

**Matter of Hallman v Rosenblum**

2010 NY Slip Op 33029(U)

October 20, 2010

Supreme Court, Nassau County

Docket Number: 15471/10

Judge: Daniel R. Palmieri

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**SHORT FORM ORDER AND JUDGMENT**

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

**Present:**

**HON. DANIEL PALMIERI  
Acting Justice Supreme Court**

-----x  
**In the Matter of SHIRLEY HALLMAN,**

**Petitioner,**

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

**-against-**

**ERIC ROSENBLUM as Director of the TOWN  
OF HEMPSTEAD DEPARTMENT OF URBAN  
RENEWAL and the TOWN OF HEMPSTEAD  
DEPARTMENT OF URBAN RENEWAL,**

**Respondents.**  
-----x

**TRIAL TERM PART: 45**

**INDEX NO.: 15471/10**

**MOTION DATE: 9-9-10  
SUBMIT DATE: 9-21-10  
SEQ. NUMBER - 001**

**The following papers have been read on this motion:**

- Order to Show Cause, dated 8-16-10.....1**
- Verified Answer, dated 9-7-10.....2**
- Affidavit in Reply, dated 9-20-10.....3**

In this Article 78 proceeding petitioner seeks judgment (1) annulling and reversing respondents' determination to terminate her participation in the Section 8 Housing Choice

Voucher Program ("the Voucher Program") as of December 31, 2009, (2) directing respondents to reinstate her to the Section 8 program as of December 31, 2009, and (3) awarding her attorneys' fees pursuant to 42 USC 1983.

Petitioner was a participant in the Voucher Program under Section 8 of the U.S. Housing Act of 1937 (42 USC 1437f). She resides at 840 Park Place in Uniondale, New York. The Voucher Program utilizes federal funds to pay rental subsidies on behalf of eligible low-income families, and is administered by local public housing agencies (PHAs) such as respondent Town of Hempstead Department of Urban Renewal. Respondent Rosenblum is sued herein in his official capacity as Director of the Department.

Petitioner's son, Assad Caldwell, resided with her, until he was temporarily placed in Highland Residential Center ("Highland"), a juvenile facility in upstate New York in April of 2009. In December of 2009, petitioner advised respondents that Assad was being returned home. Respondents requested a letter of good conduct from Highland, who provided such a letter dated January 22, 2010. That letter (Exhibit A to the petition) mentioned that Assad was placed at Highland on the charge of Criminal Trespass and Violation of Probation. The letter further noted that Assad had problems at Highland where simple directions turned into major rule violations, and that on two occasions Assad had to be restrained.

By letter dated January 22, 2010 (Exhibit B to the petition), respondent Rosenblum issued a termination notice to petitioner, stating that Assad's "criminal violent conduct makes him ineligible for our program" pursuant to CRF (sic) 982.553 ( c).

In accordance with the Housing Act, the U.S. Department of Housing and Urban Development ("HUD") published regulations to administer the Section 8 program at 24 CFR 982. The regulation cited by respondents provides as follows:

(c) Evidence of criminal activity. The PHA may terminate assistance for criminal activity by a household member as authorized by this section if the PHA determines, based on a preponderance of the evidence, that the household member has engaged in the activity, regardless of whether the household member has been arrested or convicted for such activity.

24 CFR 982.553( c).

Earlier in that same regulation "criminal activity" is identified in four ways: "drug-related criminal activity," "violent criminal activity," "other criminal activity which may threaten the health, safety or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity," and "other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA". 24 CFR 982.553 (a)(2)(ii)(A)(1-4). The phrase "violent criminal activity" is also found earlier in the regulations, as follows:

Crime by household members. The members of the household may not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.

24 CFR 982.551(1).

Petitioner requested a hearing to contest her termination from the Section 8 Voucher Program. The hearing was held on March 24, 2010. According to petitioner, the only evidence presented by respondents at the hearing was the letter of good conduct. By decision dated April 16, 2010 (Exhibit C to the petition), the Hearing Officer found that petitioner's "participation in the Section 8 Program is hereby terminated due to the violent behavior of

a household member."

