

Matter of English v New York City Hous. Auth.

2010 NY Slip Op 31361(U)

May 11, 2010

Sup Ct, NY County

Docket Number: 403053/2009

Judge: Jane S. Solomon

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

PRESENT: JANE S. SOLOMON

PART 55

Justice

Index Number : 403053/2009

ENGLISH, DESIREE

VS.

NYCHA

SEQUENCE NUMBER : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE 4/19/10

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

1 this motion to/for _____

PAPERS NUMBERED

1-3

4-5

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 *petition* is decided *by the answer decision and order.*

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

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: 5/11/10

J.S.
JANE S. SOLOMON J.S.C.

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: IAS PART 55

-----X
In the Matter of the Application of

DESIREE ENGLISH,

Petitioner,

Index No.:
403053/2009

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

**DECISION &
ORDER**

- against -

NEW YORK CITY HOUSING

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk
and notice of entry cannot be served based hereon. To
appear in person at the County Clerk's Desk (Room
141B).

-----X
Jane Solomon, J.:

In this Article 78 proceeding, petitioner pro se
Desiree English (English) challenges the decision of Respondent
New York City Housing Authority (NYCHA) to terminate her tenancy
of apartment 4D at 240 Madison Street, in Manhattan (the
Apartment).

In February of 2007, twenty one year old Christopher
English (Christopher), one of English's sons, pleaded guilty to a
charge of criminal sale of a controlled substance in the fourth
degree, a class C felony. Christopher was a member of the
household for the Apartment. On October 16, 2007, an
administrative hearing was held, and the hearing officer
sustained charges against English based on Christopher's
possession, possession with intent to sell, and sale of
narcotics. The officer determined that English's tenancy was

subject to Christopher's permanent exclusion from the Apartment. English did not challenge this determination, and any challenges made to it would be time barred (see, *Folks v. NYCHA*, 27 AD3d 270, 271 [1st Dept, 2006]).

On May 7, 2009, the police executed a search warrant on the apartment seeking Christopher on suspicion of the sale of narcotics (Verified Answer, Ex. K). Christopher was in the apartment and was arrested. Despite finding drugs and paraphernalia in the house, the charges were eventually dropped. Nonetheless, NYCHA scheduled a meeting with English regarding the status of her tenancy on May 8, 2009, whereat English admitted that Christopher was in the apartment, but that he was not residing there, and claimed that no one was selling drugs out of the apartment. A hearing followed on September 3, 2009 based in part on the violation of Christopher's permanent exclusion. The hearing officer sustained the charge for violation of permanent exclusion and determined that termination of tenancy was warranted (Notice of Review and Decision, attached to Verified Answer, Ex. W, p.4), and on November 10, 2009, the Housing Authority's Board adopted the decision (Verified Answer, Ex. X).

English argues that the decision should be overturned because Christopher was not living at the Apartment, rather he was there because she was feeling ill that day. She further argues that because the 2009 criminal charges against Christopher

were dropped, her tenancy should not be terminated. NYCHA counters that there was substantial evidence to support the Board's determination, notwithstanding the subsequent dismissal of the criminal charges.

Judicial review of an administrative determination is limited to a consideration of whether such determination is supported by substantial evidence (see, *Matter of Pell v Board of Educ.*, 34 NY2d 222, 230-232 [1974]). Substantial evidence need not rise to the level of a preponderance of the evidence, but rather, is "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact" (*300 Gramatan Ave. Assocs. v State Div. of Human Rights*, 45 NY2d 176, 180 [1978]).

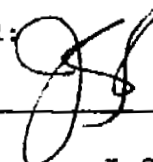
The NYCHA may properly terminate the tenancy of a tenant who violates a condition of permanent exclusion (*Romero v. Martinez*, 280 AD2d 58, 64 [1st dept, 2001]). While this is a harsh penalty, it has been held to be reasonable (*id.*; *Serrano v. Popolizio*, 183 AD2d 430 [1st Dept, 1992]). In *Romero*, the court explained "[i]f a family member presents a threat to the tenant's neighbors when he resides there, he is no less of a threat when he comes to visit. While the tenant cannot be answerable for the conduct of her emancipated child . . . she may be held responsible for her own decision to permit [the emancipated child] to enter and stay in the apartment" (*Romero, supra*, 280

AD2d at 63). NYCHA supplies sufficient evidence—the arrest warrant, the arrest itself, testimony of police officers, English’s own admission—that Christopher was in the Apartment in violation of the permanent exclusion. Accordingly, the termination of English’s tenancy, despite being harsh, was rationally based; and it hereby is

ORDERED and **ADJUDGED** that the petition is denied, and the proceeding is dismissed.

Dated: May // , 2010

ENTER:



J.S.C.

JANE S. SOLOMON

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