

Matter of Trinidad v New York City Hous. Auth.

2011 NY Slip Op 30599(U)

March 14, 2011

Supreme Court, New York County

Docket Number: 402792/10

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 : 402792/2010

TRINIDAD, AMELL K.

vs

NEW YORK CITY HOUSING

Sequence Number : 001

ARTICLE 78

INDEX NO. 402792/10

MOTION DATE

MOTION SEQ. NO. 01

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on 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 is decided in accordance with the attached 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: 3/14/11

PK J.S.C.

CYNTHIA S. KERN

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
AMELL K. TRINIDAD,

Petitioners,

Index No. 402792/10

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

DECISION/JUDGMENT

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

UNFILED JUDGMENT

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-----X
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's (NYCHA) denial of petitioner's application to open NYCHA's default judgment against her. For the reasons set forth below, the petition is hereby dismissed.

The relevant facts are as follows. Petitioner resided in apartment 5A at 65 Bush Street in the borough of Brooklyn in the Red Hook West Houses, a NYCHA-owned public housing project. On November 26, 2004, NYCHA contacted petitioner to request that she meet with

development management to discuss her chronic rent delinquency. Petitioner did not respond to the request and NYCHA again contacted petitioner to request a meeting, advising her that her delinquency could lead to the termination of her tenancy. On February 23, 2005, NYCHA brought charges against petitioner for the repeated failure to pay rent on time. A hearing was scheduled for March 17, 2005.

On March 17, 2005, instead of proceeding with the hearing, petitioner chose to settle the matter in a Stipulation by admitting the charges and agreeing to subject her tenancy to a probationary period of two years. On March 24, 2005, the Board adopted a final and binding Determination of Status approving the Stipulation. Thus, petitioner's probation began on March 24, 2005 and concluded on March 24, 2007.

Subsequent to the probationary period, petitioner was again repeatedly delinquent in the payment of her rent. Thus, on April 20, 2007, NYCHA preferred charges against her for chronic rent delinquency. A hearing was scheduled for May 22, 2007. On May 22, 2007, instead of proceeding with the scheduled hearing, petitioner again chose to settle the matter by admitting the charges and agreeing to subject her tenancy to a second probationary period of two years. In the 2007 Stipulation signed by petitioner, petitioner agreed that NYCHA could seek to terminate her tenancy for violation of probation under the Termination Procedures if she did not comply with its conditions.

On June 4, 2007, the Board adopted a final and binding Determination of Status approving the Stipulation. Thus, petitioner's probation began on June 4, 2007 and would have concluded on June 4, 2009. Petitioner, however, violated the Stipulation by continuing to fail to pay her rent when it was due during the probationary period. Thus, on March 11, 2008, NYCHA

preferred charges against petitioner for (1) chronic rent delinquency and (2) violation of the probation placed on her tenancy by the 2007 Stipulation. A hearing was scheduled for April 9, 2008.

Petitioner's April 9, 2008 hearing was adjourned until June 27, 2008 and NYCHA amended the charges to reflect petitioner's ongoing rent delinquency. Yet again, on June 27, 2008, instead of proceeding with the hearing, petitioner settled the matter in a Stipulation by admitting the charges and agreeing to subject her tenancy to a third probationary period of two years. In said Stipulation, petitioner agreed that NYCHA could seek to terminate her tenancy for violation of probation under the Termination Procedures if she did not comply with its conditions.

During the probationary period, petitioner was yet again delinquent in her payment of rent. Thus, on April 28, 2009, NYCHA preferred charges against her for (1) chronic rent delinquency and (2) violation of the probation placed on her tenancy by the 2008 Stipulation. A hearing was scheduled for May 26, 2009. That hearing was subsequently adjourned until May 7, 2010. On that date, petitioner appeared in person at the hearing office and the parties agreed to adjourn the matter one more time until July 15, 2010. The Stipulation signed by the parties provided that "[t]he Tenant understands that if he or she does not appear on the adjourned date, a default judgment may be taken and he or she may be evicted as a result."

On July 15, 2010, petitioner did not appear at her administrative hearing and did not call to request an adjournment or arrange to have a representative call or appear on her behalf. Thus, Hearing Officer Arlene Ambert (the "Hearing Officer") conducted an inquest. In her decision dated July 19, 2010, the Hearing Officer sustained the charges against petitioner on default and

recommended the termination of petitioner's tenancy. On August 4, 2010, 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, her excuse for her absence at her administrative hearing being that she "went to the doctor" on the date of the scheduled hearing. On September 9, 2010, petitioner's application was denied on the ground that petitioner did not establish excusable default. Petitioner filed a petition commencing this Article 78 proceeding with the court on October 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 (1st 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 (1st 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 ground that petitioner failed to establish an excusable default. The Hearing Officer determined that petitioner's failure to appear at her scheduled hearing because she "went to the doctor" did not explain her failure to call or have a representative call or appear on her behalf to request an adjournment. The court finds that this was a rational determination. To the extent that petitioner puts forth additional reasons for her absence at her scheduled hearing in her Article 78 petition, such as on the date of the scheduled hearing she was in pain and bleeding heavily due to a fibroid condition, this court cannot consider those arguments. This court's review is limited to the decision made by the Hearing Officer based on the arguments put forth at the administrative hearing. See *Torres v New York City Hous. Auth.*, 40 A.D.3d 328, 330 (1st Dept 2007). It is therefore

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

Dated: 3/14/11

Enter: _____

PK
J.S.C.

CYNTHIA S. KERN
J.S.C.

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