

**Matter of Bridges v Rhea**

2010 NY Slip Op 32822(U)

October 7, 2010

Sup Ct, NY County

Docket Number: 401110/10

Judge: Carol E. Huff

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

PRESENT: **CAROL E. HUFF**

PART 32

Justice

Index Number : 401110/2010  
**BRIDGES, DEBORAH L.**  
 vs.  
**RHEA, JOHN B.**  
 SEQUENCE NUMBER : 001  
 ARTICLE 78

INDEX NO. \_\_\_\_\_  
 MOTION DATE \_\_\_\_\_  
 MOTION SEQ. NO. \_\_\_\_\_  
 MOTION CAL. NO. \_\_\_\_\_

this motion to/for \_\_\_\_\_

PAPERS NUMBERED

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~~

motion is decided in accordance  
with accompanying memorandum decision

**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: OCT 06 2010

**CAROL E. HUFF** 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 32

-----X

In the Matter of the Application of : Index No. 401110/10

DEBORAH BRIDGES, :

Petitioner, :

For Judgment Pursuant to Articles 30 and 78 of the :  
Civil Practice Law & Rules,

- against - :

JOHN B. RHEA, as Chairman of 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 hereon. To  
 obtain entry, counsel or authorized representative must  
 appear in person at the Judgment Clerk's Desk (Room  
 1415)  
 Respondent.*

-----X  
CAROL E. HUFF, J.:

In this Article 78 proceeding, petitioner seeks to compel respondent New York City Housing Authority (NYCHA) to reinstate her Section 8 housing voucher and to honor the lease she signed for an apartment or, in the alternative, to offer her a new apartment.

"Section 8" refers to the Federal Housing Act of 1937 as amended in 1974:

For the purpose of aiding lower-income families in obtaining a decent place to live and of promoting economically mixed housing, assistance payments may be made with respect to existing housing in accordance with the provisions of this section.

42 U.S.C. § 1437f(a).

NYCHA administers a Section 8 voucher program that provides federally funded rent subsidies to enable low-income tenants to rent privately owned units by paying the difference between the tenant's rent and about thirty percent of the tenant's income. NYCHA issues time-

limited vouchers to eligible families who then search for an appropriate apartment. Upon locating a unit whose owner will lease it to them, they request approval of the tenancy from NYCHA, submitting a copy of the completed rental agreement. NYCHA then performs certain administrative tasks, such as inspecting the apartment, before approving the Section 8 subsidy.

In or about summer 2009, NYCHA received leave from the federal government to offer public housing units to Section 8 candidates. Thus NYCHA acted both as a landlord and as administrator of the Section 8 program with respect to certain public housing apartments.

According to the petition, petitioner was issued a Section 8 voucher effective July 2, 2009, with a 180-day term. On November 6, 2009, petitioner received a letter from NYCHA stating that an apartment had been located for her in a public housing building. The letter required her to schedule an interview, and stated that "you will be required to pay a security deposit and the first month's rent. . . . The exact amount will be calculated at the interview." NYCHA 11/06/2009 letter, Petition Ex. G.

Petitioner appeared for the interview with NYCHA's Housing Assistant Tiffany Monte on November 17, 2009. At the interview, Monte informed petitioner that she would have to pay \$375 within five days in order to secure the apartment. Also on November 17, 2009, petitioner received a letter stating that "The charges you must pay before you can receive the keys to your new apartment are . . . \$375." NYCHA 11/17/2009 letter, Petition Ex. H. Petitioner immediately applied for an emergency loan (an "Emergency One Shot Deal") from New York City's Department of Social Services Human Resources Administration.

On November 30, 2009, NYCHA suspended all further public housing Section 8 rentals because of lack of funding.

On December 2, petitioner obtained a money order for \$161 toward the apartment rental fee, as part of her application for the One Shot Deal.

On December 14, petitioner contacted Monte to determine the status of her apartment, and was informed that her lease had been cancelled because she had not provided the \$375 within five days of signing the lease. Monte stated that she left messages for petitioner on two separate occasions. Petitioner still had not received the One Shot Deal loan. The petition does not state whether it ever came through, or whether petitioner ever offered the full \$375 rental fee.

Following petitioner's telephone call to 311, petitioner received a letter from NYCHA dated February 1, 2010, which stated that her Section 8 voucher had expired on January 2, 2010, and that because of federal funding limitations, it was unable to extend the voucher beyond its original 180-day term or issue a new one.

