

Matter of Martinez v New York City Hous. Auth.

2010 NY Slip Op 30900(U)

April 12, 2010

Supreme Court, New York County

Docket Number: 401297/09

Judge: Joan A. Madden

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

HON. JOAN A. MADDEN

PRESENT: _____
Justice

PART 11

LIDIA MARTINEZ,
Petitioner

- v -

New York City Housing
Authority, Respondent

INDEX NO. 401297/09
MOTION DATE _____
MOTION SEQ. NO. 801
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

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 given to any person. To obtain a copy, the authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: April 12, 2010

HON. JOAN A. MADDEN
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: PART 11

-----X
In the Matter of the Application of
LIDIA MARTINEZ,

Petitioner,

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

Index No.: 401297/09

-against-

NEW YORK CITY HOUSING AUTHORITY

Respondent

UNFILED JUDGMENT
This judgment has not been entered. The County Clerk
has notice of entry cannot be served on the County Clerk
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
1419).

JOAN A. MADDEN, J.:

In this Article 78 proceeding, Lidia Martinez, petitioner, seeks to reverse the determination of the New York City Housing Authority (the Housing Authority), respondent, which ordered that her tenancy be terminated. The Housing Authority contends that the decision to terminate petitioner's tenancy was properly made after reviewing testimony and documentation which demonstrated that petitioner had intentionally filed false affidavits of income from 1995 through 2004.

Petitioner is a tenant in a building run by the Housing Authority at the Morrisania Air Rights Houses, 285 East 156th Street, Apartment 11C, in the Bronx, New York. Petitioner has resided at this location for almost fifteen years, and currently lives there with one of her daughters.

Pursuant to federal regulations, the Housing Authority annually monitors the family composition and income of tenants in its buildings in order to calculate and adjust the rent. *See* 24 CFR 960.253 (c). Upon reviewing petitioner's affidavit of income for 2004, the Housing

Authority's building management noticed that petitioner had submitted an award letter from the Social Security Administration which indicated that her disability benefits had been stopped. The management also noticed that the benefits received by petitioner's daughter constituted the only reported income received by the household. In order to confirm that petitioner received no other additional income, the management contacted the IRS.

Subsequently, on January 20, 2005, the IRS sent the management a copy of petitioner's tax return transcripts for 2002 and 2003. The tax returns indicated that petitioner had received income from employment which she did not disclose in her affidavits of income.

In a letter dated February 2, 2005, Evonne Parker, a Housing Manager from the Housing Authority, notified petitioner that, due to the misrepresentation concerning her income, the Housing Authority was considering terminating her lease. Parker invited petitioner to an appointment to discuss the violations of her lease. Petitioner met with the management on February 11, 2005, and disclosed that she was employed for 13 years and was working as a home attendant for Self Help Community Service. Petitioner maintained that she did not report the income to the Authority, because her rent would have increased.

On February 24, 2005, petitioner submitted a Summary of Earnings form to the management. This form confirmed that petitioner's employment with Self Help Community Service began in 1990, and that she was currently employed with the company. On March 18, 2005, management referred petitioner's case to the Office of the Inspector General for further investigation.

Suzanne Vitti (Vitti), Assistant Inspector General for the Housing Authority's Office of the Inspector General, commenced an investigation regarding the petitioner following the referral

from the management. On July 15, 2005, Vitti and Patricia Carvajal, an employee from the Office of the Inspector General, interviewed petitioner. At the interview, petitioner disclosed that she has worked at Self Help Community Service since November 3, 1990, and that she did not report her income to the Housing Authority because her rent would be increased. At the request of the Office of the Inspector General, petitioner provided a written statement in which she admitted that her failure to report her income was due to a fear of a rent increase.

On December 13, 2005, petitioner was arrested, and on October 10, 2007, she pled guilty and was convicted of grand larceny in the third degree. Petitioner once again met with the management on February 22, 2008. At this meeting, petitioner agreed to pay restitution pursuant to her plea agreement and was informed that the entire record regarding her tenancy was being forwarded to the New York City Law Department.

On December 29, 2008, the Housing Authority brought charges against petitioner, which alleged that she submitted false affidavits of income and that she had failed to disclose her employment income from 1991 through 2004. Petitioner was advised that a hearing would take place and that she could be represented by counsel or a representative.

The administrative hearing took place on February 11, 2009, with Chief Hearing Officer Ester Tomicic Hines presiding. At the hearing, the Housing Authority amended its charges against petitioner to allege that she submitted false affidavits of income for the period of 1995-2004. Vitti testified regarding the findings of her investigation, her interview with petitioner, and her review of the documents.

