

Matter of Hairston v New York City Hous. Auth.

2011 NY Slip Op 30988(U)

April 13, 2011

Supreme Court, New York County

Docket Number: 400058/11

Judge: Cynthia S. Kern

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

PRESENT: CYNTHIA S. KERN

PART 52

Index Number : 400058/2011
HAIRSTON, WAYJIDA Z.
 vs.
NEW YORK CITY HOUSING AUTHORITY
 SEQUENCE NUMBER : 001
 ARTICLE 78

INDEX NO. 400058/11
 MOTION DATE _____
 MOTION SEQ. NO. 01
 MOTION CAL. NO. _____

this motion to/for _____

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

PAPERS NUMBERED

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: 4/13/11

CYNTHIA S. KERN J.S.C.
 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: Part 52

-----X
In the Matter of the Application of
WAYJIDA HAIRSTON,

Petitioner,

Index No. 400058/11

For an Order Pursuant to Article 78
of the Civil Practice Law and Rules,

DECISION/ORDER

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.
-----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>
Notice of Cross Motion and Answering Affidavits.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Petitioner Wayjida Hairston brought this petition pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR") seeking to reverse the determination made by the New York City Housing Authority ("NYCHA"), dated September 3, 2010 (the "Determination"). In the Determination, NYCHA found petitioner ineligible for public housing because of her poor record of rent payment. For the reasons set forth below, the petition is hereby dismissed.

The relevant facts are as follows. In November 2006, petitioner applied for public housing as a five-person family. Petitioner remained on the public housing waiting list until July 2009, at which point NYCHA interviewed petitioner to assess her eligibility. According to the

Interview Record, petitioner asserted her monthly rent of \$1,600.00 for 696 Pontiac Place, Apt. 3, Bronx, New York ("Pontiac Place Apt.") was timely paid for the six months prior to her eligibility interview. Petitioner explained that she moved from her former apartment at 2428 Beaumont Avenue, Apt. 14, Bronx, New York ("Beaumont Ave. Apt.") because that apartment was too small. The interviewer requested that petitioner provide additional documentation by August 28, 2009 in order to process her application, including a current lease at the Pontiac Place Apartment, a completed date of birth request for her daughter, Ceasia Hairston, including information about Ceasia's father, copies of final court orders and all applicable stipulations for Housing Court proceedings bearing the index numbers 0058646/2006 and 0026862/2008, and a letter from her current landlord with exact rent payment dates, amount paid on each date, and current rent owed.

In response to NYCHA's request for additional documentation, petitioner submitted a letter indicating she did not have a lease for her current apartment due to a dispute with her landlord and that she was unable to provide information on Ceasia's father because she did not know his identity. Petitioner attached copies of her rent checks for January, February, April, May and June 2009 which demonstrated that she failed to timely pay her rent for February and June 2009. Petitioner also provided copies of stipulations of settlement from the Housing Court proceedings.

On or about August 3, 2009, NYCHA received the Landlord Information Form from petitioner's Beaumont Ave. Apt. landlord which indicated petitioner lived in the apartment from August 1, 2000 until September 8, 2008 and paid rent in the amount of \$831.05 per month. The Form also indicated that petitioner did not pay rent when it was due and that eviction proceedings

were brought against petitioner.

On August 10, 2009, petitioner submitted additional documents to NYCHA including a completed date of birth request form for Ceasia and a notarized letter explaining her rent arrears of \$2,037.00. Petitioner claimed that public assistance was responsible for her rent arrears and that when she began working in 2007, her public assistance benefits changed. Subsequently, on or about August 18, 2009, NYCHA requested additional documents from petitioner, including a date of birth request for Ceasia's father explaining in detail why petitioner was unable to provide Ceasia's father's name and date of birth, a W-2 tax statement for petitioner, and a written explanation regarding petitioner's arrears of \$3,209.67 in 2008 that led to her September 8, 2008 eviction. In response to this request, petitioner submitted a copy of her W-2 tax statement, a completed date of birth request form for Ceasia detailing why she was unable to provide the father's name and date of birth and a letter explaining that she paid her arrears in 2007 through the Family Eviction Prevention Supplement (FEPS) and she paid her arrears in 2008 with the assistance of a one-shot deal.

NYCHA determined that petitioner was ineligible for public housing based on her poor rent payment record. NYCHA notified petitioner that she could request an informal hearing before an impartial hearing officer to appeal this determination. Petitioner subsequently requested the informal hearing, which was held on May 11, 2010. At the hearing, Hearing Officer Barry Carey ("Hearing Officer Carey") summarized the evidence presented to NYCHA prior to its September 2009 determination. At the hearing, NYCHA presented a report that based on its investigation, petitioner has been sued in Bronx Housing Court several times by her former landlord to collect unpaid rent. Petitioner's Beaumont Ave. Apt. landlord sued petitioner in

October 2006 to collect \$2,037.26 in arrears, again in May 2008 to collect \$2,402.83 in arrears, and again in June 2008, at which time petitioner signed a stipulation acknowledging she owed \$3,209.67 for rent due through June 30, 2008.

At the hearing, petitioner stated she has been residing in a homeless shelter since March 2010 and that she did not become aware public assistance stopped paying her rent until her landlord notified her. Petitioner explained that once she learned of her rent arrears from her landlord, she applied for a one-shot deal to pay the arrears. Petitioner stated that she resided at the Pontiac Place Apt. from July 2008 until July 2009 and claimed she timely paid her monthly rent of \$1,600 but failed to verify her rent payment record. Petitioner stated she moved in with her Aunt in July 2009, later stayed with a friend and is now residing in a shelter. Petitioner, however, was unable to provide 12 consecutive months of timely rent payments. At the hearing, petitioner submitted an earnings statement for March 2010, a letter from the Social Security Administration indicating petitioner receives \$591.00 per month on behalf of her daughter Chastity Hairston, and a letter from the Beaumont Ave. Apt. landlord indicating petitioner was not evicted from the Beaumont Avenue apartment.

Hearing Officer Carey found that NYCHA "made an appropriate determination based on Federal Housing Guidelines." He further concluded that "[petitioner] has not presented sufficient objective evidence to prove that she qualifies for admission to Public Housing. [Petitioner] was found to be ineligible for Public Housing because [NYCHA's] investigation revealed that [petitioner] did not have an acceptable record of rent payment within the last three years." Hearing Officer Carey further noted that petitioner did not provide any documentation at the hearing showing she had an acceptable rent payment record for the past 12 months. Thus,

Hearing Officer Carey sustained NYCHA's determination of ineligibility.

On February 7, 2011, after commencing this Article 78 proceeding, petitioner submitted additional documents to NYCHA. Petitioner submitted a letter from the Beaumont Avenue Landlord stating petitioner had a zero balance when she left the apartment in September 2008 and a letter from Bronx Works Nelson Avenue Family Residence stating petitioner resided at the shelter from March 29, 2010 until June 28, 2010. Petitioner also submitted rent receipts for August 2010, September 2010, December 2010, and January 2011 which demonstrated that petitioner did not timely pay her monthly rent of \$50.00 for August and December 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 the instant action, the court finds that Hearing Officer Carey's Determination that petitioner was ineligible for public housing because she did not have an acceptable record of rent payment was made on a rational basis. As stated above, Hearing Officer Carey made his

