

Matter of Palomino v Rhea

2010 NY Slip Op 32194(U)

August 16, 2010

Supreme Court, New York County

Docket Number: 401111/10

Judge: Judith J. Gische

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

PRESENT: HON. JUDITH J. GISCHE
J.S.C.
Justice

PART 10

Coralyn Palomino

John B. Rhea

INDEX NO.

40111/10

MOTION DATE

MOTION SEQ. NO.

001

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes

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).

Upon the foregoing papers, it is ordered that _____

**motion (a) and cross-motion(a)
decided in accordance with
the annexed decision/order
of even date.**

Dated: 8/16/10

J. GISCHE
HON. JUDITH J. GISCHE J.S.C.

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 10

-----x
In the Matter of the Application of
Coralys Palomino,

Petitioner,

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

-against-

John B. Rhea, as Chairperson of the New York City
Housing Authority and the New York City Housing
Authority, and 611 East 182nd Street, LLC.

Respondents.
----- x

Decision/Order

Index No.: 401111/10
Seq. No. : 001

Present:

Hon. Judith J. Gische
JSC

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this
(these) motion(s):

Papers

	Numbered
Pet's OSC, summons, verified pet, exhibits	1
JBW Affirm of Emergency.....	2
Verified Answer Rhea and NYCHA, exhibits	3
611 East 182 nd Street, LLC Answer and Counterclaim	4
Pet's Answer to Counterclaim.....	5

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 County Clerk's Office.

Upon the foregoing papers the decision and order of the court is as follows:

Petitioner, Coralys Palomino ("Palomino") brings this Article 78 petition to annul respondent, John B. Rhea and the New York City Housing Authority's (collectively "NYCHA") determination not to activate Palomino's Section 8 housing subsidy for the apartment located at 611 East 182nd Street, Bronx, NY, apartment 7 ("apartment"). NYCHA, which administers the Section 8 Housing subsidy Program in New York City, opposes the petition. 611 East 182nd Street LLC ("611 East') is the landlord of the

apartment. Palomino also seeks a declaration that 611 East refused to accept her section 8 subsidy and that it failed to provide NYCHA with accurate information. 611 East opposes the petition to the extent that relief that is directed against it. It also asserts a counterclaim against Palomino for the rental arrears due for her occupancy of the apartment. Palomino has answered the counterclaim denying the material allegations and asserting various affirmative defenses, including breach of warranty of habitability.

Palomino has been living in the apartment with her five year old daughter since June 1, 2007. While she was already a tenant in the apartment, she applied for a Section 8 rent subsidy with NYCHA. On March 16, 2009, Palomino was issued a section 8 voucher under the "Housing Choice Program", which voucher had an initial expiration date of September 16, 2009. The expiration date was subsequently extended to March 16, 2010. The program provides a tenant with a subsidy to rent an apartment in a privately owned property that is first identified by the tenant and then approved by NYCHA. By the time Palomino received the voucher, she was already in arrears in rent. A Summary Proceeding had already been commenced by the landlord in Bronx Housing Court (index # 71979/08).

Although Palomino alleges that 611 East would not accept her housing voucher, it is un-refuted that In April 2009, Palomino's attorneys, the Legal Aid Society, wrote to 611 East requesting the necessary documentation that a landlord needs to send to NYCHA. It is also un-refuted that on or before May 18, 2009, the requested documentation had been provided by the landlord.

Palomino met with NYCHA in May 2009, at which time she submitted her rental

application. The Housing Assistant assigned to Palomino's case, Mr. Saqui ("Saqui") requested additional documentation to complete the application. Among other things, Saqui wanted a letter from 611 East explaining a discrepancy between the taxpayer ID number NYCHA had on file for this particular building and the taxpayer ID number that was provided with this particular rental application.

Palomino claims that, through her attorneys, she requested the information about the taxpayer ID number from 611 East. The information was provided directly to Palomino's attorneys on September 18, 2009. Thus, a Housing Court stipulation dated 9/18/09 provides: "[611 East] provided [Palomino] with signed/completed copies of W9 - Add'l landlord information and 2x HAP contract."

Palomino again met with Saqui on October 11, 2009 to complete her application. At that time she was informed that the only item not resolved to his satisfaction was the taxpayer ID discrepancy. Palomino claims that her attorneys again contacted 611 East for additional documentation about the taxpayer ID and that they did not receive any information in response. In response, 611 East claims that it was compliant with any requests made for information. NYCHA, thereafter, refused to schedule any further appointments with Palomino to resolve the taxpayer ID issue.

It is also undisputed that the apartment was never inspected and that an approved inspection by NYCHA would have been a further necessary step before NYCHA could have acted on Palomino's rental application.