Petitioner's daughters, Yoisy Martinez and Narelin Sabio, were also called to testify. Yoisy Martinez maintained that although petitioner was wrong in not reporting her income,

petitioner has been paying \$100 per month in restitution. She also alleged that the kitchen in petitioner's apartment has flooding problems, that petitioner never received certain appliances and that the apartment has a rodent problem. However, no argument was made that these conditions were related to petitioner's decision to not report her income.

Petitioner also testified at the hearing. Petitioner testified that she did not disclose the income in order to support her four children, that she is currently paying back the money owed, and that she lost her job as a result of pleading guilty. Petitioner also submitted a certificate of relief from disability which she obtained from the New York State Department of Health and testified that she is presently working again.

After reviewing all of the testimony and evidence, Hearing Officer Hines concluded that, petitioner filed false affidavits for nine years, that she failed to report her employment income to the Housing Authority, that the total rent which she owes is \$28,104, and that petitioner's tenancy should be terminated. On April 8, 2009, the Housing Authority adopted the decision of Hearing Officer Hines and terminated petitioner's tenancy. Petitioner now moves to vacate the decision of the Housing Authority.

The First Department has held that "[i]n the context of a CPLR article 78 proceeding, it is well settled that judicial review is limited to a determination of whether the administrative action was arbitrary and capricious or lacks a reasonable basis. Where such a rational basis exists, an administrative agency's construction and interpretation of its own regulations and of the statute under which it functions are entitled to great deference." *Matter of Arif v New York City Taxi & Limousine Commn.*, 3 AD3d 345, 346 (1st Dept 2004) (citations omitted).

Here, the Housing Authority based its decision to terminate petitioner's tenancy on the

testimony and evidence which was presented at the hearing held on February 11, 2009. The evidence reviewed by the Housing Authority included petitioner's concession that she intentionally concealed her income from the Housing Authority, petitioner's certificate of disposition confirming that she pled guilty to grand larceny, and petitioner's affidavits of income from 1995 through 2004 in which petitioner failed to disclose that she received any employment income, stated that no member of her household was employed, and claimed that disability benefits constituted the household's only income. The Housing Authority also reviewed W-2 statements, earning printouts, summary of earnings statements, and the schedule for rent calculation which shows that petitioner underpaid her rent by \$28,104.

Petitioner maintains that the penalty of terminating her tenancy is disproportionate and shocking to the conscience because she is currently making restitution payments to the Housing Authority, she is a single mother who raised four children, and she takes care of her youngest daughter who is under psychological care. Courts may set aside an administrative penalty if the measure of punishment or discipline is so disproportionate to the offense, that it is shocking to the judicial conscience. *See Matter of Rutkunas v Stout*, 8 NY3d 897, 898 (2007). However, the First Department has held that the termination of a tenancy may not be shocking to the conscience when the conduct of a tenant is the cause for the termination. *See Matter of Smith v New York City Hous. Auth.*, 40 AD3d 235, 235 (1st Dept), *lv denied* 9 NY3d 816 (2007) (the penalty of terminating the tenancy of petitioner does not shock the conscience, because the termination was based upon her conduct of concealing the income of her husband).

Here, the conduct of petitioner was the direct cause of the termination of her tenancy. While petitioner's circumstances which lead to the concealment of her income are sympathetic

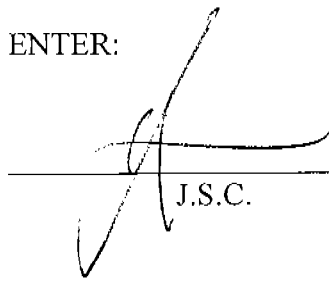
and recognizing the difficulty of rearing four children on a home attendant's salary, neither provides a legal basis for setting aside the administrative penalty. Furthermore, although petitioner is presently paying back the past due rent, this does not bar the Housing Authority from also terminating her tenancy. The annual lease signed by petitioner provides that any breach of the terms of the lease, may result in eviction by the Housing Authority. See *Newton v Municipal Hous. Auth.*, 38 NY2d 220, 221 (1976).

Based on the foregoing, the court concludes that the determination of the Housing Authority is based upon evidence and testimony presented at the hearing, and is not arbitrary, capricious or shocking to the conscience. The petition, therefore, must be denied.

Accordingly, it is

ORDERED and ADJUDGED that the petition of Lidia Martinez is denied and the proceeding is dismissed.

Dated: April 12, 2010

ENTER:


J.S.C.

UNFILED JUDGMENT
This judgment has not been entered in the County Clerk's Office and notice of entry cannot be served hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1)