

Matter of Williams v New York City Hous. Auth.

2010 NY Slip Op 33616(U)

December 29, 2010

Supreme Court, New York County

Docket Number: 402003/10

Judge: Barbara Jaffe

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

PRESENT: JAFFE BARBARA JAFFE J.S.C.

PART 5

Justice

Index Number : 402003/2010

WILLIAMS, TAMARA

vs.

NYC HOUSING AUTHORITY

SEQUENCE NUMBER : 001

ARTICLE 78

CAL #124

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

1

2, 3

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

Answering Affidavits — Exhibits + memo

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

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 11B)

Dated: 12/29/10
DEC 29 2010

BARBARA JAFFE J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/JUDG.

SETTLE ORDER /JUDG.

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 5

-----X

In the Matter of the Application of TAMARA
WILLIAMS,

Petitioner,

Index No. 402003/10

Motion Date: 11/9/10
Motion Seq. No.: 001

-against-

DECISION AND JUDGMENT

NEW YORK CITY HOUSING AUTHORITY,

Respondents.

UNENFORCEABLE
This judgment is not to be 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 11B).

BARBARA JAFFE, JSC:

For petitioner self-represented:
Tamara Williams
5210 Broadway, #5L
Bronx, New York 10463
347-322-2863

For respondent:
Melissa R. Renwick, Esq.
Sonya M. Kaloyanides
General Counsel
New York City Housing Authority
250 Broadway, 9th Fl.
New York, NY 10007
212-776-5010

By notice of petition dated May 28, 2010, petitioner brings this Article 78 proceeding to reverse respondent's determination dated August 12, 2009. Respondent opposes the petition.

By decision dated July 23, 2009, after a hearing at which petitioner failed to appear, a hearing officer employed by respondent sustained charges brought against petitioner for chronic delinquency in paying rent. (Affirmation of Melissa R. Renwick, Esq., dated Sept. 15, 2010, Exh. I). By letter dated August 5, 2009, respondent approved the hearing officer's decision and terminated petitioner's tenancy. (*Id.*, Exh. J).

On or about July 29, 2009, petitioner requested a new hearing, claiming that she failed to appear at the July hearing because she had the wrong date and alleging that her rent would soon be fully paid. (*Id.*, Exh. K). By decision dated August 12, 2009, respondent denied petitioner's

application on the ground that she had failed to present a meritorious defense. (*Id.*, Exh. M).

By 30-day notice to vacate dated May 13, 2010, respondent informed petitioner that her tenancy was terminated as of June 30, 2010 pursuant to the August 2009 decision. (Verified Petition, dated May 28, 2010 [Pet.]).

On July 28, 2010, petitioner filed her request for judicial intervention and notice of petition. (*Id.*, Exh. N). While the notice of petition reflects that petitioner seeks to reverse the August 2009 decision, she also asks for a reversal of the May 2010 determination. (Pet.). In support of her application, plaintiff alleges that she was unable to pay her rent because public assistance lost her checks, that her rent is now fully paid, and that she and her family would suffer hardship if she were evicted. Although she denies receiving several notices from respondent, including the May 2010 notice, she does not deny receiving the August 2009 determination. (*Id.*).

On or about September 15, 2010, respondent filed its verified answer, asserting as an affirmative defense that petitioner's application is time-barred, and annexing to the answer affidavits from respondent's employees stating that the August 12, 2009 decision was mailed to petitioner on either August 12, 2009 or August 13, 2009. (*Id.*, Affidavit of Shawn Younger, dated Sept. 14, 2010; Affidavit of Doris Hoffler, dated Sept. 14, 2010).

Pursuant to CPLR 217(1), any proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner. The determination becomes final and binding when the petitioner is aggrieved by it. (*Yarbough v Franco*, 95 NY2d 342 [2000]). In *Yarbough*, the Court of Appeals found that respondent's denial of the petitioner's application to vacate her default arising from her failure to

appear at a hearing, which led to respondent's decision to terminate her tenancy, constituted the final and binding determination from which the four-month statute of limitations was measured.

Here, respondent's denial of petitioner's application to vacate her default was mailed to her at the latest on August 13, 2009 and, adding an additional five days for the mailing (CPLR 2103[b], [c]), was received by her no later than August 18, 2009. The four-month statute of limitations thus expired in December 2009, and respondent's May 2010 notice to vacate did not revive the statutory time within which the proceeding could be commenced. (*See eg Eldagher v New York City Hous. Auth.*, 34 AD3d 326 [1st Dept 2006], *lv denied* 8 NY3d 804 [2007] [petitioner's claim accrued when he received respondent's letter informing him of determination; subsequent denials merely referenced original denial and did not constitute new determination]; *see also Custom Topsoil, Inc. v City of Buffalo*, 63 AD3d 1511 [4th Dept 2009] [four-month period began to run when petitioner received notice of respondent's determination that permit had expired, and subsequent "stop work" order did not revive statute of limitations]; *Matter of Finger Lakes Racing Assn., Inc. v State of N.Y. Racing & Wagering Bd.*, 34 AD3d 895 [3d Dept 2006], *lv denied* 8 NY3d 810 [2007] [statute of limitations runs from initial determination unless agency conducts fresh examination of matter based on newly presented evidence]).

As the instant proceeding was not commenced until July 2010, it is untimely. (*See eg Eldagher*, 34 AD3d 326; *cf Stephens v New York City Hous. Auth.*, 293 AD2d 318 [1st Dept 2002], *lv denied* 98 NY2d 610 [proceeding properly dismissed as time-barred as it was not commenced within four months of petitioner's receipt of respondent's determination or notice to vacate]; *Blackman v New York City Hous. Auth.*, 280 AD2d 324 [1st Dept 2001] [even if notice to vacate was considered final and binding determination rather than earlier determination,

proceeding still untimely)).


Moreover, even if timely commenced, the court's review here is limited to whether respondent properly declined to vacate petitioner's default in appearing at the hearing (*Yarbough*, 95 NY2d at 347), and petitioner failed to address the reasons for it or controvert the hearing officer's finding that she owed respondent rent, and her present argument that the determination terminating her tenancy should be vacated is based on grounds that were not advanced when she applied to vacate the decision and may not be considered here. (*See Kelly v Safir*, 96 NY2d 32 [2001] [court could not consider evidence raised for first time in papers submitted in article 78 proceeding]; *Yarbough*, 95 NY2d at 347 [judicial review of administrative proceedings confined to facts and record before agency]).

For these reasons, petitioner has not established a sufficient basis to reverse the August 2009 determination. (*See Cherry v New York City Hous. Auth.*, 67 AD3d 438 [1st Dept 2009] [court properly refused to annul respondent's denial of petitioner's application to vacate default in appearing at termination-of-tenancy hearing as petitioner failed to provide reasonable excuse for default or documentation supporting defense]). Accordingly, it is hereby

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

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 11B).

ENTER:



Barbara Jaffe, JSC
BARBARA JAFFE
J.S.C.

DATED: December 29, 2010
New York, New York
DEC 29 2010