyes assaulted an individual on May 6, 2006. The amended charges did not contain the initial rent delinquency charges.

Petitioner failed to appear once again for her scheduled administrative hearing. Accordingly, on December 3, 2007, Hearing Officer Joan Pannell recommended termination of Petitioner's tenancy, deeming the uncontroverted charges admitted by Petitioner.

Petitioner again requested a new hearing on January 16, 2008. Petitioner stated as her excuse for failing to appear at the hearing that she did not receive any letter advising her of the hearing date. As a defense to the charges, she alleged that she had a letter from the "place" of the alleged trespass stating that nothing was missing and that they were not pressing charges. Petitioner's request was granted by letter dated June 3, 2008, and her administrative hearing was rescheduled for July 10, 2008. The letter also contained the amended charges which were brought against Petitioner prior to the second hearing date. Again, no rent delinquency charges were contained.

Petitioner failed to appear for a third time on July 10, 2008. Hearing Officer Hines recommended termination yet again, deeming the charges against Petitioner admitted. On July 23, 2008, the NYCHA Board approved Hearing Officer Hines' July 10, 2008 decision and determined that Petitioner's tenancy shall be terminated.

[\* 5 ]

On August 11, 2008, Petitioner yet again applied for a new hearing, alleging that she did not receive the letter advising her as to the July 10<sup>th</sup> hearing date. As for her defense to the charges, Petitioner merely stated "I have no place to go." This time, NYCHA opposed Petitioner's request to reopen the case.

By decision dated April 17, 2009, Hearing Officer Hines denied Petitioner's application. In the decision Hearing Officer Hines found that "[Petitioner's] explanation for failing to appear... is not credible." Hearing Officer Hines cited the fact that Petitioner submitted all of her requests to re-open her case in a timely fashion. Thus, Hearing Officer Hines reasoned, "[i]f [Petitioner] received all the default determinations it is more than likely that she received the notice of the hearing as well." Hearing Officer Hines also found that Petitioner "fail[ed] to set forth any defense to the non-desirability and breach of rules and regulations charges."

Petitioner subsequently commenced this Article 78 proceeding. Petitioner submits a verified petition with a copy of Hearing Officer Hines' 4/17/09 decision annexed as an exhibit. In her petition, Petitioner states that the decision should be reversed because, although she has had difficulty paying rent, she is willing to get a second job in order to pay the rent in a timely fashion. Petitioner also states that, if her tenancy is terminated, she will have no place else to go.

NYCHA has submitted a verified answer and a memorandum of law in support of its answer. Annexed to the answer as exhibits are copies of NYCHA's procedures for termination of tenancy; the NYCHA Resident Lease Agreement signed by Petitioner; letters from NYCHA advising Petitioner of her right to meet with management concerning her alleged chronic rent delinquency prior to bringing formal charges against Petitioner; notices and specifications of charges against Petitioner; the three default decisions issued by NYCHA hearing officers against Petitioner; Petitioner's requests for new administrative hearings; letters from NYCHA granting the first two requests for new administrative hearings; NYCHA's opposition to Petitioner's third request for a new hearing; and Hearing Officer Hines' 4/17/09 decision.

It is well settled that the "[j]udicial review of an administrative determination is confined to the 'facts and record adduced before the agency'." (*Matter of Yarborough v. Franco*, 95 N.Y.2d 342, 347 [2000], quoting *Matter of Fanelli v. New York City Conciliation & Appeals Board*, 90 A.D.2d 756 [1st Dept. 1982]). The reviewing court may not substitute its judgment for that of the

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agency's determination but must decide if the agency's decision is supported on any reasonable basis. (*Matter of Clancy -Cullen Storage Co. v. Board of Elections of the City of New York*, 98 A.D.2d 635,636 [1st Dept. 1983]). Once the court finds a rational basis exists for the agency's determination, its review is ended. (*Matter of Sullivan County Harness Racing Association, Inc. v. Glasser*, 30 N.Y. 2d 269, 277-278 [1972]). The court may only declare an agency's determination "arbitrary and capricious" if it finds that there is no rational basis for the determination. (*Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 231 [1974]). Additionally, if a penalty is imposed by the agency, "the sanction must be upheld unless it shocks the judicial conscience and, therefore, constitutes an abuse of discretion as a matter of law." (*Featherstone v. Franco*, 95 NY2d 550, 554 [2000]).

Here, the court finds that the decision to terminate Petitioner's tenancy after her third failure to appear at her administrative hearing is supported by a rational basis and was not arbitrary and capricious.

Wherefore it is hereby

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

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: September 29, 2009

  
EILEEN A. RAKOWER, J.S.C.

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