

Matter of Santiago v New York Hous. Auth.
2011 NY Slip Op 30422(U)
February 16, 2011
Supreme Court, New York County
Docket Number: 400902/10
Judge: Joan B. Lobis
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Joan B. Lolis

PART 6

Index Number : 402426/2010
SANTIAGO, YOLANDA
vs.
NYC HOUSING AUTHORITY
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____

MOTION DATE 11/30/10

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

This motion to/for _____

PAPERS NUMBERED

1-15

16-43

Issue of motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Repeating Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ~~motion~~

petition is decided in accordance with the following decision, 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 141B).

Dated: 2/16/11

JBA
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):

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6**

-----X

In the Matter of the Application of
YOLANDA SANTIAGO,

Petitioner,

Index No. 400902/10

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

Decision, Order and Judgment

-against-

UNFILED JUDGMENT

THE NEW YORK HOUSING AUTHORITY,

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Respondent.141B).

-----X

JOAN B. LOBIS, J.S.C.:

Petitioner Yolanda Santiago, proceeding pro se, brings this Article 78 proceeding seeking to annul the determination of the New York City Housing Authority ("NYCHA") not to open a default judgment entered against her, which terminated her tenancy. For the reasons discussed below, the petition is denied and the stay on NYCHA v. Yolanda Santiago, Index Number 801696/10 is lifted.

Petitioner was the tenant of record of Apartment 2B at 2745 Schley Avenue, Bronx, New York (the "Apartment") in a complex owned and operated by NYCHA known as the Throggs Neck Houses ("Throggs Neck"). As is pertinent to this proceeding, between 2002 and 2006, NYCHA charged petitioner with chronic rent delinquency three separate times. Each time a hearing was scheduled, NYCHA would notify petitioner of the hearing date. All of the hearing notices sent from NYCHA to petitioner over the years have informed petitioner that she may appear at the hearing in person and may be represented by counsel or other representative of her choice. Petitioner

failed to appear at each of the three hearings scheduled between 2002 and 2006, resulting in three separate decisions on default recommending termination based on chronic rent delinquency. Petitioner successfully moved to vacate her first two defaults. Her application to vacate her third default was denied, but apparently NYCHA "inadvertently re-opened" the third default and eventually rescheduled her hearing for June 26, 2007, on amended charges of chronic rent delinquency and breach of NYCHA's rules and regulations due to petitioner's failure to provide NYCHA with proofs of income and household composition. Petitioner failed to appear at this fourth hearing, resulting in her fourth default (the "Fourth Default"). The hearing officer issued a decision on default sustaining the charges. Based on the June 26, 2007 decision, NYCHA issued a "Determination of Status for Continued Occupancy" on July 25, 2007, stating that NYCHA had determined that petitioner was ineligible for continued occupancy on the grounds of non-verifiable income, breach of rules and regulations, and chronic rent delinquency, and that her tenancy would therefore be terminated.

On or about May 20, 2010, petitioner applied to NYCHA to vacate the Fourth Default. Her excuse for missing the hearing in June 2007 was that she had been ill with colon cancer, and her defense to the charges was that she was in the process of working out her rent arrears with the welfare agency that had been paying her rent. NYCHA opposed her application to re-open the Fourth Default on the grounds that she had defaulted three times previously; that she waited thirty-five (35) months to move to vacate the default, exceeding what can be considered a reasonable amount of time as set forth in NYCHA's termination of tenancy procedures; that she did not establish an excusable default because she failed to provide medical documentation or send a

representative to the hearing; that she did not state a meritorious defense to the charges; that she continues to be chronically late in the payment of her rent, in that she has not had a zero balance since July 2001; and that she is still in breach of NYCHA's rules and regulations, in that she has not verified her income. After consideration of petitioner's application and NYCHA's opposition, on June 4, 2010, Chief Hearing Officer Ester Tomicic-Hines issued a decision denying petitioner's application to vacate the Fourth Default on the grounds that thirty-five months is far beyond a reasonable time period within which to move to vacate a default; that petitioner provided no medical documentation as proof of her illness; and that she failed to demonstrate a meritorious defense to the charges because she continued to owe rent arrears and she last had a zero balance on her rent account in 2001. This proceeding followed shortly thereafter.

