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

PRESENT: HON. JOAN A. MADDEN J.S.C. PART 11

Index Number : 402265/2008

VEGA, NANCY

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~~ Article 78 proceeding is determined in accordance with the annexed decision, order and judgment.

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: October 13, 2009

HON. JOAN A. MADDEN J.S.C.

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

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 11

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In the Matter of the Application of NANCY VEGA,

INDEX NO. 402265/08

Petitioner-Tenant,

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

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

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JOAN A. MADDEN, J.:

In this Article 78 proceeding, petitioner Nancy Vega challenges the determination of respondent New York City Housing Authority (NYCHA) terminating her tenancy on the grounds of undesirability and breach of the rules and regulations. Petitioner is the tenant of apartment 12G at the Carver Houses, a public housing project located at 55 East 99th Street in Manhattan, which is operated by NYCHA. Petitioner's son and daughter are lawful occupants of the apartment.

On or about May 1, 2008, NYCHA served petitioner with a notice that a recommendation had been made to terminate her tenancy for the reasons stated in the specification of charges, and a hearing on those charges was scheduled for June 3, 2008. On June 3, 2008, petitioner appeared for the hearing without an attorney. When the hearing officer asked "are your prepared to represent yourself today," she responded "not really" and that she "was hoping that we could postpone it." The hearing officer observed that NYCHA's attorney appeared to have no objection to a postponement, and told petitioner "in that case you don't have to give me a

reason." NYCHA's counsel then stated that he had "no objection to a brief adjournment for the tenant to seek legal counsel" and offered to provide her with "a list of legal services in Manhattan," but "I only ask that the case be set for a date certain, and that we proceed on the next date." The hearing officer suggested a date in "either June or [the] second half of July," since he was away in the beginning of July. The NYCHA attorney proposed June 26 and the hearing officer set the time for 10:00 a.m. on that date. The transcript notes that petitioner's statements during this colloquy are "inaudible."

Petitioner appeared on June 26, 2008, but had not yet been able to retain an attorney. When the hearing officer asked if she was "representing herself," she responded that she had gone to and called a "couple of places, and they said they didn't have enough time to look at the paper work," and they "gave me a letter."[1] The hearing officer noted that the letter was dated June 25 and that she had two months' notice of the charges. Petitioner attempted to explain that she had "been calling places," but the hearing officer interrupted her and said that "unless the

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[1]The letter petitioner submitted to the hearing officer on June 26, 2008, is not annexed to either parties' papers. The hearing officer did not mark the letter as an exhibit, so NYCHA did not submit the letter as part of the record. Although petitioner lists the letter as one of the documents attached to her pro se petition, the record before this court does not include the letter or any of the other listed documents. As it is undisputed that petitioner submitted the letter at the hearing, the court obtained a copy from petitioner's counsel, on notice to respondent. The letter is from the Neighborhood Defender Service of Harlem and states as follows:

> I am writing this letter as proof of Ms. Nancy Vega's attempt to contact our offices to obtain legal counsel. Unfortunately, given that Ms. Vega is not a current client, the Neighborhood Defender Service of Harlem, Inc. is not able to take Ms. Vega's case. In lieu of representation we were only able to refer Ms. Vega to other legal services that may assist her. We referred her to: the Housing Resource Center, MFY Legal Services, and the Eviction Center, among others. Given this late date, she will need an adjournment date to secure counsel.

Housing Authority agrees to give you a further opportunity, I feel constrained to go forward today." When NYCHA's attorney said he was "constrained to go forward as well," the hearing officer proceeded with the hearing. NYCHA produced one witness, NYC Police Detective Brian Fleming, and petitioner testified on her own behalf. By a decision dated June 9, 2008, the hearing officer sustained the charges and issued a disposition of "termination."

Petitioner thereafter commenced this Article 78 proceeding by filing a *pro se* petition, and subsequently retained counsel who prepared an affirmation in support of the petition. Petitioner contends that she was denied a full and fair hearing when the hearing officer denied her request for a second adjournment to obtain an attorney, and that the hearing officer's conclusion lacks adequate support in the record. Specifically as to the right to counsel, the petition alleges that at the June 26, 2008 hearing, the hearing the hearing officer "did not allow me another adjournment to bring a lawyer" and that she had "a letter that the lawyer was leaving and they asked to please give me another date."

"While an indigent tenant does not have a constitutional right to assigned counsel, a private citizen may not be deprived of continued tenancy in a public housing project, without affording him or her adequate procedural safeguards." Brown v. Popolizio, 166 AD2d 44, 54 (1st Dept 1991)(citing Escalera v. New York City Housing Authority, 425 F2d 853 [2nd Cir], cert denied, 400 US 853 [1990]). To that effect, NYCHA's Termination of Tenancy Procedures, require that the hearing officer "shall be liberal in granting reasonable adjournments requested by the tenant . . . for good cause shown, to assure that there be no doubt that the tenant is afforded every due process right." Id.

Here, the hearing officer's failure to accommodate petitioner by granting a second adjournment so that she obtain counsel, was arbitrary and capricious in light of NYCHA's clear and express policy as quoted above as to the liberal granting of reasonable adjournments requested by the tenant "to assure that there be no doubt that the tenant is afforded every due process right." Id. While acknowledging petitioner's right to seek legal representation, the hearing officer gave petitioner a brief adjournment of slightly more than three weeks for her to find an attorney and for that attorney to prepare her case. Based on petitioner's testimony and sworn statements in the petition, she has sufficiently demonstrated that during that brief three-week period she was actively engaged in efforts to find an attorney by contacting legal services organizations. When petitioner told the hearing officer that she needed additional time, the hearing officer never inquired about the details of the steps she had already taken to find an attorney and did not even ask her to specify how much more time she thought she would need. Rather, the hearing officer simply denied her request outright, indicating that he lacked the authority to grant a second adjournment if the NYCHA would not consent.

Under these circumstances, petitioner was deprived of a meaningful opportunity to obtain counsel, and the hearing officer abused his discretion in proceeding with the hearing and in failing to accommodate petitioner by giving her an adequate and reasonable amount of time to obtain counsel. See id. The hearing officer also incorrectly assumed he had no discretion to grant petitioner a second adjournment absent NYCHA's consent, as the hearing officer was expressly mandated by NYCHA's termination procedures to be "liberal" in granting a tenant's requests for reasonable adjournments "for good cause shown," so as to guarantee without doubt that "every due process right" is afforded to the tenant. The petition is therefore granted to the

extent of annulling NYCHA's determination terminating petitioner's tenancy, and remitting the matter to NYCHA for a *de novo* hearing. Id.

Petitioner's further objections as to the adequacy of the evidence and whether NYCHA sustained its burden of proof at the hearing, raise questions of substantial evidence which must be transferred to the Appellate Division. See CPLR 7802 (g); Brooks v. Wagner Houses, 1 AD3d 284 (1st Dept 2003). However, in light of this court's determination annulling NYCHA's decision and remitting the matter for a new hearing, any questions as to substantial evidence have been rendered moot.

Accordingly it is hereby

ORDERED AND ADJUDGED that the petition is granted to the extent that the determination of respondent New York City Housing Authority terminating petitioner's tenancy is annulled, and the matter is remitted to respondent New York City Housing Authority for a *de novo* hearing.

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

DATED: October 13 2009

ENTER:

J.S.C.