

Matter of Atkinson v New York City Hous. Auth.

2011 NY Slip Op 30991(U)

April 13, 2011

Supreme Court, New York County

Docket Number: 403235/10

Judge: Cynthia S. Kern

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

CYNTHIA S. KERN

PRESENT: _____ J.S.C. Justice

PART 52

Index Number : 403235/2010
ATKINSON, JACQUIL
 vs.
NEW YORK CITY HOUSING
 SEQUENCE NUMBER : 001
 ARTICLE 78

INDEX NO. 403235/10
 MOTION DATE _____
 MOTION SEQ. NO. 01
 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 is decided in accordance with the attached decision.

FILED

APR 14 2011

NEW YORK COUNTY CLERK'S OFFICE

Dated: 4/13/11

PK
CYNTHIA S. KERN 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
JACQUIL ATKINSON,

Petitioner,

Index No. 403235/10

For a Judgment 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>
Affirmations in Opposition to the Cross-Motion.....	<u>3</u>
Replying Affidavits.....	<u>4</u>
Exhibits.....	<u>4</u>

Petitioner commenced this Article 78 proceeding to challenge the determination of defendant New York City Housing Authority ("NYCHA") dismissing his remaining-family-member grievance for failure to pay use and occupancy. NYCHA cross-moves to dismiss the petition because the claim is barred by the statute of limitations. For the reasons set forth below, NYCHA's cross-motion is granted and the petition is hereby dismissed as time-barred.

The relevant facts are as follows. Petitioner's grandmother, Irene Jackson, was the former tenant of apartment 5B at 1780 First Avenue, New York, New York, in the Holmes

Towers Houses, a NYCHA-owned property. After Ms. Jackson's death on November 10, 2006, petitioner requested and was granted a remaining-family-member grievance to determine whether he qualified to succeed to Ms. Jackson's lease. Petitioner claimed that at one point he was on the lease of both Ms. Jackson and his mother, who lives in a separate apartment at Wise Towers, another NYCHA-owned property. However, petitioner admitted that Ms. Jackson removed him from her lease at some point thereafter.

Both the NYCHA Housing Manager and District Office denied petitioner's grievance on the grounds that although petitioner had been an authorized member of Ms. Jackson's household, he vacated the apartment in 2005 and did not receive written permission from management to return. Both the Housing Manager and the District Office noted that petitioner was listed as a current resident in his mother's household at Wise Towers.

Subsequent to denying petitioner's grievance, NYCHA commenced a holdover proceeding against petitioner in Civil Court. On November 25, 2008, both parties stipulated to adjourn the matter until January 1, 2009 to give petitioner the opportunity to pursue his remaining-family-member grievance by requesting an administrative hearing. Petitioner, however, failed to request such a hearing. Thus, on February 11, 2009, both parties again stipulated to adjourn the matter to March 25, 2009 to give petitioner the opportunity to pursue his remaining-family-member grievance by requesting an administrative hearing. Petitioner, however, again failed to request a hearing. The Civil Court again adjourned the matter on behalf of petitioner a third time, to July 15, 2009.

On July 9, 2009, counsel for NYCHA notified petitioner that his grievance hearing was scheduled for August 5, 2009. The notice informed petitioner that he could be represented by

counsel, it included NYCHA's defenses to petitioner's claims, and enclosed a copy of the grievance procedures and relevant policies. On August 5, 2009, however, petitioner failed to appear at his administrative hearing. NYCHA opened his default and rescheduled his hearing. On September 22, 2009, the Office of Impartial Hearings sent petitioner a notice reminding him that his grievance hearing was scheduled for October 23, 2009. The notice informed petitioner that NYCHA reserved the right to request that the hearing officer dismiss the grievance in the event that petitioner is not up to date in the payment of use and occupancy at the time of the hearing.

Hearing Officer Joan Pannell ("Hearing Officer Pannell") presided at the proceedings on October 23, 2009. At the hearing, NYCHA made a motion to dismiss petitioner's grievance because he was not current in his payment of use and occupancy. Housing Assistant Jeronda Woods authenticated a rent ledger for the apartment showing when rent becomes due and when it is paid. Ms. Woods testified that petitioner's monthly use and occupancy was \$182.60 and that he owed \$1,745.00, or 9.5 months worth of use and occupancy payments. Petitioner admitted that he had not paid any use and occupancy for the entire year of 2009. He testified that he could pay his rent but that because some of his belongings were in storage, he had to pay that bill. Hearing Officer Pannell explained to petitioner that he could only have a hearing on the merits of his claim to the apartment if petitioner paid all of his use and occupancy, as is NYCHA's rule. Petitioner was instructed to request to re-open the hearing once he was current in his use and occupancy.

After Hearing Officer Pannell recounted the documentary evidence and the witnesses' testimony, she dismissed petitioner's grievance. By determination dated December 2, 2009,

