

**Matter of Sierra v New York City Dept. of Hous.
Preserv. & Dev.**

2011 NY Slip Op 32386(U)

August 19, 2011

Sup Ct, NY County

Docket Number: 402399/2010

Judge: Saliann Scarpulla

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

PRESENT: SALIANN SCARPULLA

PART 19

Index Number : 402399/2010

SIERRA, RAQUEL

vs.

NYC DEPT. OF HPD

SEQUENCE NUMBER : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

his 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

~~motion and cross-motion~~ are decided in accordance with accompanying memorandum 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: 8/19/11

Saliann Scarpulla
SALIANN SCARPULLA, 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: CIVIL TERM: PART 19
-----X

In the Matter of the Application of

RAQUEL SIERRA, as Power of Attorney for
EMMA SIERRA, and Individually on her own
Behalf,

Index No.: 402399/2010
Submission Date: 06/08/11

Petitioner,

- against -

DECISION AND ORDER

NEW YORK CITY DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT,

Respondent.

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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).

Petitioner, *pro se*:
Raquel Sierra
3333 Broadway
Apt. A7C
New York, NY 10031

For Respondent:
Lata Nott, Esq.
Assistant Corporation Counsel
100 Church Street, Room 5-182
New York, NY 10007

Papers considered in review of this order to show cause and cross motion to dismiss:

Notice of Petition.....	1
Verified Answer.....	2
Respondent's Memo of Law.....	3

HON. SALIANN SCARPULLA, J.:

In this Article 78 proceeding, petitioner Raquel Sierra, as Power of Attorney for Emma Sierra, and individually on her own behalf ("R. Sierra"), challenges the April 27, 2010 decision of respondent, New York City Department of Housing Preservation and Development ("HPD"), to terminate Emma Sierra's ("E. Sierra") enrollment in the Section 8 Voucher program.

On April 27, 2010, HPD determined that E. Sierra's Section 8 subsidy should be terminated due to her absence from her subsidized apartment for 180 consecutive days,

and for the failure by R. Sierra – E. Sierra’s daughter – to provide documentation that the building management had allowed R. Sierra to be added to the lease for E. Sierra’s unit.

E. Sierra’s absence from the apartment is not in dispute. E. Sierra left her apartment, located at 3333 Broadway, Apt. A7C (the “apartment”), in November 2008, following a stroke. Since the stroke, E. Sierra has lived in the Jewish Home Lifecare nursing home. In September 2009, R. Sierra moved into the apartment to care for E. Sierra’s grandchildren, including two minor children.

HPD first attempted to terminate E. Sierra’s Section 8 subsidy based on her absence from her apartment in a decision dated August 27, 2009. After correspondence and conferences between HPD and petitioner, an informal hearing was held on January 5, 2010, and a decision was issued dated February 4, 2010. In the decision, HPD’s hearing officer conditionally reversed the termination decision, finding that there were mitigating circumstances. This conditional reversal, however, was contingent on R. Sierra, who has power of attorney for E. Sierra, submitting the necessary documentation to demonstrate that R. Sierra had become the “head of household” for the apartment subject to the Section 8 subsidy, as well as R. Sierra submitting a recertification package.

On March 2, 2010, R. Sierra and her sister Lisa Acosta (“Acosta”) attended a mandatory conference with HPD representatives to discuss the February 4, 2010 informal hearing decision. At the conference, HPD gave R. Sierra a “Statement of Understanding – Section 8 Participant Obligations,” dated March 2, 2010, which R. Sierra signed (the “Statement of Understanding”). The Statement of Understanding directed R. Sierra to provide to HPD within fifteen (15) days a number of documents, including among other

things, a letter from the building management acknowledging that R. Sierra was head of the household, a completed recertification package, and a general release form from the building management. HPD maintains that at this conference, R. Sierra was advised that if building management did not allow her to become head of the household (in other words, to be added to the lease), then the family would have to obtain a general release form executed by building management, releasing E. Sierra from her obligation under the lease. After receipt of the executed general release, HPD would issue the family a "move voucher," which would allow the family to seek another apartment.

On March 15, 2010, R. Sierra submitted many of the requested documents to HPD, including a recertification package. However, on March 22, 2010, HPD advised R. Sierra that it had not received a letter from building management stating that she was head of the household, nor an updated letter of family composition. R. Sierra stated the next morning that she would have the building management fax the required letters to HPD.

