SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: JOAN B. LOBIS Justice

PART 6

Index Number : 400121/2012
BLAKE KENNETH
vs.
RHEA, JOHN B.
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____

MOTION DATE 2/22/12

MOTION SEQ. NO. _____

The following papers, numbered 1 to ____, were read on this motion to/for overturn NYCHA determination.

Notice of Motion/Order to Show Cause — Affidavits — Exhibits Petition | No(s). 1-10

Answering Affidavits — Exhibits _____ | No(s). 11-24

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

THIS MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION

ORDER

FILED

APR 20 2012

NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: 4/18/12

_____, J.S.C.
JOAN B. LOBIS

1. CHECK ONE: ..... ☑ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6

----------X

IN THE MATTER OF THE APPLICATION OF
KENNETH BLAKE ,

Petitioner,

Index No. 400121/12

FOR A JUDGMENT PURSUANT TO ARTICLE 78
OF THE CIVIL PRACTICE LAW AND RULES

Decision and Order

-against-

JOHN B. RHEA, as CHAIRMAN OF THE
NEW YORK CITY HOUSING AUTHORITY,

Respondent.

----------X

JOAN B. LOBIS, J.S.C.:

By this Article 78 proceeding, petitioner Kenneth Blake seeks to vacate the decision of respondent New York City Housing Authority ("NYCHA") denying his application to vacate his default in appearing at a hearing held on August 2, 2011 at NYCHA's office. The hearing resulted in a finding against Mr. Blake in his absence and led to a determination that his tenancy be terminated.

Mr. Blake has lived at 311 Osborn Street, Apt. 6E, Brooklyn, New York, also known as the Brownsville Houses, since 2007. He resides at the premises with his two children, who are 22 and 15 years old. By notice dated June 30, 2011, he was notified that charges had been brought against him for chronic delinquency in the payment of rent. The charges specified that over a twelve-month period beginning May 1, 2010, Mr. Blake was late with his rent payment twelve times. He was also informed that a recommendation had been made to terminate his tenancy. A hearing on the charges was scheduled for August 2, 2011, at NYCHA's offices at 250 Broadway, New York,

New York. Petitioner failed to appear for the hearing. The hearing officer sustained the charges on default and recommended that Mr. Blake's tenancy be terminated.

Petitioner requested a new hearing date of August 4, 2011, on a form provided by NYCHA. As the reason for missing the hearing, he wrote that he mistakenly thought the date of the hearing was August 12. In Section F, entitled "Defense", petitioner wrote that he spoke to Ms. Washington, that he called the number she gave him, and that he was "sent to this office for a reopening of the case[;] here make a rent grievance." Petitioner did not state any other defense to the underlying charges.

In support of the petition, petitioner does not deny the charges of chronic delinquency, but says that he should be given an opportunity to present mitigating circumstances which led to his failure to pay rent. He believes that before his tenancy is terminated, NYCHA should consider his claim that he was providing financial assistance to his son. He also sets forth his plan to become current in his rent payments, in that he has applied for assistance from the New York City Department of Social Services and that he is anticipating a substantial tax refund. He argues that NYCHA's determination not to reopen his hearing was an abuse of discretion, as was its failure to consider his testimony on mitigation. He asserts that terminating his tenancy is disproportionate to the offense of chronic rent delinquency and is shocking to one's sense of fairness.

In answering the petition, NYCHA argues that this court must deny the petition. It also argues that this court is limited to reviewing the issue of vacating the default in appearing at the

hearing, citing In re Yarbough v. Franco, 264 A.D.2d 740 (2d Dep't 1999), aff'd, 95 N.Y.2d 342 (2000). In that regard, NYCHA maintains that it properly denied petitioner's request for a new hearing because he failed to allege both an excusable default and a meritorious defense on his application to vacate his default.

NYCHA is correct in arguing that this court's role is limited to the issue of vacating the default. The standard of review is whether the administrative decision on the issue was made in violation of lawful procedures, whether it was arbitrary or capricious, or whether it was affected by an error of law. In re Pell v. Bd. of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 N.Y.2d 222, 231 (1974). A determination is considered arbitrary and capricious when it is made "without sound basis in reason or regard to fact." In re Peckham v. Calogero, 12 N.Y.3d 424, 431 (2009), citing Pell, 34 N.Y.2d at 231. If the agency's determination is rationally supported, the court must sustain the determination "even if the court concluded that it would have reached a different result than the one reached by the agency." Peckham, 12 N.Y.3d at 431 (citation omitted).

Here, it cannot be said that the hearing officer's determination to deny the request to reopen the hearing was arbitrary, capricious, or otherwise irrational. NYCHA has been repeatedly upheld in requiring a tenant to establish both an excusable default and a meritorious defense in seeking to vacate a default. Petitioner's application to vacate the default in appearing at the hearing failed to set forth a meritorious defense to the underlying charges. The supporting affidavit herein similarly falls short of setting forth a meritorious defense. Since this court is not reviewing the

underlying determination to terminate the tenancy, any argument that the penalty in light of all the circumstances is shocking to one's sense of fairness cannot be reviewed. See Pell, 34 N.Y. at 233. This court is limited to a review of the denial of the request to reopen the hearing. In re Yarbough v. Franco, 264 A.D.2d 740 (2d Dep't 1999). Accordingly, it is hereby

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

Dated: April 18, 2012

ENTER:

JOAN B. LOBIS, J.S.C.

FILED

APR 20 2012

NEW YORK
COUNTY CLERK'S OFFICE