

<b>Matter of Allen v New York City Hous. Auth.</b>
2011 NY Slip Op 30485(U)
February 22, 2011
Supreme Court, New York County
Docket Number: 402322/10
Judge: Emily Jane Goodman
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: EMILY JANE GOODMAN

PART 17

*Justice*

Index Number : 402322/2010  
**ALLEN, ARLENE**  
 VS.  
**NYC HOUSING AUTHORITY**  
 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~~ *petition* *is decided*  
*per attached*

**FILED**

MAR 04 2011

NEW YORK  
COUNTY CLERK'S OFFICE



Dated: 2/22/11

EMILY JANE GOODMAN 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 I.A.S. PART 17

-----X  
In the Matter of the Application of  
ARLENE ALLEN,

Petitioner,

Index No. 402322/10

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

**FILED**

**MAR 04 2011**

-----X  
EMILY JANE GOODMAN, J.S.C.:

NEW YORK  
COUNTY CLERK'S OFFICE

Arlene Allen appears pro se in this Article 78 proceeding in an effort to prevent being evicted from her Brooklyn home. Ms. Allen, a woman in her 70's who works as a school bus "matron," has lived in the same apartment since 1975, but now faces homelessness. She has middle-aged children who do not live with her. Darryl who has his own nearby apartment, is disabled, having lost both legs, and is now terminally ill and hospitalized; and Andre, who is central to this matter.

The basis of the NYCHA planned eviction is that Andre was arrested in 2006 (not at the relevant location) and on or about March 20, 2007, he pled guilty to the violation of disorderly conduct and was sentenced to a conditional discharge. By stipulation between the parties dated January 16, 2007, Andre was excluded from his mother's home. However, NYCHA investigators subsequently found him in the apartment when, it is said and is undisputed, that he was there to get clothes to wear for a family funeral and to shower. Nevertheless, this violated the exclusion which extended to "even solemn family

occasions.” Ms. Allen’s “probation” was then extended for an additional year, as recommended by the hearing officer.

About a year later investigators discovered both sons in Petitioner’s apartment. Darryl was permitted to be there, but Andre was not. Ms. Allen testified at an administrative hearing that she thought his exclusion was for a year, which was just about up, and “not a lifetime.” Also, she needed Andre’s help lifting Darryl and his wheelchair to reach her apartment. Still, Andre, who was not living there, was not permitted to visit for any reason.

The Hearing Officer decided against Ms. Allen whose undisputed testimony was, “I never did anything wrong,” except that her loved ones, her two sons, were found in her home. The Hearing Officer found that Andre’s presence was “a danger to others.” She did not state why, or what that danger might be. If this referred to the 2006 drug arrest, all criminal charges were dismissed and he pled guilty to the violation (not a crime) of disorderly conduct and was sentenced to a conditional discharge which was never violated. Yet there was no evidence in this record, in the Criminal Court disposition or in the Hearing Officer’s findings, that Andre Allen had actually possessed drugs. The original criminal charges were dismissed. We do not know if the laboratory ever examined whatever substance was found, or, determined that it was talcum powder or oregano. While the Court will not speculate as to whether Andre’s presence is a danger, the Hearing Officer has done just that. While the Hearing Officer correctly mentions that

the burden of proof is different in a criminal case than in a NYCHA administrative hearing, she is basing her finding on a dismissed allegation which never implicated a burden of proof, and a guilty plea which never implicated drugs; in other words, on an accusation which was never established in any form.

However, putting aside the foregoing, and deciding on another basis, this case still presents an elderly mother facing life on the street not because of any misconduct she committed, or any injury she caused to another person or to NYCHA property. The remedy of eviction sought by NYCHA is out of proportion to the facts and shocks the “shocks the judicial conscience and, therefore, constitutes an abuse of discretion as a matter of law” (Peoples v. New York City Housing Authority, 281 A.D.2d 259, 260 [1st Dept. 2001] [even where a tenant committed “a very serious breach of respondent’s rules” by among other things attacking a NYCHA employee, the penalty of termination shocked the conscience]). This is especially true where is nothing in the record to support the hearing officer’s conclusion that the “Tenant is compromising the safety of other unsuspecting residents” (see Matos v New York City Housing Authority, 912 NYS2d 49 [1st Dept 2010] [trial court decision modified because the conditioning of housing on the permanent exclusion of the son of an elderly petitioner shocked the conscience where “the hearing officer made no finding that [the son] posed any threat to NYCHA’s residents or employees” despite his two prior misdemeanor convictions] [emphasis added]).

It is hereby

ORDERED that the decision of the hearing officer, dated March 31, 2010 and the New York City Housing Authority Determination of Status, dated April 14, 2010, finding that termination of tenancy was warranted, are vacated, and the matter is remanded to agency for imposition of a lesser penalty, if any; and it is further

ORDERED that Respondent should clarify to Petitioner the status of the stipulation forthwith, in light of Matos v New York City Housing Authority, cited above;

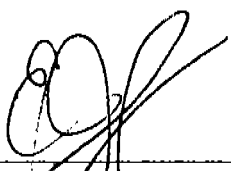
ORDERED that as Plaintiff is pro se, Respondent shall take all steps necessary to have this Decision, Order and Judgment entered by the Clerk of the Court.

**This constitutes the Decision, Order and Judgment of the Court.**

Dated: February 22, 2011

ENTER:

**FILED**  
MAR 04 2011  
NEW YORK  
COUNTY CLERK'S OFFICE

  
\_\_\_\_\_  
J.S.C.  
**EMILY JANE GOODMAN**