In a letter dated March 29, 2009, HPD issued E. Sierra a Pre-Termination Notice of Section 8 Non-Compliance, advising her that her Section 8 rent subsidy might be terminated for failure to provide: (1) a current family composition letter from building management; (2) a letter from building management stating that R. Sierra was head of household (i.e., added to the lease); and (3) a letter from the nursing home stating E. Sierra's release date.

HPD then sent a letter, dated April 27, 2010, which stated that

To date, HPD has not received a complete recertification package and a general release form from the landlord despite the assistance and ample time provided to your household by HPD. Therefore, pursuant to the informal hearing decision dated February 4, 2010, the termination of your Section 8 rent subsidy is upheld. **The effective date of termination is May 31, 2010.**

(Emphasis in original.)

R. Sierra brought this proceeding to annul HPD's April 27, 2010 determination of termination on the grounds that it was arbitrary and capricious, or in the alternative to have HPD replace E. Sierra with R. Sierra as head of household:

Discussion

It is well settled that judicial review of an administrative determination pursuant to CPLR Article 78 is limited to a review of the record before the agency and the question of whether its determination was arbitrary or capricious and has a rational basis in the record. See CPLR §7803(3); *Gilman v. N.Y. State Div. of Hous. & Community Renewal*, 99 N.Y.2d 144 (2002); *Nestor v. New York State Div. of Hous. & Community Renewal*, 257 A.D.2d 395 (1st Dep't 1999). "In short, '[j]udicial review of an administrative determination is limited to the grounds invoked by the agency.'" *Matter of Rizzo v. DHCR*, 6 N.Y.3d 104, 110 (2005) (quoting *Matter of Aronosky v. Board of Educ., Community School Dist. No. 22 of City of N.Y.*, 75 N.Y.2d 997, 1000 (1990)).

An action is arbitrary and capricious, or an abuse of discretion, when the action is taken 'without sound basis in reason and without regard to the facts.'" *Matter of Rohan v. New York City Housing Authority*, 2009 NY Slip Op 30177U, at *6-*7 (Sup. Ct. N.Y. Co. Jan. 23, 2009) (quoting *Matter of Pell v. Board of Education*, 23 N.Y. 2d 222, 231 (1974)).

R. Sierra fails to establish that HPD's termination of the Section 8 subsidy was arbitrary and capricious. HPD is bound by the confines of the federal law that governs Section 8 voucher programs nationwide. The voucher programs are administered by local agencies, but funded by the federal government. Therefore, each local public housing agency ("PHA") must conform to a certain set of standards embodied in Title 24 of the Code of Federal Regulations. "The PHA must comply with HUD [Department of Housing and Urban Development] regulations and other HUD requirements for the program." 24 C.F.R. 982.52. One HUD regulation requires that "the family may not be absent from the unit for a period of more than 180 consecutive calendar days in any circumstance, or for any reason." 24 C.F.R. 982.312.

Here, it is undisputed that HPD has terminated E. Sierra's enrollment in the Section 8 voucher program only after an initial warning, an informal hearing, and multiple opportunities for R. Sierra to replace E. Sierra as the "head of the household" to preserve the Section 8 subsidy. R. Sierra has not submitted the missing "head of household" papers or a general release in support of this petition, nor has she established that they were ever provided to HPD. Accordingly, HPD has not acted in an arbitrary or capricious manner by terminating E. Sierra's enrollment in the Section 8 voucher program. HPD is required to act within HUD's regulations, which do not allow for such an extended absence by a Section 8 voucher recipient "for any reason." 24 C.F.R. 982.312.

R. Sierra also argues that the may 31, 2010 termination date was premature because she was told she could submit a move request until June 2, 2010. This argument is moot because no move request was ever submitted.

In accordance with the foregoing, it is hereby

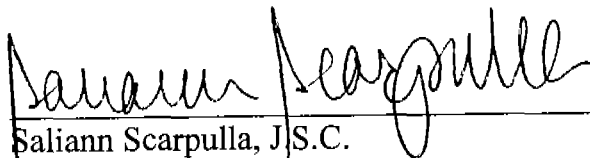
ORDERED and ADJUDGED that the petition of Raquel Sierra, as Power of Attorney for Emma Sierra, and individually on her own behalf is denied and dismissed.

This constitutes the decision, order and judgment of the Court.

Dated: New York, New York

August 19, 2011

ENTER :


Saliann Scarpulla, J.S.C.

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