As a threshold matter, NYCHA asserts that the petition should be dismissed because it is barred by the statute of limitations. A petitioner must commence an Article 78 proceeding within four months after the administrative determination to be reviewed becomes final. CPLR 217(1). NYCHA argues that the final determination occurred during the telephone conversation petitioner had with Monte on December 14, 2009, where, according to the petition, Monte said that "we cancelled your Section 8 Voucher and lease on December 4, 2009." Petition ¶ 53. However, this hearsay verbal statement by a housing assistant cannot be deemed a final determination by NYCHA, especially considering that NYCHA subsequently issued a written notice at odds with Monte's statement. The February 1, 2010, letter from Elliot Lauterstein, Housing Manager, Leased Housing Correspondence Unit, stated that the Section 8 voucher terminated on January 2, 2010 (not December 4, 2009), "without completion of a successful

rental” (not that a completed lease had been cancelled). Accordingly the date from which the Statute of Limitations should run is February 1, 2010, and petitioner filed the claim within the time allowed.

In an Article 78 proceeding, “The standard of judicial review . . . is whether the result reached was arbitrary and capricious or without a rational basis in the administrative record.” Nelson v Roberts, 304 AD2d 20, 23 (1st Dept 2003). Because petitioner never satisfied a condition precedent to the completion of her lease or the Section 8 apartment rental subsidy application, and because the NYCHA behavior complained of was discretionary in nature, petitioner fails to establish that respondents acted arbitrarily or capriciously or without a rational basis.

Petitioner’s first cause of action is for “Violation of LHD #01-6,” which is an internal NYCHA policy amendment that states NYCHA will “stop the clock” on a Section 8 voucher after the applicant submits an apartment application including the rental agreement and during the time NYCHA is processing it for Section 8 approval.

The key point that petitioner overlooks is that, as the letter from Lauterstein stated, the voucher terminated “without completion of a successful rental.” There never was an effective rental agreement, because petitioner never provided an essential element of the rental contract, the \$375 fee. Petitioner acknowledges that she was told that she was required to provide that sum within five days of the November 17 meeting with Monte. Twenty-seven days later, on December 14, petitioner still did not have the full amount, and the petition does not state that she ever sought an extension of time to obtain it, or that she ever offered the full amount. Consequently, the applicant never submitted a completed apartment contract for NYCHA to

process for Section 8 approval, and so there was no trigger to stop the running of the clock. This cause of action is dismissed.

Petitioner's second cause of action is for "Violation of NYCHA's Administrative Plan." Petitioner contends that NYCHA "may" extend a voucher beyond 180 days for good cause shown. The mandamus relief sought by plaintiff is a unusual remedy to be invoked only where a petitioner has demonstrated clear legal right to the relief sought, and it will not lie where NYCHA is alleged only to have failed to take what petitioner acknowledges is discretionary action. See Salisbury v Lapidéz, 277 AD2d 319 (2d Dept 2000). This cause of action is dismissed.

Petitioner's third cause of action is for "Termination of Section 8 Voucher," alleging that NYCHA failed to notify petitioner that her assisted tenancy application had been denied. Again, since the condition precedent (payment of the \$375 fee) for a completed application had never been accomplished, there was no effective Section 8 rental subsidy application to deny. Petitioner's fourth cause of action, for "Breach of Lease," fails for the same reason. These causes of action are dismissed.

Petitioner's fourth and fifth causes of action are for "Promissory Estoppel" and "Equitable Estoppel." In both, petitioner contends: "NYCHA led petitioner to believe that she would be able to use her Section 8 Voucher for the subject apartment. Nonetheless, NYCHA refused to deliver possession of the apartment." The argument fails again because of the failure to pay the rental fee. Further, estoppel may not be used against NYCHA to prevent it from performing its statutory duty to provide apartments only to those who fulfill the eligibility requirements. See Schorr v New York City Dept. of Housing, 10 NY3d 776 (2008). To the

extent NYCHA had discretion to be flexible with the eligibility requirements, failure to exercise discretion is not a ground for granting estoppel relief in an Article 78 proceeding.

Finally, petitioner's seventh cause of action is for "Violation of NYCHA's Management Manual." The petition states that, "in special hardship cases, the tenant may request more than five days to pay the rental fees and the manager may grant additional time upon approval of the District Director." Here as well, petitioner herself admits the discretionary nature of the actions sought, and this cause of action is dismissed for the reasons stated above.

The Court acknowledges the unfortunate and painful consequences suffered by petitioner when she was unable to produce the relatively small amount needed to secure an apartment for herself, with the result that she was forced to live in a women's shelter. The Court takes some encouragement from respondents' statement that NYCHA will reach out to her with another opportunity to use Section 8 privileges when it obtains additional funding.

Accordingly, for the reasons stated, it is

ADJUDGED that the petition is denied and the proceeding is dismissed.

Dated: OCT 07 2010



**CAROL E. HUFF**

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).**