

Whipple v HPD - 100 Gold, Sec 8 Appeals Unit

2012 NY Slip Op 31368(U)

May 15, 2012

Sup Ct, New York County

Docket Number: 400186/12

Judge: Alexander W. Hunter Jr

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: ALEXANDER W. HUNTER JR
Justice

PART 33

Index Number : 400186/2012
WHIPPLE, SABRINA
vs.
N.Y.C.D.H.P.D.
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to 37, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1-10, 11-36
Answering Affidavits — Exhibits _____ | No(s). ~~1-10, 11-36~~ 37
Replying Affidavits _____ | No(s). _____

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

See memorandum decision and judgment annexed hereto.

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).

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

Dated: 5/15/12

Alexander W. Hunter Jr, J.S.C.
ALEXANDER W. HUNTER JR

- 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
COUNTY OF NEW YORK: PART 33**

-----X
Sabrina S. Whipple,

Index No.: 400186/12

Petitioner,

Decision and Judgment

-against-

HPD - 100 Gold, Sec 8 Appeals Unit - Dominador
V. Pascual III, Esq.,

Respondent.

-----X
HON. ALEXANDER W. HUNTER, JR.

The application by petitioner for an order pursuant to C.P.L.R. Article 78, reversing respondent New York City Department of Housing Preservation and Development's ("HPD") determination to terminate petitioner's Section 8 subsidy, is denied and the petition is dismissed, without costs and disbursements to either party. Petitioner's request in the alternative to be transferred to the New York City Housing Authority's ("NYCHA") Section 8 Program is denied. Respondent's cross-motion to dismiss the petition is granted.

Respondent HPD is the public housing authority responsible for administering the Section 8 program in New York City. This program is designed to assist lower income families in obtaining safe and affordable privately owned rental housing and to promote economically mixed housing. **See, 42 U.S.C. § 1437(f)(a) and 24 C.F.R. § 982.1(a)(1).** HPD is required to conduct annual and interim reexaminations of family income and composition. **24 C.F.R. § 982.516.** HPD has the authority to deny or terminate Section 8 assistance if the family has: 1) misrepresented income, household members, or any other information reported to HPD; 2) violated one of the family obligations; or 3) failed to provide information requested by HPD. **24 C.F.R. § 982.552.**

In 2000, pro se petitioner applied for and received approval to participate in the Section 8 program. In 2006, petitioner moved to a new apartment located at 3301 Barker Avenue, Suite 2, Bronx, NY ("subject apartment"). HPD entered into a Housing Assistance Payments contract with the landlord for the subject apartment. Petitioner's share of the monthly rent was \$150.00 and HPD's share was \$1,396.00.

On June 27, 2007, petitioner submitted her annual Section 8 Recertification Declaration Form. She indicated on the form that five individuals were currently living at the subject apartment: 1) petitioner; 2) Monica Glenn; 3) Sabrina Glenn, Erik Meza, and Angel Meza. Petitioner also submitted two letters on New York Foundling letterhead, dated June 19, 2007 and June 21, 2007 respectively. The first letter stated that Sabrina Glenn and Monica Glenn (the "Glenn children") had resided with petitioner since 2005 and the second letter indicated that the

Glenn children were foster children residing with petitioner.

Thereafter, respondent received information alleging that petitioner misrepresented her household composition. The Program Integrity and Compliance Unit investigated and found that petitioner had submitted forged letters on New York Foundling letterhead. A Casework Supervisor at the New York Foundling Hospital informed HPD that they had no record of the Glenn children. They also had no record of petitioner listed as a licensed foster home.

HPD sent petitioner a "Pre-Termination Notice of Section 8 Non-Compliance", dated September 18, 2009, which informed petitioner that her Section 8 subsidy may be terminated. The notice indicated that petitioner had misrepresented her household composition and the information she supplied was false and incomplete. The notice further provided that petitioner could request a conference with HPD to review her file before her Section 8 subsidy was terminated.

By notice dated October 7, 2009, petitioner's request for a conference was granted and scheduled for October 22, 2009. Her conference was subsequently rescheduled for November 5, 2009. Petitioner was instructed to bring any requested documents requested by HPD and any additional documents that would assist HPD in making a decision as to her Section 8 subsidy. At the conference, petitioner signed a "Statement of Understanding - Section 8 Participant Obligation" agreeing to submit certain documents by November 12, 2009.

Petitioner failed to submit the additional documents requested by HPD. Respondent informed petitioner, by notice dated January 7, 2010, that her Section 8 subsidy was terminated effective February 28, 2010 because: 1) she had failed to submit the additional requested documents; 2) she misrepresented her household composition as to Sabrina and Monica Glenn; and 3) she provided false and incomplete information.