Petitioner asks the court to reverse the July 25, 2007 determination finding her ineligible for continued occupancy based on mitigating circumstances. Regarding a reasonable excuse, petitioner maintains that her illnesses kept her from appearing at the hearings and recounts her battle with colon cancer, which involved inpatient hospitalizations and debilitating chemotherapy and radiation treatments. In support of this, she submits a letter from a physician dated December 2, 2009, stating that petitioner had been undergoing chemotherapy treatment for colon cancer since December 2006, which left her weak and severely ill. The physician stated that petitioner had a hard time keeping appointments due to the illness and side effects, and that he had recommended that she not travel to or attend non-medical appointments alone. He stated that she was accompanied by her son to all of her appointments. A second letter from a different physician dated November 11, 2005, stated that petitioner had been under that physician's care since January 2004 for hemorrhoids and

that she experienced acute pain when sitting for long periods of time. A third letter from a third physician, dated November 9, 2006, stated that petitioner had a left ankle fracture and would need to stay off her ankle for four to six weeks. Regarding a meritorious defense, petitioner asserts that the rent arrears are about to be resolved. She is expecting to receive short-term rental assistance to cover the arrears, and long-term public assistance to cover payment of future rents. She is also collecting donations from concerned neighbors.

NYCHA opposes the petition, maintaining that the only issue before the court is whether Hearing Officer Tominic-Hines properly denied petitioner's application to open the Fourth Default. NYCHA argues that the hearing officer properly denied petitioner's application because petitioner failed to apply to open her default within a reasonable time and her excuse was not reasonable because she did not state that her illness or treatment prevented her from appearing for her hearing; she failed to provide corroborating medical documentation; she failed to ask for the hearing to be rescheduled at the time; she made no attempt to send a representative in her place; and this was her fourth default, so she was aware of the consequences of failing to attend hearings. Furthermore, the medical documentation annexed to the petition is presented for the first time and was not a part of the administrative record before the agency at the time it was making its decision. Finally, petitioner's defense is not meritorious, NYCHA argues, because petitioner does not address her failure to annually certify her household income and composition, she concedes that she pays her rent late, and her current problems obtaining public assistance do not explain her nine year history of rent delinquency. For these reasons, NYCHA maintains that the hearing officer's determination to deny petitioner's application to open the Fourth Default was rational.

In an Article 78 proceeding, the court's review of an administrative action is limited to a determination of whether that administrative decision was made in violation of lawful procedures, whether it is arbitrary or capricious, or whether it was affected by an error of law. In re Pell v. Board of Educ., 34 N.Y.2d 222, 231 (1974). A determination is considered arbitrary when it is made "without sound basis in reason or regard to the facts." In re Peckham v. Calogero, 12 N.Y.3d 424, 431 (2009), citing Pell, 34 N.Y.2d at 231. If the agency's determination is rationally supported, the court must sustain the determination "even if the court concludes that it would have reached a different result than the one reached by the agency." Peckham, 12 N.Y.3d at 431 (citation omitted). The court cannot "weigh the evidence, choose between conflicting proof, or substitute its assessment of the evidence or witness credibility for that of the administrative factfinder." In re Porter v. New York City Hous. Auth., 42 A.D.3d 314 (1st Dep't 2007) (citations omitted).

According to NYCHA's termination of tenancy procedures and clearly indicated on the default applications, a defaulting tenant must make an application to reopen the default "within a reasonable time after his/her default in appearance [and upon the application] the Hearing Officer may, for good cause shown, open such default and set a new hearing date." NYCHA Termination of Tenancy Procedures ¶ 8.

The court cannot review the July 25, 2007 determination, as petitioner requests; the only issue before the court is whether the denial of petitioner's application to open the Fourth Default was proper. It was not irrational for Hearing Officer Tominic-Hines to conclude that petitioner—who waited almost three years to apply to vacate her default—did not apply to open her

default within a reasonable amount of time as required by NYCHA's termination of tenancy procedures. Nor was it irrational for Hearing Officer Tominic-Hines to find that petitioner's medical excuse was unsubstantiated because she did not provide documentation regarding her illness. Furthermore, even if petitioner's excuse and defense were credited, neither explained her chronic rent delinquency as far back as 2001.

As to Hearing Officer Tominic-Hines' imposition of the penalty of tenancy termination, the court is constrained by NYCHA's rules that consider chronic late payment of rent grounds for termination, and First Department case law that suggests that termination of tenancy is not arbitrary and capricious when a tenant defaults on a hearing. See In re Cherry v. New York City Hous. Auth., 67 A.D.3d 438, 439 (1st Dep't 2009) (citation omitted).

Accordingly, it is hereby

ORDERED that the stay on NYCHA v. Yolanda Santiago, Index Number 801696/2010 in Landlord/Tenant Housing Part of the Civil Court of the City of New York in Bronx County is lifted; and it is further

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

Dated: February 16, 2011.



JOAN B. LOBIS, J.S.C.

UNFILED JUDGMENT

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