

Matter of Murray v New York City Hous. Auth.
2009 NY Slip Op 32266(U)
October 5, 2009
Supreme Court, New York County
Docket Number: 105022/09
Judge: Marilyn Shafer
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: SHAFFER
Justice

PART 8

TUNISHA MURRAY

INDEX NO. 105022/09

MOTION DATE _____

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

- v -

N.Y.C. HOUSING AUTHORITY

The following papers, numbered 1 to _____ were read on this motion to/for _____

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

Answering Affidavits – Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ~~motion~~ petition is granted in accord with the annexed memorandum.

FILED
OCT 02 2009
COUNTY CLERK'S OFFICE
NEW YORK

Dated: 9/30/09

MARILYN SHAFER
J.S.C.

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
TUNISHIA MURRAY ,
Petitioner,

INDEX NO. 105022/09
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 5, were read on this petition:

- Order to Show Cause, Petition – Exhibits
- Verified Answer – Exhibits
- Memorandum of Law
- Transcript of Administrative Hearing

PAPERS NUMBERED

- 1,2
- 3
- 4
- 5

FILED
OCT 02 2009
COUNTY CLERK'S OFFICE
NEW YORK

Cross-Motion: Yes No

Upon the foregoing papers, the petition is granted.

Introduction

This is a proceeding brought pursuant to Article 78 challenging the determination of the New York City Housing Preservation and Development to terminate petitioner's

[* 3]
tenancy.

Background

Petitioner is a public housing tenant of record living in the apartment in which she grew up. She has no criminal record and has had no prior administrative hearings relating to her apartment.

The records shows that, in April, 2008, the Police executed a search warrant and a "controlled buy" at her apartment. The seller was petitioner's son who was in possession of approximately \$10.00 worth of cocaine and \$447 in cash. There was an additional person in the apartment at the time, Jesse Jones, who had never applied for tenancy status in the apartment and had an apartment in Brooklyn. Jones was in possession of three baggies of marijuana, two in his pocket and one in the bedroom, with a street value of approximately \$75.00.

No charges were brought against the petitioner and there is no connection in the record between her and any drugs. Her son received a conditional discharge and no longer lives in the apartment. Jones was given probation.

The Authority recommended termination of petitioner's tenancy and noticed a hearing on the charges of (1) allowing Jones to reside in the apartment without authorization; and (2) failing to refrain illegal activity in the apartment. Petitioner contends that, at the hearing, there was no testimony regarding Jones' tenancy nor that she had actual knowledge of any illegal activity.

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]). The court has the power to review, either as a matter of law or an exercise of discretion, the measure of discipline imposed by an administrative agency. (*Bovino v Scott*, 22 NY2d 214 [1968]). The court will annul a sanction when it is so disproportionate to the offense, in light of all of the circumstances, as to be shocking to one’s sense of fairness. (*Pell, supra*).

This Court finds that, in light of all the circumstances, the penalty imposed, termination of petitioner’s tenancy, is so disproportionate to the offense as to be arbitrary and capricious. The amount of drugs recovered was small and failed to indicate an on-going criminal operation. The persons who were in actual possession of the drugs received probation and a conditional discharge. The petitioner, who was never connected to the drugs and never charged with any crime, is facing the loss of the home in which she has lived her entire life. The Authority has the possibility of imposing remedies which are

far less harsh than termination.

This Court finds that the balance of equities tips in favor of the petitioner. This Court annuls the Authority's decision to terminate petitioner's tenancy and directs the matter be returned to the Authority for further proceedings in accord with this decision.

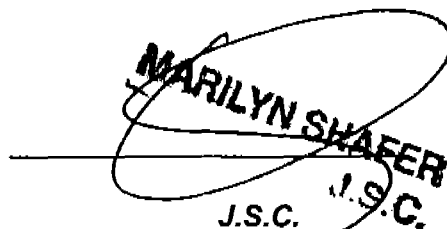
We have considered the other arguments raised by the parties and find them to be without merit.

Accordingly, it is hereby

ORDERED that the petition is granted.

This reflects the decision and order of this Court.

Dated: 9/30/09


MARILYN SHAFER
J.S.C. J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

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