

Matter of Warren v New York Hous. Auth.
2010 NY Slip Op 32011(U)
July 23, 2010
Supreme Court, New York County
Docket Number: 400853/10
Judge: Joan B. Lobis
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6**

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In the Matter of the Application of
YVONNE WARREN,

Petitioner,

Index No. 400853/10

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

Decision, Order and Judgment

-against-

THE NEW YORK HOUSING AUTHORITY

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
41B)

JOAN B. LOBIS, J.S.C.:

Petitioner Yvonne Warren, proceeding pro se, brings this Article 78 proceeding
by order to show cause seeking to annul the determination of the New York City Housing
Authority ("NYCHA") not to open a default judgment entered against her, which terminated her
tenancy, and seeking to enjoin her eviction pursuant to a judgment entered against her in the
Landlord/Tenant Housing Part of the Civil Court of the City of New York in Bronx County
("Bronx Housing Court") in the case of NYCHA v. Yvonne Warren, Index Number 47234/2009.
Respondent cross-moves for dismissal of the petition on the grounds that proceeding is time
barred. For the reasons discussed below, the cross motion is granted, the petition is denied, and
the stay on the eviction is lifted.

Petitioner is the tenant of record of Apartment 4B at 831 Hunts Point Ave, Bronx,
New York (the "Apartment"), in a development owned and operated by NYCHA known as
Murphy Private Houses (the "Development"). In a letter dated November 16, 2006, a housing

manger from the Development notified petitioner that NYCHA was considering terminating her tenancy because she was in violation of her lease. The letter informed petitioner that she could meet with the housing manager on November 22, 2006, to discuss the matter. Petitioner failed to respond or appear at the meeting. By a second letter dated December 4, 2006, the meeting was rescheduled to December 12, 2006. This letter specified her lease violation: petitioner had failed to verify her income with an income affidavit. Petitioner failed to respond or appear at that meeting and her records were transferred to the Applications and Tenancy Administration Division. On July 16, 2007, NYCHA notified petitioner by letter that a hearing would be held on September 20, 2007, to consider the termination of her tenancy. The letter charged that petitioner failed to verify her income and was chronically late in her payment of rent from August 2006 through July 2007. On September 20, 2007, petitioner and NYCHA entered into a signed stipulation adjourning the hearing to November 29, 2007. On November 29, 2007, the parties entered into another stipulation adjourning the hearing to January 24, 2008. A third stipulation, signed on January 24, 2008, adjourned the hearing to March 6, 2008. Also on January 24, 2008, NYCHA amended its charges against petitioner, alleging that in addition to being late in rent from August 2006 through July 2007, petitioner had failed to pay her rent from August 2007 through January 1, 2008.

On March 6, 2008, petitioner failed to appear for the hearing. As a result, on March 7, 2008, Hearing Officer Arlene Lambert issued a decision and disposition upon petitioner's default. The decision and disposition sustained the charges against petitioner and recommended termination of her tenancy. On March 19, 2008, NYCHA approved the decision

and disposition.

Petitioner continued to occupy the Apartment and on March 20, 2009, applied to NYCHA for a new hearing using a "Request to the Hearing Officer for a New Hearing" form. The form instructed petitioner that in order to be granted a new hearing, petitioner must complete the form within a "reasonable time" after her default and show "good cause." To show good cause, petitioner was required to present "a reasonable excuse to explain why [she] missed [her] hearing . . . AND . . . a good defense why [she] think[s] [NYCHA's] charges against [her] are not true, or the problem has been corrected, or otherwise explain why [her] tenancy should not be terminated." (Emphasis in original). On the application, petitioner claimed that she never received notice of the March 6, 2008 hearing. She claimed that public assistance was willing to pay her rent if the default was vacated.

Thereafter, NYCHA initiated a holdover proceeding against petitioner (NYCHA-Murphy Private Houses v. Warren, Index No. 013924/2008) and evicted petitioner on March 26, 2009. On or about April 2, 2009, the Honorable Kevin C. McClanahan of Bronx Housing Court ordered that petitioner, upon payment of \$6,558.65 in arrears, be restored to the Apartment. The Department of Social Services paid the amount owed and petitioner was restored to the Apartment.

On December 1, 2009, Hector Ramos, a manager of NYCHA's Housing Litigation area, submitted an affidavit in opposition to petitioner's application to open her default. Mr.

Ramos argued that petitioner failed to present "good cause" for her default. On June 10, 2009, Hearing Officer Ambert issued a decision denying petitioner's application to open her default (the "Final Decision"). Hearing Officer Ambert set forth that petitioner only addressed the charge of failure to pay rent; she neglected to explain why she has failed to provide income affidavits, which, according to the hearing officer, petitioner had failed to supply for the last several years.