Against the background of this case, in December 2009, due primarily to a severe funding shortfall, NYCHA was forced to adopt policies that would make drastic and deep cuts to the section 8 voucher program. At that time, it stopped funding new

contracts, even for previously issued vouchers, where the housing rental package had not been submitted. NYCHA also established cut-off dates by which certain categories of voucher holders would no longer be honored. As a broad policy, NYCHA decided that it could not fund new vouchers for rental packages which had not been completed by December 10, 2009.

On December 30, 2008 Palomino was notified that her voucher would not be funded.¹ According to the affidavit of NYCHA Assistant Deputy General Manager of Operations of the Leased Housing Department, Gregory A. Kern, submitted in a prior class action², when NYCHA has sufficient funding to accept new rental packages, affected vouchers will be reached according to their certification date and permitted to resubmit rental packages. Palomino is apparently still certified to receive a voucher if and when funding is available.

Discussion

Article 78 Petition against NYCHA

In an Article 78 proceeding, the applicable standard of review is whether the administrative decision: [1] was made in violation of lawful procedure; [2] affected by an error of law; [2] or arbitrary or capricious or an abuse of discretion, including whether the penalty imposed was an abuse of discretion (CPLR § 7803 [3]). An agency abuses

¹No party includes a copy of this letter in their papers. It appears, however, to have been a standard letter sent to all applications in progress at the time see: Kern affidavit ex B para 43).

²A class action entitled Yonson v. NYCHA (09 Civ. 10439[SHS]), challenging NYCHA's decision not to fund vouchers, was commenced in the District Court of the Southern district of New York and then withdrawn.

its exercise of discretion if its decision lacks a rational basis. (Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester Co., 34 NY2d 222, 231 [1974]; see also Matter of Colton v. Berman, 21 NY2d 322, 329 [1967]).

Where the determination involves the interpretation of statutes and regulations, judicial deference to an agency's interpretation is owed, but only when specialized knowledge and understanding of underlying operational practices or an evaluation of factual data, with inferences to be drawn therefrom, is at stake. Roberts v. Tishman Speyer Properties, LP, 13 NY3d 270 (2009). Where, however, the question is purely one of statutory reading and analysis, and depends only on accurate apprehension of legislative intent, then there is no basis for relying on any special competence or expertise of the administrative agency. Roberts v. Tishman Speyer Properties, LP, supra. The Court's analysis, under such circumstances, is whether the agency's interpretation of the statutes is affected by an error of law. CPLR §7803.

Palomino claims that NYCHA acted arbitrarily and capriciously by rejecting the information provided about 611 East's taxpayer ID number, which delayed her application, which in turn resulted in her being part of NYCHA's cut-off in funding section 8 vouchers. NYCHA insists that it obtain accurate taxpayer ID information about any and every private landlord to ensure that subsidy checks are issued to the correct entity. It claims that it routinely checks identification numbers on any given application against its computer database and the IRS taxpayer identification number matching system. This case produced a discrepancy, in that NYCHA had a different existing taxpayer ID number than the one that the landlord had provided.

The court finds that the requirement by NYCHA that the taxpayer information about the landlord be verified before it issues a Housing Assistance Payment ("HAP") contract to a landlord is neither arbitrary or capricious. Nor is there any indication that its failure to resolve the discrepancy on the information provided was either arbitrary or capricious. Indeed, on the record before the Court, there is no basis to reach any conclusion one way or the other about the correctness fo the taxpayer ID number provided, or the nature of the discrepancy, or what, if anything, was still necessary tor resolve the discrepancy.

Palimono's real objection here is that NYCHA did not act more quickly to have her application fully processed and approved before the new NYCHA policies to address the funding cutbacks were put into place. In this regard, there is nothing to suggest that Palimino's application was deliberately delayed or that the taxpayer ID issue was raised by NYCHA as a pretext to otherwise delay the processing of her rental application. There is no indication that Palomino's application was not processed in due course. Moreover, the Court is unable to conclude on this record that had the taxpayer identification issue been resolved earlier, the application would have been approved and funded before the funding cut-off. Palomino still needed to have her apartment pass inspection. 24 CFR § 982.305(a)(2). There was no certainty that such an inspection would have been conducted before the cut-off date or resulted in an approval. Indeed, Palomino herself raises issues in response to the counterclaim for rent regarding the warranty of habitability which may have prevented or delayed approval. It also is clear that NYCHA has the right to refuse a voucher or to refuse to fund a voucher where it does not have the funds to do so. See: Yoanson v. NYCHA, 09 Civ 10439 [SHS]. Decision dated

1/26/10; Form for Voucher Housing Choice Program §2; see also: 24 CFR §982.454; 982.204(d)(2).

Under these circumstances, the Court concludes that the actions taken by NYCHA in connection with refusing to fund Palomino's section 8 housing voucher were neither arbitrary nor capricious.

