

Cowan v Rhea

2011 NY Slip Op 32870(U)

September 20, 2011

Supreme Court, New York County

Docket Number: 403444/2010

Judge: Jane S. Solomon

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

PRESENT: JANE S. SOLOMON
Justice

PART 55

Cowan

- v -

Rhea

INDEX NO. 403444/10
MOTION DATE 3/21/11
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for A-78

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

PAPERS NUMBERED	
1-3	_____
4-5	_____
6	_____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion ~~petition~~ is decided by the annexed Memorandum Decision, order + Judgment

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: 3/29/11

JANE S. SOLOMON
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

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 55

-----X
JOLETHA COWAN,

Index No. 403444/2010

Petitioner,

DECISION, ORDER and
JUDGMENT

-against-

JOHN B. RHEA, as Commissioner of the
New York City Housing Authority and
NEW YORK CITY HOUSING AUTHORITY

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Respondents.

SOLOMON, J.:

As the result of budget cuts, funding for new Section 8 housing subsidies has been eliminated. Petitioner Joletha Cowan (Cowan) seeks an order directing respondents John B. Rhea and the New York City Housing Authority (collectively NYCHA) to re-certify her to the Section 8 program at the highest priority level so she will be more likely to receive a subsidy when Section 8 funding is available. The petition is denied for the reasons below.

In 2007, Cowan applied for a Section 8 housing voucher for her family, comprised of herself, her husband Omar, and their four children. At the time, they lived in an apartment and collected a Work Advantage subsidy.¹ In early 2009, Cowan and Omar separated, and Omar moved out. Because Cowan was at risk of losing the apartment without Omar's income, she went to the New

¹ Work Advantage is a 1-2 year rental subsidy program that is intended to help people stay out of homeless shelters and to give them an incentive to find and retain employment.

York City Department of Homeless Services (DHS), which referred her to NYCHA for a Section 8 voucher under its Homeless Prevention Program.

The Homeless Prevention Program, as relevant here, is designed to assist people who are at "imminent risk" of becoming homeless (NYCHA Applications and Tenancy Administration Department Memorandum, Answer, Ex. B). NYCHA assigns priority codes to applications, with the lower code numbers receiving highest priority. Applications approved for the Homeless Prevention Program receive a 0 priority code, which is the highest priority. Applicants who already are homeless or living in a shelter receive a 2 priority code.² When a rental package is submitted for final approval, NYCHA interviews the applicant to verify that the information on the application is still accurate, and where there is a change of circumstances, NYCHA's Applications and Tenancy Administration Department (ATAD) re-examines the application to certify that the applicant still qualifies.

Cowan filed a separate Section 8 application based on the DHS Homeless Prevention Program referral. The application

² Priority code 2 is for "[a]pplicants who live in hotels or shelters used by the City or whose primary nighttime residence is a place not designed for, or ordinarily used as, a regular sleeping accommodation" (see, NYCHA Section 8 priority codes, at www.nyc.gov/html/nycha/html/section8/section8-prioritycodes.shtml (last viewed June 29, 2011)).

was assigned priority code 0. Her 2007 application was "put on hold." As a result of the DHS referral, Cowan received a Section 8 voucher on August 11, 2009. She then found an apartment and submitted a rental package to NYCHA. She was interviewed on September 17, 2009, and due to a change in household income resulting from Omar's reduced contributions to the family, the rental package was refused and sent to ATAD for re-examination. In the meantime, Cowan's Work Advantage subsidy expired in October and she no longer could afford her rent. Having not yet received a response from the Department of Housing Applications regarding the re-examination, Cowan moved to a homeless shelter with her children. She informed NYCHA of this change.

Because she was no longer at risk of being homeless-- she in fact was homeless and living in a shelter--NYCHA determined that she no longer was entitled to priority code 0 under the DHS referral. By letter dated December 18, 2009, NYCHA informed Cowan that her application was no longer being processed based on its priority status, and invited her to discuss it at NYCHA's offices within 30 days, failing which the application would be discarded (Answer, Ex. O). The reason given is "You moved out of your DHS Advantage apartment" (*id.*).

Notwithstanding this determination and letter, on December 30, NYCHA sent Cowan a second letter informing her that it was not processing her rental package due to a funding

shortfall, and that she would be given priority to restore her voucher when funding became available (Petition, Ex. H). NYCHA claims that this letter was sent in error (Answer ¶ 40), but it never informed Cowan of the mistake. Cowan did not appear at the NYCHA office to discuss her change in priority, and her 2009 application was terminated. The 2007 application was reinstated at priority code 2.

Cowan wants to be returned to priority code 0, so that when Section 8 funding is once again available, she is more likely to be issued a voucher immediately. However, as a practical matter, based upon the rules and procedures described in the papers, Cowan's expectation that she will be issued a voucher immediately seems unfounded. The Homeless Prevention Program is designed to give priority to people who are at imminent risk of becoming homeless, and gives a lower priority to those who already are homeless, or are not at imminent risk. Where there is a change in circumstance between when the application is made and when the rental package is submitted for final approval, as here, the application is re-examined. Cowan's circumstances undeniably changed, and it cannot be said that NYCHA's re-examination of her application to verify that she still was qualified for priority treatment was irrational. Even if she were put back to a priority code 0, her application would be subject to a re-examination when the Section 8 voucher was

ready to be issued. Since she is not in the same "imminent risk" of homelessness as she was in August 2009, it appears extremely unlikely that a voucher would issue.

Moreover, while an applicant may request an administrative hearing to challenge an eligibility determination, she is not entitled to a hearing to challenge a priority code assignment (24 CFR § 982.554[a]). NYCHA's assignment of priorities is not subject to Article 78 review, and in any event, it was not arbitrary and capricious in this case. It is unfortunate that Cowan did not receive the assistance she needed to prevent her from becoming homeless in October 2009, but once that occurred, she no longer qualified for priority code 0. Accordingly it hereby is

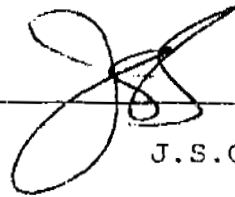
ORDERED and ADJUDGED that the petition is denied, and the proceeding is dismissed.

Dated: September 20, 2011

Enter:

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J.S.C.

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