

Matter of Lewis v New York City Hous. Auth.

2010 NY Slip Op 30079(U)

January 13, 2010

Supreme Court, New York County

Docket Number: 402656/2009

Judge: Carol R. Edmead

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

PRESENT: **HON. CAROL EDMEAD**

PART 31

Index Number : 402656/2009

LEWIS, RAQUEL

vs

NYC HOUSING AUTHORITY

Sequence Number : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE 1/12/10

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

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

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).

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

The instant Article 78 proceeding is decided in accordance with the annexed Memorandum Decision. It is hereby

ORDERED and ADJUDGED that the application of petitioner Raquel Lewis, for an order and judgment annulling the decision of the respondent New York City Housing Authority, is denied in its entirety. And it is further

ORDERED and ADJUDGED that the cross motion of respondent New York City Housing Authority to dismiss the Verified Petition is granted, and the Verified Petition herein is dismissed. And it is further

ORDERED that counsel for respondent shall serve a copy of this Order with Notice of Entry within twenty (20) days of entry on petitioner.

Dated: 1/13/2010


J.S.C.

HON. CAROL EDMEAD

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 35

In the Matter of the Application of
RAQUEL LEWIS,

Petitioner

Index No. 402656/2009

DECISION/ORDER

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

-against-

NEW YORK CITY HOUSING AUTHORITY

Respondent.

EDMEAD, J.S.C.

UNFILED JUDGMENT
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and notice of entry cannot be served based hereon. To
obtain entry, contact or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
141B).

MEMORANDUM DECISION

Petitioner Raquel Lewis (petitioner) moves for an order and judgment annulling the decision of the respondent New York City Housing Authority (NYCHA) which denied petitioner's application to reopen her default in appearing at an administrative hearing to terminate her tenancy on charges of chronic rent delinquency, violation of NYCHA's pet policy, and violation of probation.

NYCHA cross moves for an order dismissing the Verified Petition pursuant to CPLR 3211(a)(5) arguing that petitioner's claims are barred by the statute of limitations.

Background

Petitioner was the tenant of record of apartment 4E at 1780 Madison Avenue in Manhattan, which was part of the Milbank-Frawley (now Taft Houses) development owned and operated by NYCHA. In March 2003, NYPD executed a search warrant in petitioner's

apartment, recovered evidence of illegal drug trafficking, and arrested Andrew Bjorntzen (Mr. Bjorntzen), an unauthorized occupant of petitioner's apartment, for possession of controlled substances with the intent to sell. This resulted in petitioner agreeing to settle charges brought against her by NYCHA with a three-year probationary period and a permanent exclusion of Mr. Bjorntzen from her apartment.

During her probationary period, petitioner became chronically delinquent in her payment of rent. Further, in March 2007, a pit bull belonging to petitioner was found unleashed within the apartment building's grounds, and a police officer killed the dog. Petitioner had failed to register the dog in violation of NYCHA's pet policy. After petitioner met with NYCHA management in response to a call-in letter, NYCHA notified petitioner it had scheduled a termination-of-tenancy hearing based on charges she violated her probation, violated the pet policy, and chronically had failed to timely pay rent between April 2006 and March 2007.

The hearing was adjourned and ultimately scheduled for January 8, 2008. Petitioner failed to appear at the hearing scheduled for January 8, 2008. By decision dated January 9, 2008, the Hearing Officer sustained the charges and concluded termination of tenancy was warranted. NYCHA's Board adopted the Hearing Officer's decision, issuing a determination terminating petitioner's tenancy. Petitioner applied to vacate her default, and NYCHA opposed petitioner's application. NYCHA mailed the Hearing Officer's decision to petitioner on the same day the Hearing Officer issued it, April 10, 2008.

Petitioner commenced this Article 78 proceeding on or about October 21, 2009.

Petitioner's Contentions

Petitioner's argues only that all of the arrears have been paid.

Respondent's Contentions

Petitioner's claims are time barred under the four-month statute of limitations applicable to this proceeding because petitioner commenced this proceeding more than 18 months after she received NYCHA's final and binding determination terminating her tenancy and more than 14 months after the expiration of the statute of limitations.

Discussion

An article 78 proceeding must be commenced within four months after the administrative determination to be reviewed becomes "final and binding upon the petitioner" (*Yarbough v Franco*, 95 N.Y.2d 342, 717 N.Y.S.2d 79 [2000]; CPLR 217[1]; *New York State Assn. of Counties v Axelrod*, 78 NY2d 158, 165, 573 NYS2d 25, 577 N.E.2d 16). An administrative determination becomes "final and binding" when the petitioner seeking review has been aggrieved by it. An administrative action is not final and binding within the contemplation of CPLR 217 until it "has its impact" upon the petitioner (*Bludson v Popolizio*, 166 AD2d 346, 347, 561 N.Y.S.2d 14 [Dept 1990], citing *Matter of Edmead v McGuire*, 67 NY2d 714, 716, 499 NYS2d 934, 490 NE2d 853). The Statute of Limitations does not begin to run until the petitioner receives notice of the determination (*Matter of Blondo v New York State Bd. of Parole*, 60 NY2d 832, 834, 470 NYS2d 130, 458 NE2d 371).

In the instant case, petitioner should have commenced this Article 78 proceeding by August 15, 2008, at the latest. Petitioner failed to commence this proceeding until October 21, 2009, over 14 months after the expiration of the statute of limitations. As such, this proceeding

is untimely, and must be dismissed.

Conclusion

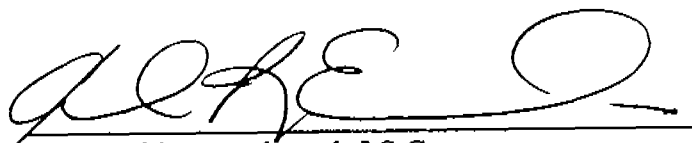
Based on the foregoing, it is hereby\

ORDERED and ADJUDGED that the application of petitioner Raquel Lewis, for an order and judgment annulling the decision of the respondent New York City Housing Authority, is **denied in its entirety**. And it is further

ORDERED and ADJUDGED that the cross motion of respondent New York City Housing Authority to dismiss the Verified Petition is **granted, and the Verified Petition herein is dismissed**. And it is further

ORDERED that counsel for respondent shall serve a copy of this Order with Notice of Entry within twenty (20) days of entry on petitioner.

Dated: January 13, 2010



Carol Robinson Edmead, J.S.C.

HON. CAROL EDMEAD

UNFILED JUDGMENT

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