After the Final Decision, NYCHA initiated a second holdover proceeding against petitioner in Bronx Housing Court, NYCHA v. Yvonne Warren, Index Number 47234/2009 (the "Holdover Proceeding"). On November 9, 2009, after a trial of the Holdover Proceeding, the Honorable Louis Vullella issued a decision and order finding that NYCHA established a prima facie case that it had administratively terminated petitioner's lease. The judgment awarded NYCHA possession and stayed the eviction through November 11, 2009. On December 24, 2009, Justice Vullella denied petitioner's motion to vacate the judgment. On March 15, 2010, the Honorable Jaya K. Madavan of Bronx Housing Court denied petitioner's motion to vacate the November 9, 2009 judgement and ordered that the notice of eviction be served forthwith.

On or about March 31, 2010, petitioner brought this petition by order to show cause. Petitioner also sought a temporary restraining order staying her eviction, which was granted on March 31, 2010. Petitioner argues that she did not receive notice of the March 6, 2008 hearing date from NYCHA. Respondent cross-moves for an order dismissing the petition as barred by the four month statute of limitations governing Article 78 proceedings. Respondent attaches two affidavits of mailing to its papers. The first affidavit is from Doris Hoffer. Ms.

Hoffler affirms that she prepared the Final Decision for mailing, evidenced by the initials "dh" at the bottom of the Final Decision. Ms. Hoffler explains that the Final Decision was placed into a windowed envelope, so that the address at the top of the letter is visible through the envelope. The address at the top of the Final Decision is the address of the Apartment. She then put the envelope into an outgoing mail box. Shawn Younger, an administrative manager of NYCHA's mail center, provides the second affidavit. Mr. Younger asserts that it is the practice of mail center employees to pick up mail from outgoing mail boxes. The mail is then sorted by zip code and postage is attached the mail according to United States Postal Service ("USPS") rates. The mail is then put into USPS mail receptacles. The mail is regularly placed into the receptacle within one business day of its pick-up. In opposition to the cross-motion, petitioner argues that she did not receive notice of the Final Decision.

An Article 78 proceeding must be commenced within four (4) months after the determination to be reviewed becomes final. C.P.L.R. § 217(1). "An administrative determination is final and binding so as to commence the running of the Statute of Limitations when the petitioner has received notice of the determination and is aggrieved by it." In re Cauldwest Realty Corp. v. New York, 160 A.D.2d 489, 490 (1st Dep't 1990), citing In re Biondo v. New York State Bd. of Parole, 60 N.Y.2d 832 (1983). Proof of a regular mailing practice gives rise to a rebuttable presumption of delivery. Badio v. Liberty Mut. Fire Ins. Co., 12 A.D.3d 229, 229-30 (1st Dep't 2004). Mailed notices are presumed to have been received within five (5) days of the mailing. See C.P.L.R. Rules 2103(b)(2) & (c).

In order to raise a presumption of receipt, NYCHA must show that it “followed a regular office procedure designed to insure that such notices were properly addressed and mailed.” In re Cruz v. Wing, 276 A.D.2d 307 (1st Dep’t 2000) (citations omitted). Proof of a regular office procedure can be demonstrated by affidavits or testimony from an “employee who possessed personal knowledge of the office mailing practice, including how the mail was picked up and counted, and how the names and addresses on each item were confirmed.” Badio, 12 A.D.3d at 230; see also Cruz, 276 A.D.2d at 307. If respondent meets its burden of proof that the mailing was mailed to petitioner and presumed received, the burden shifts to petitioner to rebut the presumption of receipt. Badio, 12 A.D.3d at 230. Denial of receipt alone is insufficient to rebut the presumption. Id.; Nassau Ins. Co. v. Murray, 46 N.Y.2d 828, 829-30 (1978). “In addition to a claim of no receipt, there must be a showing that routine office practice was not followed or was so careless that it would be unreasonable to assume that the notice was mailed.” Id. at 830, quoted in Badio, 12 A.D.3d at 230.

In this case, respondent has demonstrated a presumption of receipt of the Final Decision with two affidavits of employees who possess personal knowledge of NYCHA’s mailing practice. Petitioner has failed to rebut the presumption with anything other than a claim that she never received the Final Decision. Even petitioner’s general argument that she did not receive notice of the Final Decision is doubtful given her repeated, patently false denials of receiving any notice from NYCHA of the March 6, 2008 hearing. See In re Dowling v. Holland, 245 A.D.2d 167, 169 (1st Dep’t 1997). Petitioner personally consented to the March 6, 2008 hearing date. There has been no showing that the routine office practice was not followed or that

respondent's practice is so careless that it is unreasonable to assume that notice was mailed. The petition, brought well after the four month statutory limit, is untimely.

The court is troubled by NYCHA's persistent effort to evict petitioner, especially since her arrears were paid in full in the spring of 2009 and there is no indication from NYCHA that she is currently late in rent. Nevertheless, the court is constrained by the four month statute of limitations period for commencing Article 78 proceedings. Accordingly, it is

ORDERED that the cross motion is granted; and it is further

ORDERED that the stay on the eviction ordered pursuant to NYCHA v. Yvonne Warren, Index Number 47234/2009 in Landlord/Tenant Housing Part of the Civil Court of the City of New York in Bronx County is lifted; and it is further

ADJUDGED that the petition and the proceeding are dismissed, without costs.

Dated: July 23, 2010



JOAN B. LOBIS, J.S.C.

UNFILED JUDGMENT

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