

Matter of Quinones v Rhea

2010 NY Slip Op 31531(U)

May 25, 2010

Supreme Court, New York County

Docket Number: 403044/09

Judge: Eileen A. Rakower

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

HON. EILEEN A. RAKOWER

PRESENT: _____

PART 15

Justice

Index Number : 403044/2009

QUINONES, DORIS

VS.

RHEA, JOHN B.

SEQUENCE NUMBER : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

his motion to/for _____

PAPERS NUMBERED

1-4

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

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).

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

Dated: 5/25/10



HON. EILEEN A. RAKOWER

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 15

-----X
In the Matter of the Application of
DORIS QUINONES,

Index No.
403044/09

Petitioner,

DECISION
and ORDER

- against -

Mot. Seq.
001

JOHN B. RHEA, as Chair of the New York City Housing
Authority, and the NEW YORK CITY HOUSING
AUTHORITY,

UNFILED JUDGMENT
*This judgment has not been entered by the County Clerk
and notice of entry cannot be served by first class mail. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
141B).*

HON. EILEEN A. RAKOWER:

Petitioner Doris Quinones ("Petitioner") brings this Article 78 proceeding seeking to annul the decision of the New York City Housing Authority ("NYCHA"), made after an administrative hearing, to terminate Petitioner's tenancy in her apartment located in a residential building owned and operated by NYCHA.

By Notice and Specification of Charges dated March 12, 2009, Petitioner was charged with non-desirability and breach of NYCHA rules and regulations. These charges stemmed from allegations that, on January 21, 2009, Petitioner, acting alone or in concert with her son Daniel Reid ("Reid") and two others, unlawfully possessed, sold, or attempted to sell crack cocaine and marijuana, a quantity of which was recovered during the execution of a search warrant at Petitioner's apartment.

On April 7, 2009, Petitioner appeared for an administrative hearing on the charges. At that time, however, the hearing was adjourned until May 13, 2009, to allow for Petitioner to obtain counsel.

On May 13, 2009, Petitioner again appeared for her administrative hearing. Prior to NYCHA presenting its case, Hearing Officer Desiree Miller asked Reid to wait in the hallway while NYCHA's witness testified. The record indicates that

Hearing Officer Miller clarified with Petitioner that she would be representing herself (after attempts to retain counsel were unsuccessful), and that Reid was present solely in his capacity as a witness. Hearing Officer Miller reminded Petitioner that she could also be represented by a non-attorney representative. Hearing Officer Miller then explained the nature of the administrative hearing to Petitioner, and allowed NYCHA to present its case.

NYCHA called Detective Jeremiah Breen of the New York Police Department ("NYPD") as its sole witness. Detective Breen testified that the NYPD obtained a search warrant for Petitioner's apartment after the NYPD conducted "numerous" controlled purchases of crack cocaine from the apartment. Detective Breen estimated that five or six purchases were made from Petitioner's apartment over a one to two-month period.

Detective Breen testified that he executed the search warrant on January 21, 2009 at 10:55 p.m. The NYPD arrested Petitioner, Ried, and two other individuals as a result of the search, in which the following items were recovered: a glass crack pipe with residue, found in Petitioner's bedroom; a silver metal grinder used for "grinding marijuana and grinding drugs to pack them;" three ziplock bags containing cocaine; and a ziplock bag of marijuana. Breen testified that the grinder and the bags of cocaine and marijuana were recovered in the dresser drawer of the other bedroom in Petitioner's apartment (*i.e.*, not Petitioner's room).

After NYCHA's direct examination of Detective Breen, Petitioner, acting *pro se*, attempted to cross-examine him. She attempted to ask a question and then asked Hearing Officer Miller if she would be able to call Reid in for assistance. However, after a lengthy discussion concerning Petitioner's previously unsuccessful attempts to obtain counsel, the parties agreed to further adjourn the hearing until June 16, 2009, so that Petitioner could make further attempts to secure counsel.

When the hearing resumed on June 16, 2009, Petitioner stated that she was unable to obtain legal assistance. Accordingly, Reid appeared both as a witness and as Petitioner's representative. Hearing Officer Miller asked Petitioner if she had any further questions for Detective Breen. She replied, "No, I don't. I'm done with him. He [Reid] may want to say something to him." However, when asked by Hearing Officer Miller whether either had any questions for Detective Breen, both

[* 4]

Petitioner and Reid said that they did not.¹ As the hearing proceeded on June 16th, Hearing Officer Miller, *sua sponte* and over the objection of counsel for NYCHA, adjourned the hearing for a mental evaluation after Petitioner revealed that she was prescribed Prozac, an antidepressant.

