

Anderson v New York City Hous. Auth.

2011 NY Slip Op 30585(U)

March 11, 2011

Supreme Court, New York County

Docket Number: 403329/2010

Judge: Jane S. Solomon

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

PRESENT: JANE S. SOLOMON
Justice

PART 55

Index Number : 403329/2010
ANDERSON, NINA
vs.
NEW YORK CITY HOUSING
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____

MOTION DATE 2/24/11

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

1-3

4-5

6-7

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 by the annexed memorandum 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: 3/11/11

JANE S. SOLOMON
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: IAS PART 55

-----X
NINA ANDERSON,

Index No. 403329/2010

Petitioner,

-against-

DECISION, ORDER
& JUDGMENT

NEW YORK CITY HOUSING AUTHORITY

UNFILED JUDGMENT

Respondent.

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SOLOMON, J.:

Pursuant to Article 78 of the Civil Practice Law and Rules, pro se petitioner Nina Anderson (Petitioner) challenges the determination of respondent New York City Housing Authority (NYCHA) finding her ineligible for Section 8 benefits.

On September 24, 2009, Petitioner was convicted of criminal possession of a controlled substance, crack cocaine, a Class A misdemeanor. She entered treatment, but quit before completion, and relapsed. She later reentered treatment and completed it. Petitioner was given a two year rent subsidy by the Department of Homeless Services, which will expire in April 2011. She applied for Section 8 housing to secure an apartment before the expiration of the subsidy. On January 26, 2010, she was found ineligible for Section 8 assistance because of her conviction. She appealed. On June 1, 2010, NYCHA held an informal Section 8 hearing. Petitioner testified that she was a member of a support and therapy group for alcoholics and in an outpatient drug rehabilitation program, though she had not

completed the program. The hearing officer found that NYCHA made an appropriate determination based on Federal Housing Guidelines (Hearing Report, attached to Petition, p. 4) and based upon a finding that Petitioner had not supplied "sufficient objective documentation to prove that she has made a significant positive changes in her behavior since her offence" (*Id.*). In reply, Petitioner submits proof that she has now successfully completed her drug rehabilitation program, is one year sober, and is participating in a work-internship program.

A court may not substitute its judgment for that of an administrative agency where there is a rational basis to support the finding and conclusions of the agency (*Howard v. Wyman*, 28 NY2d 434, 438 [1971]).

Federal regulations state that Housing Authorities must establish standards that prohibit admission where the authority has "reasonable cause to believe that a household member's illegal drug use . . . may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents" (24 CFR § 982.553[a][1][ii][b]). To fulfill this requirement, NYCHA established certain limitations for eligibility for persons with conviction records (Applications and Tenancy Administration Dept. Manual [Applications Manual], attached to Answer, Ex. A). In the Applications Manual, an individuals convicted of a Class A misdemeanor is ineligible for Section 8 benefits for four years after the sentence, including completion of probation and parole,

with no further conviction or pending charge (Applications Manual, at E[4][a][4]). Under this rule, Petitioner would not be eligible for Section 8 until March 2014.

To mitigate the severity of section E(4)(a)(4), NYCHA gives consideration to the "time, nature and extent of the applicant's conduct and to factors that indicate a reasonable probability of favorable future conduct," such as evidence of rehabilitation (*Id.*, at E[2]). This evidence must be considered in the determination.

It is uncontested that Petitioner was ineligible under section E(4)(a)(4). At the June 2010 hearing, she testified that she had taken illegal drugs as recently as February of 2010, and had not completed a drug treatment program. She did not provide proof that she received "counseling designed to correct the offending behavior," had not been in school or employed for at least six months, and had not established a positive record for at least six months. The hearing officer noted that while she had submitted positive character reference letters, they were not sufficient to persuade him that she had changed her ways.

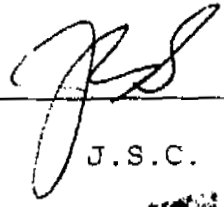
Petitioner's subsequent completion of drug rehabilitation treatment, her assertions that she has been sober for over a year, has started a vocational internship, continues with an aftercare support group, and attends Alcoholics Anonymous, are all commendable steps forward. However, her progress occurred after the hearing officer made his

determination. This information could not have been considered at the time of the hearing and may not be considered now (*Featherstone v. Franco*, 95 NY2d 550, 554 [2000][judicial review is limited to the record presented to the administrative authority]).

Accordingly, the Hearing Officer's determination had a rational basis and can not be overturned; and it hereby is ORDERED and ADJUDGED that the petition is denied.

Dated: March 11, 2011

ENTER:



J.S.C.
JAN 11 2011

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