

<b>Matter of Toomer v Rhea</b>
2010 NY Slip Op 31130(U)
April 23, 2010
Sup Ct, NY County
Docket Number: 401647/09
Judge: Emily Jane Goodman
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: EMILY JANE GOODMAN

PART 17

Index Number : 401647/2009  
TOOMER, KENDRA  
VS.  
RHEA, JOHN B.  
SEQUENCE NUMBER : 001  
ARTICLE 78

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

In 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

*motion is decided*

*per attached*

**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).

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

Dated: 4/23/10

*[Signature]*  
EMILY JANE GOODMAN  
NON-FINAL DISPOSITION

Check one:  FINAL DISPOSITION

Check if appropriate:  DO NOT POST

REFERENCE



[\*3]

for Section 8 housing, a federal program operated by the U.S. Department of Housing and Urban Development (HUD), pursuant to Title 24, Part 982 of the Code of Federal Regulations (CFR). No Section 8 issues are part of this motion, except to explain why Petitioner was at the office. On August 23, 2007 Petitioner received a letter from the Housing Authority stating that she would be ineligible to apply for public housing for three years for the following reason:

On Thursday, 8/02/07, applicant, Kendra Toomer visited the Brooklyn Applications Information Office at 4:50pm to inquire about the status of her Section 8 application. Kendra Toomer spoke to the Assistant Manager in a very loud and disruptive tone of voice. The Manager intervened and advised her that her application will be reviewed and that she may contact the office within a week for the result. Applicant insisted on immediate action and did not like what she heard and became agitated. She reached over the counter by the receptionist's area and pushed the time clock causing it to fall on the floor and broke the wires (*sic*). The police were summoned.

The Housing Authority's policy (hereafter "The Policy") states:

Persons Who Within the Last Three Years Have Engaged In or Threatened Abusive or Violent Behavior Toward Housing Authority Staff

Such families shall be ineligible for three years from the date they are declared ineligible. However, if the Authority has evidence of three or more such incidents

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within the last three years, the family shall be ineligible for four years from the date the family is declared ineligible.

If the latest possible date of the offending behavior can be approximately established, the period of ineligibility shall begin from that date, instead of from the date the family is declared ineligible.

Petitioner appealed the Housing Authority's determination and a hearing was held. At the hearing, Petitioner testified that she is homeless and has been applying for public housing for over 10 years, and has had no other incidents. Petitioner stated further that she had appeared at the Housing Authority Applications Information Office three times since her initial interview on April 27, 2007 and was told each time that her case was pending. Petitioner testified that on August 2, 2007, the date that she knocked over the clock, she was frustrated with the threat of her case being closed and she felt she was being ignored by the Housing Authority, after having appeared many times, waiting hours. Petitioner stated that she had no contact with the police and left the office when she was told to do so by security. Petitioner has never been convicted of a crime and has no criminal history. Although Petitioner argues that she knocked the clock off the caseworker's desk by accident, the hearing officer implicitly rejected that contention and Petitioner has

[\*5]  
not shown this implicit factual finding was arbitrary and capricious.

#### Discussion

This Court has the authority to review an administrative sanction that "shocks the judicial conscience and, therefore, constitutes an abuse of discretion as a matter of law" Peoples v. New York City Housing Authority, 281 A.D.2d 259, 260 (1st Dept. 2001).

Petitioner maintains that the decision is arbitrary and capricious and that the penalty--being barred from even applying for public housing for three years--is so severe that it shocks the conscience.

Under 24 CFR §982.54(23), the Housing Authority must consider "family behavior or suitability for tenancy" when screening applicants for public housing. The Policy was presumably instituted pursuant to federal law, but no definition or guidance is given by the Housing Authority to determine what would constitute "abusive or violent behavior". Even if properly considered "abusive or violent behavior," the incident described by the Housing Authority in support of its decision to bar Petitioner from public housing for three years was de minimus and does not rise to a level that would justify denying a homeless person housing, under the circumstances of this case. The penalty is so disproportionate to the offense that it shocks the

conscience, and constitutes an abuse of discretion as a matter of law. Vargas v. Franco, 238 A.D.2d 274 (1<sup>st</sup> Dept. 1997).

In Peoples v. New York City Housing Authority, the First Department held that even where a tenant committed "a very serious breach of respondent's rules" by accosting a housing authority representative during an inspection, the penalty of termination of housing benefits was too severe and shocked the conscience. Peoples v. New York City Housing Authority 281 AD2d 259 (1<sup>st</sup> Dept 2001). Similarly here, the penalty of barring an individual, who has no criminal history, from public housing for three years, for a momentary lapse in judgment that did not involve physical contact or a threat of physical contact, or cause significant damage or injury, is too severe.

In Winn v. Brown, the Court found that the Housing Authority's decision to terminate petitioner's tenancy shocked the conscience in light of the fact that petitioner was under a great deal of stress when the incidents occurred, even though petitioner's actions included "screaming profanities, racial epithets and making threats to respondent's employees". Winn v. Brown, 226 A.D.2d 191 (1st Dept 1996).

Similarly, in Milton v. Christian, although the tenant threatened a Housing Assistant on two occasions and verbally abused and possibly struck a maintenance worker and two others in a dispute concerning the failure of the staff to repair a leak in

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the tenant's apartment, the First Department found that the penalty of termination was "shocking to one's sense of fairness," noting that the tenant was "under extreme physical and emotional stress" due to medical problems, abandonment by the tenant's wife and child and neglect by the Housing Authority to repair leaks in the tenant's apartment. Milton v. Christian, 99 A.D.2d 984,985 (1st Dept. 1984).

Here, as in Winn and Milton, Petitioner was under a great deal of stress as she had made numerous visits to the Applications Office and felt that the Housing Authority was ignoring her case. Petitioner, who suffers from two serious medical conditions, has been homeless for many years; despite her hardships, she has had no other incidents with the Housing Authority. The incidents described in the cases cited above are much graver than the incident in this case, where Petitioner merely knocked a clock off a caseworker's desk. The Housing Authority does not claim that Petitioner made any threats, as were made by the petitioners in both Winn and Milton, nor do they claim that Petitioner physically accosted anyone, as the petitioner in Peoples did.

Accordingly, it is hereby

ADJUDGED that Petition is granted and the determination of the hearing officer, dated November 24, 2008, and the determination of Respondent New York City Housing Authority,

dated August 23, 2007, to bar Petitioner from seeking public housing and/or seeking Section 8 assistance for three years for engaging in "abusive or violent behavior toward Housing Authority Staff," are vacated; and it is further

ORDERED that the Respondent shall process Petitioner's application forthwith, including, if necessary, scheduling a new interview, which Petitioner's attorneys may attend; and it is further

ORDERED that issue of a lesser penalty is remanded to Respondent; however, even though a determination is not yet made on the lesser penalty, because the excessive three year penalty imposed expires in August, 2010, Respondent is directed to process Petitioner's application for NYCHA housing and Section 8, forthwith, consistent with all other eligibility requirements, and the availability of Section 8 funds<sup>1</sup>.

This constitutes the Decision, Order and Judgment of the Court.

Dated: April 23, 2010

ENTER:

**UNFILED JUDGMENT**  
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**EMILY JANE GOODMAN**

<sup>1</sup> The Court is mindful of the recent catastrophic status of Section 8 vouchers in this city.