A local housing authority has the burden of persuasion at a Section 8 termination hearing and must initially present sufficient evidence to establish a *prima facie* case. *Nichols v VanAmerongen*, 72 AD3d 1499 (4<sup>th</sup> Dept. 2010). The determination of a hearing officer at a Section 8 hearing must be supported by substantial evidence, and where it is not, the determination should be annulled and the petitioner reinstated. *Pena v Mulligan*, 32 AD3d 952 (2<sup>nd</sup> Dept. 2006).

Assuming that the Hearing Officer was referring to Assad, on this record there has been no showing of "criminal violent conduct" by Assad, as alleged by respondents in the termination notice. The only "criminal activity" by Assad, as noted in the letter of good conduct which was referenced in the termination notice, is criminal trespass and violation of probation. Without more, there has been no showing that such conduct was "drug-related," "violent," or such as threatened the health, safety or peaceful enjoyment of other residents or the owner, staff, or those residing nearby. Respondents have failed to present a *prima facie* case of "criminal violent conduct" by Assad, and *a fortiori*, substantial evidence of the same.

Rule violations at Highland *per se* do not constitute "criminal violent conduct" as defined in the regulations. Although the need for restraints during rule violations may constitute "violent behavior" by Assad as determined by the Hearing Officer, "violent behavior" is not the standard for termination.

Under these circumstances, respondents' termination of petitioner's participation in the Section 8 program was improper.

Respondents' first objection in point of law in their answer is based upon conduct by

both Assad Caldwell and his brother Alan Caldwell. The conduct by Assad has already been considered. Respondents argue that they provided evidence at the hearing of "violent criminal activity" by Alan Caldwell, another of petitioner's sons who resides with her. Respondent Rosenblum avers that this evidence consisted of a Newsday article dated March 5, 2010 (Exhibit B to the Return), wherein Alan Caldwell was allegedly charged in the shooting death of another on January 17, 2010. The record also contains a letter dated March 10, 2010 (Exhibit E to the Return, hereafter "the second letter") by respondents to petitioner, stating that should the hearing officer find in her favor at the hearing already scheduled for March 24, 2010, petitioner's Section 8 participation would then be terminated as of April 10, 2010, and gave petitioner nine days to request an additional informal hearing.

This second letter by respondents is not the basis of this Article 78 proceeding, nor could Alan's conduct in March, 2010, be considered retroactively as the basis for petitioner's purported termination as of December 31, 2009. Consequently, if Alan's conduct was considered by the Hearing Officer on March 24, 2010, as argued by respondents, such consideration was improper.

Moreover, because the Hearing Officer does not identify the "household member" concerned nor the "violent behavior" at issue, it is impossible for this Court to know the precise basis for the Hearing Officer's determination. This ambiguity is an additional basis for annulling the Hearing Officer's determination. *Edgecomb v Housing Authority of Town of Vernon*, 824 F Supp 312, 316 (D.C. Conn. 1993).

Based on the foregoing, respondents' objection in point of law is denied, and the petition is granted to the extent that the Court hereby annuls petitioner's termination from the

[6]  
Voucher Program on the grounds that respondents failed to present a *prima facie* case at the hearing, and the Hearing Officer's determination is not based upon substantial evidence. Petitioner is hereby reinstated to the Voucher Program as of December 31, 2009.

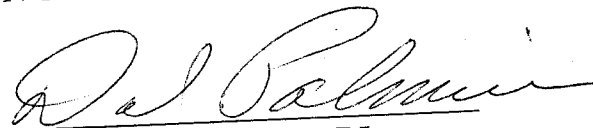
Attorneys' fees are denied. *See Ortiz v 570156 LLC*, 19 Misc 3d 819 (Sup. Ct., NY Cty, 2008).

The Court would note that this determination does not impair the respondents from revisiting petitioner's status in the Section 8 program pursuant the regulations discussed above should the future behavior of those residing with her so warrant.

This shall constitute the Decision, Order and Judgment of this Court.

ENTER

DATED: October 20, 2010

  
HON. DANIEL PALMIERI  
Acting Supreme Court Justice

TO: Jeffrey A. Seigel, Esq.  
Attorney for Petitioner  
Nassau/Suffolk Law Services Committee, Inc.  
One Helen Keller Way, 5<sup>th</sup> floor  
Hempstead, NY 11550

Joseph J. Ra  
Town Attorney  
Attorney for Respondent  
Hempstead Town Hall  
Hempstead, NY 11550

**ENTERED**  
OCT 22 2010  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE