

**Matter of Robinson v New York City Dept. of Hous.  
Preserv. & Dev.**

2010 NY Slip Op 31530(U)

June 4, 2010

Supreme Court, New York County

Docket Number: 401563/09

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

Index Number : 401563/2009

ROBINSON, CASSANDRA

vs

NYC DEPT OF HOUSING &

Sequence Number : 001

ARTICLE 78

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

MOTION DATE

4/12/10

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

123

45

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

*petition is decided in accordance with the enclosed memorandum decision and judgment.*

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: \_\_\_\_\_

6/4/10

JANE S. SOLOMON J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate:

DO NOT POST

REFERENCE

SUPREME COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: PART 55

-----x  
In the Matter of  
CASSANDRA ROBINSON/ARTIE ROBINSON,                    DECISION and JUDGMENT

Petitioners,

Index No.: 401563/09

-against-

NEW YORK CITY DEPARTMENT OF  
HOUSING PRESERVATION AND  
DEVELOPMENT,

-----  
JANE S. SOLOMON, J.:

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk  
and notice of entry cannot be served based hereon. To  
Respondent's counsel or authorized representative must  
appear in person at the Judgment Clerk's Desk (Room  
1202)

Pursuant to Article 78 of the Civil Practice Law and  
Rules, petitioners Cassandra Robinson and Artie Robinson  
challenge the New York City Department of Housing Preservation  
and Development ("HPD") determination to terminate Cassandra  
Robinson's Section 8 subsidy. Petitioners seek reinstatement of  
the subsidy.

Cassandra Robinson and her husband, Artie Robinson,  
reside in the Bronx. The family's only income is from  
Supplemental Security Income. In 2005, Cassandra Robinson  
applied for a Section 8 housing subsidy. In February 2006, HPD  
granted the subsidy to Ms. Robinson as head of household.

In 1989, Mr. Robinson was convicted for committing a  
criminal sexual act in the first degree in violation of Section  
130.50 of the New York Penal Law, a class B felony. He was  
registered with the New York State Division of Criminal Justice

Services as a Level 2 sex offender. Pursuant to New York Correction Law Section 168-h(2), a person who is classified as a Level 2 sex offender as of March 11, 2002, must register annually for life. However, a Level 2 sex offender who is not designated a sexual predator, a sexually violent offender or a predicate sex offender, may be relieved of the duty to register by filing a petition with the sentencing court (Correction Law Section 168-o). Mr. Robinson is not designated a sexual predator, a sexually violent offender or a predicate sex offender.

Mr. Robinson was listed as a member of the household at the time of the application for Section 8 assistance, and remained so at the time of HPD's determination. Federal regulations mandate that the public housing agency must "establish standards that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program" (24 CFR 982.553[a][2]). The Federal regulation says nothing about participants who are already receiving the subsidy. Chapter 15 of the HPD Administrative Plan mandates that HPD must deny assistance to an applicant if any member of the household is subject to a lifetime sex offender registration requirement. Chapter 15 also mandates that HPD terminate assistance for a

participant if any member of the household is subject to a lifetime sex offender registration requirement.

After admitting the Robinsons into the Section 8 program, HPD began screening applicants and participants of the program to determine if any household members were subject to a lifetime sex offender registration requirement. Upon learning of Mr. Robinson's status as a Level 2 sex offender, HPD sought guidance from their liason with the United States Department of Housing and Urban Development ("HUD"), who advised them to "immediately take action to terminate" the subsidy.

HPD sent Ms. Robinson a Pre-termination Notice of Section 8 Non-compliance. Ms. Robinson requested a pre-termination conference, which was held on November 6, 2008. HPD then sent Ms. Robinson a Notice of Termination on November 19, 2008, which stated that her Section 8 subsidy was terminated for failure to comply with HPD regulations. Ms. Robinson appealed the decision, and HPD held an informal hearing on February 11, 2009. The hearing officer issued a decision on May 27, 2009, upholding the termination of Ms. Robinson's Section 8 subsidy. The hearing officer found that Chapter 15 of the HPD Administrative Plan mandates the termination of assistance to any household if any member of the household is subject to a lifetime registration requirement under a State sex offender registration

program. The hearing officer also concluded that Chapter 15 of the HPD Administrative Plan was consistent with the HUD guidance, which directed HPD to immediately terminate any household that was mistakenly admitted to the Section 8 program despite having a member subject to the lifetime sex offender registration requirement. Finally, the hearing officer concluded that HPD policy was a reasonable interpretation of Federal regulations.

Ms. Robinson and her representative made two arguments at the hearing. First, they questioned whether Mr. Robinson was in fact subject to a lifetime registration requirement. The hearing officer concluded that a preponderance of the evidence indicates that Mr. Robinson has been designated as a Level 2 sex offender, and is therefore subject to a lifetime registration requirement. Second, they argued that Mr. Robinson is not a threat to anyone due to his failing medical condition. The hearing officer held that the HPD policy requires mandatory termination of assistance to sex offenders subject to lifetime registration, and that he had no discretion to consider Mr. Robinson's medical circumstances.

The standard of review for an Article 78 proceeding is whether the agency determination was arbitrary or capricious, or affected by an error of law (*Matter of Colton v. Berman*, 21 N.Y.2d 322 [1967]). The court's function is to determine whether

the determination is rational (*Matter of Pell v. Board of Educ. of Union Free School Dist. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 N.Y.2d 222 [1974]).

If Mr. Robinson is subject to a lifetime registration under a State sex offender registration program, HPD's determination to terminate Ms. Robinson's Section 8 rent subsidy would not be arbitrary or capricious, or affected by an error of law. HPD, with guidance from HUD, reasonably interpreted the Federal regulation to prohibit providing section 8 assistance to any household with a lifetime registered sex offender, even if the household has already been admitted to the program. Chapter 15 of the HPD Administrative Plan is a reasonable interpretation of the Federal regulation.

The hearing officer properly declined to consider mitigating factors, such as Mr. Robinson's health, due to the mandatory nature of the Federal regulation.

However, the hearing officer failed to take into account those parts of Corrections Law Sections 168-h (cited in the hearing officer's decision) and 168-o, which make clear that a person registered as a Level 2 sex offender, but not designated a sexual predator, a sexually violent offender or a predicate sex offender, may be relieved of the duty to register as a sex

offender, and therefore is not subject to Chapter 15 of the HPD Plan or the HUD regulation.

At oral argument, held after papers on this proceeding were fully submitted, the possibility that Mr. Robinson may be relieved of his duty to register as a sex offender by making an application to the sentencing court was discussed among the court, pro se petitioners and HPD's counsel. Naturally, the record now before the court does not show whether such an application has since been made, and if it has, whether it was granted. The issue of whether Mr. Robinson remains subject to a lifetime registration is therefore remanded to HPD for further consideration in accordance with the foregoing. Accordingly, it hereby is

ORDERED and ADJUDGED that the petition is granted to the extent that the matter is remanded to HPD to determine whether Mr. Robinson is, at the time of the remanded hearing, subject to a lifetime registration requirement under New York law.

Dated: June 4, 2010

ENTER:



**UNFILED JUDGMENT**

J. S. C.

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**JANE S. SOLOMON**