On or about January 10, 2010, petitioner submitted a request for an informal hearing to appeal HPD's determination. Petitioner was notified by notice dated July 8, 2010, that an informal hearing was scheduled for October 7, 2010 at 2:00 PM. The notice indicated that the failure: 1) to appear at the hearing; 2) to call to reschedule; or 3) to appear at the scheduled time would result in a default and her Section 8 subsidy would be terminated.

The hearing was held as scheduled on October 7, 2010 before HPD Hearing Officer Dominador Pascual. Petitioner did not appear at the scheduled time. On October 12, 2010, Hearing Officer Pascual issued a default decision and upheld HPD's decision to terminate petitioner's Section 8 subsidy. HPD sent petitioner a "Notice of Determination After Informal Hearing Section 8 Subsidy Terminated ("Notice of Determination"), dated October 13, 2010. The Notice of Determination informed petitioner that her Section 8 subsidy was terminated because she failed to appear at the informal hearing and did not contact HPD to reschedule. The Notice of Determination further stated that in order to appeal the determination she must file for judicial review through the New York State Unified Court System within four (4 months) of the

date of the notice.

Petitioner submitted a request to reschedule her hearing. She indicated that she was unable to attend the hearing on time because she had fallen asleep on the train. On October 13, 2010, petitioner submitted two notes from her primary care physician which stated that she was currently taking several medications for multiple medical ailments, some of which make her drowsy. On October 25, 2010, petitioner called HPD to inquire about her termination. On January 21, 2011, counsel for petitioner sent a letter to HPD requesting that Hearing Officer Pascual reconsider the default decision. HPD denied petitioner's request.

Petitioner commenced the instant proceeding on January 24, 2012. She asserts that she was forced to move out of the subject apartment because she was unable to pay the rent. Petitioner seeks to be reinstated into the Section 8 program or in the alternative to be transferred to the New York City Housing Authority's ("NYCHA") Section 8 Program.

Respondent cross-moves to dismiss the petition on the ground that the proceeding is time-barred. The statute of limitations began to run on October 13, 2010, the date of the Notice of Determination. Moreover, neither petitioner's October 25, 2010 inquiry nor her counsel's January 21, 2011 letter extended the statute of limitations. Therefore, respondent argues that petitioner had until February 13, 2011, to commence her action, but failed to do so.

Even if the petition was not time-barred, respondent argues that it does not have the authority to transfer petitioner to NYCHA's Section 8 Program. Respondent maintains that HPD and NYCHA administer two separate and distinct programs and neither program has the ability to transfer its participants to the other.

In opposition to respondent's cross-motion to dismiss, petitioner asserts that she had no help and was unaware that "a unified court" was Supreme Court and therefore could not timely commence the instant proceeding. She further asserts that she suffers from diabetes, asthma, and high blood pressure and has been on disability since 2008. Petitioner further argues that HPD unjustifiably terminated her Section 8 subsidy simply because she fell asleep on the train due to drowsy medications and missed her scheduled hearing.

Pursuant to C.P.L.R. 217(1), a proceeding against a body or officer must be commenced within four months after the determination becomes final and binding upon the petitioner. "An administrative determination becomes final and binding when the petitioner seeking review is aggrieved by it." **Matter of Yarbough v. Franco, 95 N.Y.2d 342, 346 (2000)**. Courts have held Article 78 proceedings as time-barred even when commenced one day after the four month statute of limitations has expired. **See, Matter of Magat v. County of Rockland, 265 A.D.2d 483 (2nd Dept. 1999); Matter of Tuxedo Conservation and Taxpayers Ass'n v. Town Bd., 213 A.D.2d 655 (2nd Dept. 1995)**. Moreover, requests to reconsider the final determination do not extend the applicable statute of limitations. **See, Matter of De Milio v. Borghard, 55 N.Y.2d 216 (1982); Raykowski v. New York City Dept of Transp., 259 A.D.2d 367 (1st Dept.**

1999); Matter of Bonar v. Shaffer, 140 A.D.2d 153 (1st Dept. 1988).

Respondent issued the Notice of Determination, its final determination, which terminated petitioner's Section 8 subsidy on October 13, 2010. Petitioner was explicitly informed of the four month statute of limitations. Petitioner commenced this special proceeding more than eleven months after the expiration of the statute of limitations on January 24, 2012. Therefore, this petition must be dismissed as time-barred pursuant to C.P.L.R. 3211(a)(5).

This court finds that petitioner's remaining arguments are without merit.

Accordingly,

ADJUDGED that the petition is denied and the proceeding is dismissed, without costs and disbursements to either party. Petitioner's request in the alternative to be transferred to NYCHA's Section 8 Program is denied. Respondent's cross-motion to dismiss the petition is granted.

Dated: May 15, 2012

ENTER:

A handwritten signature in black ink, appearing to be 'J.S.C.', written over a horizontal line.

J.S.C.