

Matter of Knopfler v New York City Hous. Auth.

2011 NY Slip Op 31325(U)

May 17, 2011

Supreme Court, New York County

Docket Number: 100637/11

Judge: Cynthia Kern

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

PRESENT: CYNTHIA S. KERN
J.S.C. Justice

PART 52

Index Number : 100637/2011
KNOPFLER, PINCHAS
vs.
NEW YORK CITY HOUSING AUTHORITY
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. 100637/11
MOTION DATE _____
MOTION SEQ. NO. 01
MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

Notice of Motlon/ 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 annexed decision.*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED

MAY 19 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 5/17/11

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.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 52

-----X
In the Matter of the Application of
PINCHAS KNOPFLER,

Petitioner,

Index No. 100637/11

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

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.
-----X

FILED

MAY 19 2011

NEW YORK
COUNTY CLERK'S OFFICE

HON. CYNTHIA 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 Petition and Affidavits Annexed..... | <u>1</u> |
| Answering Affidavits and Cross Motion..... | <u>2</u> |
| Replying Affidavits..... | <u>3</u> |
| Exhibits..... | <u>4</u> |

Petitioner brings this petition seeking to compel reissuance of his "Section 8" housing voucher. Respondent the New York City Housing Authority (NYCHA) responds that its decision to revoke the voucher was rational and not arbitrary and capricious and that petitioner may not rely on the doctrine of estoppel in the instant case. For the reasons set forth more fully below, the petition is granted.

The relevant facts are as follows. Petitioner Pinchas Knopfler was awarded a Section 8 voucher by NYCHA dated July 16, 2009. At the time, he lived in public housing at 121 Wilson

Street in Brooklyn. His family was given the highest priority code for the voucher program. The voucher provided that petitioner was not considered a participant in the Section 8 program until he submitted a rental package to NYCHA and NYCHA entered into a contract approving the tenancy. Petitioner did not submit a rental package to NYCHA. In December 2009, NYCHA withdrew all Section 8 vouchers for those who had not yet used the vouchers due to a lack of funding. NYCHA communicated this decision to petitioner in a letter dated December 30, 2009, which stated "Please be assured that you will be given priority to have your voucher restored should Section 8 funding become available... Please let us know right away if there is a change in your address..." The letter did not state that petitioner had to remain in public housing to retain his priority. Several months later, petitioner contacted NYCHA to find out if there would be any effect on his level of priority if he moved out of his public housing accommodations. He was advised that such a move would not affect his priority level. He then moved with his family into his parents' basement, which lacks a kitchen and adequate heat.

Subsequently, NYCHA refunded approximately 1500 Section 8 vouchers. Petitioner's voucher was not re-offered. Instead, NYCHA sent petitioner a Notice dated August 26, 2010, which indicated that his original voucher had expired. The Knopfler family called unnamed "elected officials" who allegedly told them that their move had cost them their priority status. Petitioner never received any written notice of explanation.

Petitioner now alleges that NYCHA's actions were arbitrary and capricious, that its failure to provide written notice of its decision to revoke petitioner's priority deprived petitioner of his due process rights and that NYCHA is estopped from revoking petitioner's priority status

because of the assurance of a member of its staff that he would retain his priority.

As an initial matter, it was not arbitrary and capricious of NYCHA to revoke petitioner's priority status based on his moving out of public housing. Residents of public housing normally have the highest Section 8 priority so it would not be arbitrary and capricious for petitioner's move to result in a loss of priority status.

Petitioner is entitled, however, to have his priority restored because NYCHA is estopped by its own employee's statements from revoking it. Although governmental entities cannot be estopped from enforcing statutes or regulations, they can be estopped from taking discretionary actions. *See Brady Properties, Ltd. v New York City Loft Board*, 269 A.D.2d 137, 140 (1st Dept 2000). In *Brady*, the First Department held that where a landlord was "actively misled" when he was told by a Loft Board Hearing Officer that he did not need to formally apply for retroactive rent increases, the landlord was entitled to such increases without filing such an application. *See id.* The *Brady* court found that the Loft Board was estopped from denying such increases to the landlord by the words of its employee. *See id.* In the present case, as in *Brady*, NYCHA is estopped from revoking petitioner's priority based on its employee's assurance that such priority would not be revoked if petitioner moved out of public housing. Just as in *Brady*, petitioner was actively misled by a government employee and acted in reliance on the information he received. Petitioner would not have moved out of public housing but for the assurances of the NYCHA representative he spoke to that he would not lose his priority status if he did so. The cases cited by NYCHA to the contrary are inapposite as they all involve the enforcement of a statute or regulation, not a discretionary policy as is the case here.

Accordingly, the petition is granted and NYCHA is directed to restore petitioner's

priority for a Section 8 voucher. This constitutes the decision and order of the court.

Dated: 5/17/11

Enter: CSK
J.S.C.

CYNTHIA S. KERN
J.S.C.

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MAY 19 2011

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