

**Boyd v New York State Div. of Hous. & Community
Renewal**

2011 NY Slip Op 33076(U)

November 22, 2011

Supreme Court, New York County

Docket Number: 110437/11

Judge: Barbara Jaffe

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

PRESENT: JAFFE BARBARA JAFFE
J.S.C.
Justice

PART 5

Kelley S. Boyd

INDEX NO. 110437/11

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

- v -

NYS DHCR, ET AL.

The following papers, numbered 1 to _____ were read on this motion to/for preliminary injunction

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED	
1	_____
2	_____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

FILED

NOV 25 2011

NEW YORK COUNTY CLERK'S OFFICE

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION ~~ORDER~~ Judgment.

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

Dated: 11/23/11
NOV 23 2011

[Signature]
BARBARA JAFFE 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 5

-----X
KELLEY S. BOYD,

Index No. 110437/11

Petitioner,

Motion Subm.: 11/15/11
Motion Seq. No.: 001

-against-

DECISION & JUDGMENT

NEW YORK STATE DIVISION OF HOUSING
& COMMUNITY RENEWAL,

Respondent,

FILED

NOV 25 2011

232/242 REALTY CO., LLC, AKA UPTOWN
REALTY, ROBERT CANDEE, OWNER,

Proposed Respondents.

NEW YORK
COUNTY CLERK'S OFFICE

-----X
BARBARA JAFFE, JSC:

For petitioner, self-represented:
Kelly S. Boyd
240 Cabrini Blvd., Apt. 4-F
New York, NY 10033

For Realty:
David I. Paul, Esq.
Rappaport, Hertz et al.
118-35 Queens Blvd., 9th Fl.
Forest Hills, NY 11375
718-261-7700

By order to show cause dated September 29, 2011, petitioner seeks an order granting her a preliminary injunction and staying a proceeding pending in New York City Civil Court, Housing Part, and adding as respondents 232/242 Realty Co., LLC a/k/a Uptown Realty and Robert Candee (collectively, Realty). Realty opposes the stay while the New York State Division of Housing and Community Renewal (DHCR) takes no position.

I. PERTINENT BACKGROUND

Since 2007, petitioner has been the tenant of apartment 4F at 240 Cabrini Boulevard,

New York, New York, premises owned by Realty. (Affidavit of Kelley S. Boyd, dated Sept. 29, 2011 [Boyd Affid.], Exh. D). Sometime in 2010, petitioner filed a complaint with DHCR alleging that Realty had been overcharging her rent. (*Id.*, Exh. B). On October 4, 2010, DHCR issued an order finding that Realty had not overcharged petitioner, which was affirmed by order dated July 19, 2011. (*Id.*, Exhs. A, B).

On or about September 13, 2011, petitioner commenced a special proceeding pursuant to CPLR Article 78 seeking to overturn DHCR's July 2011 determination, which is scheduled for oral argument on December 9, 2011.

Also in 2010, Realty commenced a non-payment proceeding against petitioner in New York City Civil Court, Housing Part, Index No. 91598/10. (*Id.*, Exh. 1). By order dated August 22, 2010, the proceeding was restored to the calendar and adjourned to October 6, 2011 and then to December 12, 2011 for settlement or trial. (*Id.*).

II. CONTENTIONS

Petitioner seeks a stay of the non-payment proceeding until her Article 78 petition is decided, arguing that its outcome will impact the non-payment proceeding. (Boyd Affid.).

Realty opposes the stay on the grounds that petitioner has not stated that she will pay any rent or use and occupancy during the stay and that she is unlikely to succeed on her petition as DHCR has twice determined that she has not been overcharged. (Affirmation of David I. Paul, Esq., dated Nov. 11, 2011).

III. ANALYSIS

A preliminary injunction may be granted upon a showing by petitioner of a likelihood of success, a danger of irreparable injury, and that the balance of equities is in her favor. (*Jones v*

Park Front Apts., LLC, 73 AD3d 612 [1st Dept 2010]).

Here, the equities are in petitioner’s favor as she is facing eviction from her home, while Realty will suffer no prejudice as a result of the stay as long as petitioner pays it rent or use and occupancy during the pendency of the stay. Moreover, not only would irreparable harm result if plaintiff is evicted, but it will render her Article 78 proceeding meaningless. (*See Reynolds v Div. of Hous. and Community Renewal*, 199 AD2d 15 [1st Dept 1993] [court properly stayed eviction proceeding against petitioner pending determination by defendant of petitioner’s rent overcharge complaint]; *Diaz v Donovan*, NYLJ, July 15, 2008 [Sup Ct, New York County] [stay of nonpayment proceeding warranted pending agency’s review of decision to terminate plaintiff’s section 8 subsidy]).

Finally, petitioner has sufficiently established that she may succeed on her Article 78 petition, as a denial of the injunction will render her petition meaningless and she seeks only to retain the status quo pending the decision on her petition. (67A NY Jur 2d, Injunctions § 15 [2011]; *Bd. of Mgrs. of 235 E. 22nd St. Condominium v Lavy Corp.*, 233 AD2d 158 [1st Dept 1996] [as plaintiff sought only to maintain status quo, likelihood of success found even though facts were in dispute]; *Ma v Lien*, 198 AD2d 186 [1st Dept 1993], *lv denied* 198 AD2d 186 [1994] [even if facts are disputed, court can find likelihood of success on merits, especially when denial of injunction would render ineffectual final judgment]).

IV. CONCLUSION

Accordingly, it is hereby

ORDERED and ADJUDGED, that petitioner’s motion for a preliminary injunction is granted and a stay is issued in the proceeding *232/242 Realty Co., LLC v. Kelley Boyd, L&T*

Index Number 91598/10 (New York County Civil Court, Housing Part), including any attempt to evict petitioner, pending a determination on petitioner's Article 78 petition; it is further

ORDERED and ADJUDGED, that the stay is also conditioned on petitioner's monthly payment of use and occupancy to 232/242 Realty Co., LLC a/k/a Uptown Realty of the amount of rent set forth in DHCR's October 4, 2010 determination, commencing on December 1, 2011; it is further

ORDERED, that the caption of this proceeding is amended to add the proposed respondents, 232/242 Realty Co., LLC a/k/a Uptown Realty, Uptown Realty, and Robert Candee, Owner, as respondents herein;


ORDERED, that all papers, pleadings, and proceedings in the above-entitled action be amended by adding as respondents 232/242 Realty Co., LLC a/k/a Uptown Realty, Uptown Realty, and Robert Candee, Owner, without prejudice to the proceedings heretofore had herein; and it is further

ORDERED, that petitioner shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to amend their records to reflect such change in the caption herein.

FILED

ENTER:

NOV 25 2011


Barbara Jaffe, JSC

NEW YORK
COUNTY CLERK'S OFFICE

DATED: November 22, 2011
New York, New York