

Lacroix v Rhea

2010 NY Slip Op 32307(U)

August 25, 2010

Supreme Court, New York County

Docket Number: 400189/2010

Judge: Jane S. Solomon

Republished from New York State Unified Court
System's E-Courts Service.

Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

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

JANE B. SOLOMON

PRESENT: _____
Justice

PART 55

Index Number : 400189/2010
LACROIX, YONINE
VS.
RHEA, JOHN B.
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

on 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 upon the*
attached Memorandum Order and Judgment.

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 1817).

Dated: 8/25/10

[Signature]
JANE B. SOLOMON 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 55

-----X
YONNIE LACROIX a/k/a. YONNIE JEROME,

Petitioner,

Index No.: 400189/2010

-against-

ORDER & JUDGMENT

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

Respondent

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
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
141B).*

Petitioner Yonnie Lacroix (Lacroix) is a tenant residing at 1809 Beverly Road, Apartment 1-E, in Brooklyn (the Apartment), a building operated by respondent New York City Housing Authority (NYCHA). She petitions, under CPLR Article 78, for an order directing Respondents to correctly complete petitioner's 2009 Section 8 recertification and to issue retroactive Section 8 payments to her landlord and, in the alternative, to annul the determination that her monthly rent is \$1,433.

In 2008, Lacroix's household consisted of eleven family members. She alleges that in 2009, six family members moved out of the Apartment, including her (now estranged) husband Wilfred and two of her sons, Dukens, age 22, and Jeffrey, age 20. Not having records of their departure, NYCHA determined that Lacroix's monthly rent was \$1,433.

Lacroix argues that her rent should be reduced based on

their departure; that NYCHA did not properly calculate the self-employment income of Wilfred; and NYCHA failed to provide her with a reasonable accommodation to prove their departure.

NYCHA's Leased Housing Department (LHD) Memorandums #03-13 and #04-18 govern Section 8 re-certification. When discrepancies as to household composition exist, NYCHA must offer an opportunity for the tenant to explain the discrepancies (LHD Memo #3-13, attached to Verified Answer, Ex. B).

Lacroix was given this opportunity. She was sent two letters stating "PLEASE PROVIDE PROOF OF [Jerome and Dukens] CURRENT ADDRESS, EMPLOYMENT FORM FILLED OUT BY THE EMPLOYER . . . COPY OF TAX RETURN . . ." (Answer, Ex. K and L). She met with an NYCHA caseworker on two separate occasions. On the second visit she submitted a notarized handwritten letter from her daughter, Claudia, explaining that Jerome and Dukens lived with her, and not Lacroix (Answer, Ex. V). No other proof was given. NYCHA did not find this letter sufficient to prove that her sons and husband had left the household. Further NYCHA investigation showed that Dukens and Jeffrey both continue to receive SSI stipends, mailed to the Apartment address, and that Lacroix is listed as the payee of those benefits (Verified Answer, Ex. R and U).

Based on this, NYCHA did not act arbitrarily or capriciously in including Dukens, Jeffrey or Wilfred's income in

[* 4]

Lacroix's Section 8 rent calculation. Indeed, despite having counsel here, Lacroix has not supplied any new evidence. This failure is relevant because, pursuant to federal regulation, NYCHA can reexamine family income and composition at any time (24 CFR § 982.516(b)(1 and 2)).

Similarly, Lacroix's claim that her husband left the household is unsubstantiated, and her claim that NYCHA arbitrarily estimated his self-employment income is baseless. NYCHA followed the required guidelines in determining Wilfred's income (Audit Report, attached to Verified Answer, Ex. I; Fraud & Abuse Guidelines, attached to Verified Answer, Ex. E, at II[B][1] and II[N]), and utilized the most recent information that had been supplied to it.

Lacroix's argument that NYCHA did not follow the exact strictures of LHD 3-13 by not scheduling an interview prior to sending the termination notices would elevate form over substance, as she was given the opportunity, and continues to have the opportunity, to rectify her situation.

Lacroix's next argument, that she was not given a "reasonable accommodation" also fails. That accommodation, as defined by LHD #2-09 (attached to Verified Answer, Ex. G), requires that tenants with disabilities be given additional time to contact a third party to help in completing the paperwork. Lacroix submitted a disability status notice as part of her

* 5]
annual review (Verified Answer, Ex. J), without identifying who needed the help, nor the type of accommodation needed on the form.


"A governmental entity must know what a plaintiff seeks prior to incurring liability for failing to affirmatively grant a reasonable accommodation" (*Tsombanidis v. West Haven Fire Dept.*, 352 F3d 565, 579 [2nd Cir, Conn., 2003]). Lacroix argues that it was evident that she needed an "accommodation of additional time" to gather proof that her sons were no longer in her household because of a physical disability (she suffered a stroke in 2008). This argument ignores that Lacroix was given a second meeting with her caseworker so that she could gather the required proof. She did not and still has not done so as of this date.

Accordingly, it hereby is

ORDERED and ADJUDGED that the petition is denied.

Dated: August 25, 2010

ENTER:



J.S.C.

JANE B. SOLOMON

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).