Declaration against 611 East

Palomino alternatively seeks a declaration against 611 East that it has violated NYCAC § 8-107, which she claims requires landlords to accept section 8 vouchers from current tenants in rent-stabilized apartments. The law is somewhat different, however, in that prohibits landlords from discriminating against a tenant on the basis of any "lawful source of income of such person." NYCAC § 8-107. Palomino's claim here is not that 611 East refused to accept her section 8 voucher, but that 611 East delayed the paperwork and did not adequately straighten out the taxpayer ID discrepancy with NYCHA. The delay eventually contributed to her inability to obtain approval for her rental application package before the cut-off dates for funding that were set by NYCHA. Palomino claims that the landlords acceptance of her voucher was "lip service." The remedy requested by Palomino in this action is an order directing that 611 East accept the section 8 rent subsidy and that 611 East provide NYCHA with all of the information requested.

In opposition, 611 East indicates that it is and has been perfectly amenable to accepting any rent subsidy obtained by Palomino and that it has provided all of the information requested of it to process the application. In this regard, Palomino's real problem with 611 East, as with NYCHA, is that the landlord did not act quickly enough to

complete the rental application in time to beat the funding cut-off NYCHA instituted to address widespread funding deficits. There was no specific deadline imposed on 611 East to produce information requested either by law or by NYCHA. There is no allegations or information from which to conclude that 611 East was aware that if it did not act sooner, no funds would be available from NYCHA to fund the voucher. *A fortiori* there are no allegations of information from which to conclude that 611 East deliberately withheld information with the intention of having the rental application fail. As for the taxpayer ID discrepancy, 611 East provided a copy of its W-9, the official IRS document, by which an ID number is certified. It is unclear on this record, what, if anything else, NYCHA wanted or needed to satisfy its inquiry into the discrepancy.

The Court, therefore, denies Palomino's request for a declaration that 611 has violated NYCAC §8-107. It further declines to direct that 611 East accept Palomino's rent subsidy because: [1] even on Palomino's own petition, there is no valid claim that 611 East refused any rent subsidy; and [2] NYCHA is not providing Palomino with any rent subsidy which the court can order 611 East to accept. Likewise, the court will not direct 611 East to provide any further information to NYCHA about the taxpayer ID number because: [1] it is unclear what, if anything, it would need to provide at this time; and [2] even if more information is provided, NYCHA has indicated that the voucher will not be funded at this point.

Counterclaim against Palomino

611 East seeks a judgment for rent arrears and a "declaration" that either Palomino and/or NYCHA pay the arrears. While the court can combine an article 78 proceeding with plenary actions (Harlem River Consumers Co-op, Inc. v. Stein, 44

AD2d 546 [1st dept. 1974]), the counterclaim in this matter is dismissed without prejudice to proceed in either the existing (or a newly commenced) summary proceeding the in the Housing Part of the Civil Court of the City of New York.

The counterclaim based on non-payment of rent seeks a declaration of who should pay. Although styled as a declaratory action, it is essentially a claim for breach of contract. A cause of action for declaratory judgment is unnecessary and inappropriate when the plaintiff has an adequate alternative remedy in another form of action, such as breach of contract. Main Evaluations, Inc. v. State, 296 AD2d 852 (4th dept. 2002).

Moreover, the claim for rent arrears appears to be the subject of a previously filed, pending summary proceeding in the Bronx, warranting dismissal of this action. Simonetti v. Larson, 44 AD3d 1028 (2nd dept. 2007). Even if the Bronx proceeding is no longer pending, the Housing Part of the Civil Court is a specialized court, with the necessary expertise to resolve rent cases and the defenses raised herein, like warranty of habitability. It has full jurisdiction to resolve all of the disputes raised by the counterclaim and Palomino's defenses. 952 Associates, LLC v. Palmer, 52 Ad3d 236 (1st dept. 2008).

Conclusion

In accordance herewith it is hereby

ORDERED and ADJUDGED that petitioner's Article 78 petition against John B. Rhea and the New York City Housing Authority is denied and the petition is hereby dismissed with prejudice; and it is further

ORDERED and ADJUDGED that petitioner's action for a declaratory judgment

against 611 East 182nd Street, LLC is denied and the action is hereby dismissed with prejudice, and it is further

ORDERED and ADJUDGED that 611 East 182nd Street, LLC's counterclaim against petitioner is dismissed without prejudice, and it is further

ORDERED and ADJUDGED that no party to this proceeding/action is awarded costs and disbursements, and it is further

ORDERED and ADJUDGED that any requested relief not otherwise expressly granted herein is denied and this constitutes the decision and order of the court.

Dated: New York, NY
August 16, 2010

SO ORDERED:

J.G. J.S.C. 

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).