

Matter of Morrison v New York City Hous. Auth.

2011 NY Slip Op 32770(U)

October 24, 2011

Sup Ct, NY County

Docket Number: 401000/11

Judge: Judith J. Gische

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

HON. JUDITH J. GISCHE

PRESENT: _____ J.S.C. _____
Justice

PART 10

Shamica Morrison

INDEX NO. 401002/11

MOTION DATE _____

- v -

MOTION SEQ. NO. 001

New York City Housing Authority

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

**motion (s) and cross-motion(s)
decided in accordance with
the annexed decision/order
of even date.**

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: 10/24/11

HON. JUDITH J. GISCHE 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):

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).

Supreme Court of the State of New York
County of New York: IAS Part 10

-----x
In the Matter of the Application of
SHAMICA MORRISON,

Petitioner,

Decision/ Order
Index No.:401000/11
Seq. No.: 001

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

Present:
Hon. Judith J. Gische
J.S.C.

NEW YORK CITY HOUSING AUTHORITY,

Respondent,
-----x

Recitation, as required by CPLR § 2219 [a] of the papers considered in the review of this (these) motion(s):

Papers	Numbered
Notice of Pet and Pet w/poor person order.....	1
Resp's x/m to dismiss (sep back).....	2
Answer w/MR affirm exhs.....	3
Resp's affirm (MRR) for adjournment.....	4

-----x
This is a Article 78 summary proceeding brought by pro se Petitioner, Shamica Morrison ("petitioner") to have the New York City Housing Authority's ("NYCHA") administrative determination, terminating her public housing tenancy, annulled. Petitioner's tenancy was terminated because of her failure to pay rent. NYCHA has cross-moved to dismiss the petition as untimely.

Applicable law

Where a motion to dismiss is premised upon CPLR § 7804 (f), only the petition and the exhibits attached thereto may be considered and all the allegations contained therein are deemed to be true (Green Harbour

Homeowners' Ass'n, Inc. v. Town of Lake George Planning Board, 1 AD3d 744 [3rd Dept 2003]). Similarly, on a motion to dismiss brought pursuant to CPLR § 3211, the court is required to presume the truth of all allegations contained in the challenged pleadings and resolve all inferences which may reasonably flow therefrom in favor of the non-movant (Cron v. Hargro Fabrics, Inc., 91 NY2d 362 [1998]; Sanders v. Winship, 57 NY2d 391 [1982]). Thus, the court's inquiry on the motion to dismiss is whether the petitioner has a cause of action, not whether it has stated one (Guggenheimer v. Ginzberg, 43 NY2d 268 [1977]; DePaoli v. Board of Educ., Somers Cent. School Dist., 92 AD2d 894 [2nd Dept 1983]).

Pursuant to Article 78, the statute of limitations to commence a special proceeding challenging any action coming within its ambit is four months from the date of a trial order (Yarborough v. Franco, 95 NY2d 342 [2000]).

Facts and arguments presented

Petitioner was the tenant of record at 361 Livonia Avenue, Apt 9B, Brooklyn New York ("apartment"), an apartment located in the Van Dyke Housing Development and operated by NYCHA. In November 2009, NYCHA sent petitioner notice that her tenancy was being terminated for chronic delinquency in paying her rent. As of the date of the notice, petitioner owed twelve (12) months rent. Petitioner was notified of a hearing scheduled for December 2, 2009. Subsequently, the parties tried to resolve their dispute and the hearing did not proceed.

Thereafter, NYCHA served petitioner with a new notice amending the charges against petitioner to include rent through December 2009, and a new

hearing was scheduled for March 9, 2010. Petitioner did not appear for the termination hearing on March 9, 2010 and a default decision and disposition was entered against her. It was not until petitioner went to NYCHA, in person, on March 11, 2010 that she was informed that she had already missed the hearing. Petitioner then made an application to vacate her default which was set to be heard on March 30, 2010. In her application to vacate the default the reasons petitioner gave for not appearing were that she misplaced the letter informing her of the date she as supposed to appear for the earlier hearing and every time she tried to call her caseworker she reached an answering service.

On March 30, 2010, petitioner's application to vacate the default decision entered against her was denied. The hearing officer concluded that petitioner did not "explain her delinquency or offer a specific plan for cure." The Office of Impartial Hearings mailed the hearing officer's decision to petitioner on March 30, 2010. Petitioner does not deny receiving the decision in the mail on or by April 4, 2010. Petitioner argues that her petition should be granted and the agency's determination annulled because she did not know that could challenge the decision in court until several months after NYCHA's decision was issued.

NYCHA, in its cross-motion, contends that the petition should be denied because this action was commenced after of the four-month statute of limitations had run. Additionally, NYCHA argues that not only are statutes of limitations to be strictly construed, but that ignorance of the law is not a valid basis for tolling the limitation. In order to have been within the statute of limitations, petitioner needed to commence this Article 78 proceeding by August 4, 2010. Petitioner did

not commence this proceeding April 18, 2011, which was more than eight months after the statute of limitations expired. NYCHA, therefore seeks the pre-answer dismissal of this proceeding pursuant to CPLR § 7804 (f), 217 (1), 3211 (a)(5).

Discussion

Since petitioner did not commence this action until after the statute of limitations expired, she does not have a cause of action and the court must grant NYCHA's cross-motion to dismiss. Statutes of limitation are to be strictly construed. Sumpter v. New York Hous Auth., 260 A.D. 2d 176,177 (1st Dept 1999).

Furthermore, even for those representing themselves, a party's ignorance of the law is no excuse and the statute of limitations cannot be tolled based on petitioner's ignorance of Article 78 proceedings. In Harris v. City of New York, 297 A.D. 2d 473 (1st Dept 2002), the court held that a pro se plaintiff's lack of knowledge of time requirements for filing was an insufficient excuse for failing to timely file a notice of claim. Likewise, in this matter, petitioner's ignorance of Article 78 proceedings is an insufficient excuse for late filing. Additionally, there is no legal requirement for NYCHA to notify an aggrieved party of the applicable limitations period at the time of termination. Sumpter v. New York City Housing Authority 260 A.D.2d 176,178 (1st Dept 1999). Consequently petitioner's lack of knowledge provides no defense to a motion for dismissal.

Conclusion

In accordance with the foregoing,

it is hereby,

Ordered that Respondent the New York City Housing Authority's cross-motion to dismiss is hereby granted, and it is further


Ordered adjudged and declared that Petitioner Shamica Morrison's petition to review the New York City Housing Authority's denial of her application to vacate the default decision entered against her is hereby denied and the petition is dismissed. It is further

Ordered that any relief requested that has not been addressed in this decision has nonetheless been considered and is hereby expressly denied.

Ordered that this constitutes the decision and order of the court.

Dated: New York, New York
October 24, 2011

ENTER



HON. JUDITH J. GISCHE, J.S.C

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).