

**Matter of Fletcher v New York City Hous. Auth.**

2011 NY Slip Op 30213(U)

January 27, 2011

Sup Ct, New York County

Docket Number: 402542/10

Judge: Cynthia S. Kern

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

PRESENT: CYNTHIA S. KERN  
J.S.C.

PART 52

Index Number : 402542/2010

FLETCHER, EBONY

INDEX NO. 402542/10

vs

NEW YORK CITY HOUSING

MOTION DATE \_\_\_\_\_

Sequence Number : 001

MOTION SEQ. NO. 01

ARTICLE 78

MOTION CAL. NO. \_\_\_\_\_

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

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

PAPERS NUMBERED

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion is decided in accordance with the annexed 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: 11/27/11

CYNTHIA S. KERN  
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 52

-----x  
In the Matter of the Application of  
EBONY FLETCHER,

Petitioner,

Index No. 402542/10

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

**DECISION/JUDGMENT**

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

*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 1312).*

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**HON. CYNTHIA S. KERN, J.S.C.**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for : \_\_\_\_\_

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Answering Affidavits.....	<u>2</u>
Cross-Motion and Affidavits Annexed.....	_____
Answering Affidavits to Cross-Motion.....	_____
Replying Affidavits.....	_____
Exhibits.....	<u>3</u>

Petitioner commenced this Article 78 proceeding to challenge the determination of defendant New York City Housing Authority (NYCHA) denying petitioner's application to open NYCHA's default judgment against petitioner. For the reasons set forth below, the petition is hereby dismissed.

The relevant facts are as follows. Petitioner resided in apartment 4D at 340 Georgia Avenue in the borough of Brooklyn in the Unity Plaza Houses, a NYCHA-owned public

housing project. On February 21, 2007, NYCHA brought charges against petitioner for the repeated failure to pay rent on time. A hearing was scheduled for May 31, 2007. Petitioner did not appear at the hearing and the hearing officer sustained the charges against her on default. On October 8, 2008, NYCHA adopted a final determination of status approving the hearing officer's decision and terminating petitioner's tenancy. Petitioner then applied to vacate the default decision. The petitioner's application was granted on January 25, 2008. After several amendments to the charges to update petitioner's delinquency, NYCHA served petitioner with a final set of charges on December 3, 2008 and a hearing was scheduled for January 9, 2009 before Hearing Officer Joan Parnell. Petitioner appeared for the January 9, 2009 hearing and admitted to the charges of violation of probation and chronic rent delinquency and entered into a stipulation with NYCHA agreeing to pay her rental arrears by February 5, 2009. The hearing was adjourned to February 19, 2009 with petitioner's consent. Petitioner did not appear at this hearing nor did she abide by the terms of her stipulation to become current on her rent by February 5, 2009. As a result, Hearing Officer Parnell sustained the charges and recommended termination of petitioner's tenancy. On March 18, 2009, the Housing Authority adopted Hearing Officer Parnell's decision and terminated petitioner's tenancy. On March 26, 2010, over one year after her second default, petitioner submitted an application to vacate the default claiming that she was unable to attend her hearing because of her employment obligations. However, petitioner did not provide any evidence in support of her claim. On May 11, 2010, Hearing Officer Parnell denied petitioner's application to vacate the default decision on the grounds that it was untimely because petitioner waited over a year to apply to vacate the default without sufficient explanation and that petitioner still owed over a year's rent. Petitioner filed

this petition to commence this proceeding with the court on September 7, 2010.

“The law is well settled that the courts may not overturn the decision of an administrative agency which has a rational basis and was not arbitrary and capricious.” *Goldstein v Lewis*, 90 A.D.2d 748, 749 (1<sup>st</sup> Dep’t 1982). “In applying the ‘arbitrary and capricious’ standard, a court inquires whether the determination under review had a rational basis.” *Halperin v City of New Rochelle*, 24 A.D.3d 768, 770 (2d Dep’t 2005); see *Pell v Board. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 N.Y.2d, 222, 231 (1974)(“[r]ationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard.”) “The arbitrary or capricious test chiefly ‘relates to whether a particular action should have been taken or is justified ... and whether the administrative action is without foundation in fact.’ Arbitrary action is without sound basis in reason and is generally taken without regard to facts.” *Pell*, 34 N.Y.2d at 231 (internal citations omitted). In addition, when an action is taken on default, the petitioner is not entitled to CPLR Article 78 review of the underlying determination to terminate the tenancy. The review is limited to whether the hearing officer’s decision to deny petitioner’s request to open the default judgment had a rational basis. See *Yarbough v Franco*, 264 A.D.2d 740, 741 (1<sup>st</sup> Dept 1999).

In the instant action, the court finds that the Hearing Officer’s decision to deny petitioner’s request to reopen the default judgment was made on a rational basis. As stated above, the Hearing Officer made her determination on the grounds that not only did petitioner wait over a year to apply to vacate the default judgment without explanation, she still owed over a year’s rent to NYCHA despite her agreement to pay her rental arrears by February 5, 2009.