The hearing resumed on July 22, 2009, after NYCHA's Social Services Department found that Petitioner was mentally competent to proceed with her hearing and did not require a guardian *ad litem*. Petitioner testified in her own defense. Petitioner read a statement into the record. Petitioner stated that she has lived in the subject apartment since 1951, and that she has been a good neighbor, taking care of elderly individuals on her floor. Petitioner stated that her son took full responsibility for the drugs, and denied having knowledge of any drug activity in her apartment. Petitioner also submitted several letters from neighbors which speak to Petitioner's good character and standing in the community.

Reid also testified in Petitioner's defense. Reid stated on the record that his mother would not allow Petitioner to drink or smoke in the apartment, that he never engaged in any drug-related activity in the Petitioner's apartment, and that he hid his drug use from her. He further stated, "I have my own house if I want to do anything like that." He testified on cross-examination that the drugs recovered in the apartment were his, but that he does not know why there was a crack pipe in his mother's room because she does not do drugs.

By Decision dated July 28, 2009, Hearing Officer Miller found that "Detective Breen's credible testimony and documentary evidence established that Tenant along with guest Daniel Reid unlawfully possessed cocaine in plain view in the apartment and that Reid possessed marijuana in the apartment..." Hearing Officer Miller further found that "Tenant's possession of a pipe with cocaine residue along [with] her inability to control a guest who simultaneously possessed several ziplock backs of cocaine and paraphernalia in another room in her apartment, present a danger to the health and safety of her neighbors." Based on the foregoing, Hearing Officer Miller found that termination of Petitioner's tenancy was the appropriate sanction. On August 19, 2009, NYCHA approved Hearing Officer Miller's Decision and terminated Petitioner's tenancy. This Petition ensued.

¹Reid indicated on the record that he had a statement that he wanted to make to Detective Breen. However, when Hearing Officer Miller asked him if he had any actual questions for Detective Breen on cross-examination, Reid stated "No."

In her Petition, Petitioner claims that her termination was improper for two reasons. First, Petitioner claims that the sanction of termination was disproportionate to her offense. Secondly, Petitioner claims that she was denied due process of law because she was not afforded the opportunity to adequately cross-examine Detective Breen.

CPLR §7803 provides that judicial review of determinations of administrative agencies such as NYCHA is limited to whether a challenged determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion. It is well settled that the “[j]udicial review of an administrative determination is confined to the ‘facts and record adduced before the agency’.” (*Matter of Yarborough v. Franco*, 95 N.Y.2d 342, 347 [2000], quoting *Matter of Fanelli v. New York City Conciliation & Appeals Board*, 90 A.D.2d 756 [1st Dept. 1982]). The reviewing court may not substitute its judgment for that of the agency’s determination but must decide if the agency’s decision is supported on any reasonable basis. (*Matter of Clancy -Cullen Storage Co. v. Board of Elections of the City of New York*, 98 A.D.2d 635,636 [1st Dept. 1983]). Additionally, if a penalty is imposed by the agency, “the sanction must be upheld unless it shocks the judicial conscience and, therefore, constitutes an abuse of discretion as a matter of law.” (*Featherstone v. Franco*, 95 NY2d 550, 554 [2000]).

Based on the record before it, the Court finds that NYCHA’s decision accorded due process of law, and was supported by a rational basis. Hearing Officer Miller was acting within her discretion in crediting the testimony of Detective Breen, who testified that 1) a crack pipe was found in Petitioner’s own bedroom; and 2) five or six controlled purchases of cocaine from Petitioner’s apartment were conducted by the NYPD over a period of one to two months. Thus, it was rational for Hearing Officer Miller to conclude that Petitioner and Reid unlawfully possessed cocaine in the apartment. Although Petitioner claims that the sanction of termination is shockingly disproportionate to her offense, it is well settled that termination of public housing tenancy is an appropriate sanction for permitting drug-related activity to take place in an apartment, notwithstanding even a tenant’s alleged ignorance of the unlawful activity (*see Satterwhite v. Hernandez*, 16 A.D.3d 131, 131-32 [1st Dept. 2005]).

Moreover, Petitioner’s claim that she was denied the opportunity to cross-examine Detective Breen is belied by the record. On Page 68 of the hearing transcript, both Petitioner and Reid explicitly state that they had no further

questions for the detective. Nor does the record contain any indication that Hearing Officer Miller unduly pressured Petitioner and Reid into foregoing additional cross-examination, as Petitioner alleges. Finally, the Court rejects Petitioner's claim that her termination was arbitrary and capricious due to NYCHA's failure to appoint a guardian *ad litem*, because this argument is raised for the first time in reply. Moreover, even if the Court were to consider this argument, there is nothing in the record which indicates that NYCHA's Social Services Department's finding that Petitioner was mentally competent to present her defense was arbitrary or irrational.

Wherefore it is hereby

ORDERED and ADJUDGED that the Petition is denied and the proceeding is dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: May 25, 2010


EILEEN A. RAKOWER, J.S.C.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk 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 141B).