

**Matter of Fuller v New York City Hous. Auth.**

2012 NY Slip Op 31717(U)

June 22, 2012

Supreme Court, New York County

Docket Number: 402972/11

Judge: Arlene P. Bluth

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

PRESENT: HON. ARLENE P. BLUTH  
*Justice*

PART 4

Index Number : 402972/2011  
FULLER, SHANOVA  
vs.  
NYC HOUSING AUTHORITY  
SEQUENCE NUMBER : 001  
ARTICLE 78

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for Article 78

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). 1  
Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). 2  
Replying Affidavits \_\_\_\_\_ | No(s). 3

Upon the foregoing papers, it is ordered that this <sup>petition</sup> motion is

**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION/ORDER**

### 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: 6/22/12

[Signature], J.S.C.

- 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 NY  
COUNTY OF NEW YORK: PART 4

Index No.: 402972/11

In the Matter of the Application of  
Shanova Fuller,

*Petitioner,*  
*-against-*

**DECISION, ORDER  
AND JUDGMENT**

New York City Housing Authority,  
*Respondent.*

Present: HON. ARLENE P. BLUTH

Upon the foregoing papers, it is ORDERED and ADJUDGED the petition is denied and the proceeding is dismissed.

Petitioner, who is self-represented, seeks to reverse respondent New York City Housing Authority's (NYCHA's) September 28, 2011 determination of status to terminate her tenancy which upheld the hearing officer's September 12, 2011 decision after a hearing. Respondent NYCHA opposes the petition and contends that it acted reasonably, lawfully and properly in terminating petitioner's tenancy based on criminal drug activity in her apartment, in light of the fact that (1) police recovered, among other things, 39 bags of marijuana and 41 bags of crack cocaine from petitioner's bedroom during the execution of a search warrant, (2) petitioner admitted that she possessed marijuana, and (3) petitioner's subsequently pled guilty to a drug-related misdemeanor and felony.

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Applicable law and procedures regarding criminal activity

Until her tenancy was terminated, petitioner was the tenant of record of an apartment which is part of a NYCHA development. Because NYCHA receives federal funds, it must comply with the federal rules and regulations disseminated through the US Department of

Housing and Urban Development.

These federal regulations are incorporated into the terms and conditions of NYCHA's leases, and specifically petitioner's lease, under the heading "Tenant Obligations". The lease (1) prohibits tenants, members of the tenant's household, guests, or other persons under tenant's control from engaging in "criminal activity that threatens the health, safety or right to peaceful enjoyment of the Development by other residents" or "[a]ny violent or drug-related criminal activity on or off the Leased Premises or the Development", and requires tenants to act in a manner "conducive to maintaining the Development in a decent, safe and sanitary condition" (see exh A to answer, para.12).

Federal regulations empower NYCHA to terminate a tenancy if it determines that a tenant, any member of a tenant's household, a guest or another person under the tenant's control has engaged in criminal behavior, regardless of whether the person was "arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction." 24 CFR §966.4(1)(5)(iii).

#### Charges against petitioner

The police executed a search warrant in petitioner's apartment on March 3, 2010, arrested petitioner and an individual named Shaborn Dickerson, and recovered, among other things, 39 bags of marijuana and 41 bags of crack cocaine from petitioner's bedroom, one marijuana cigarette from the living room, and one round of ammunition for a 9mm firearm from the petitioner's children's bedroom.

Thereafter, NYCHA's housing manager sent her written notice that he was referring the matter to the Tenant Administrator for review and preparation of charges. NYCHA served these

charges on petitioner, and set a hearing date of May 17, 2010; on that date, petitioner defaulted at the hearing. The following month, petitioner's application for a new hearing was granted, and she was told that she would be informed of the new date.<sup>1</sup>

#### The hearing and decision

A hearing was held before hearing officer Ester Tomacic-Ulines on May 17, 2011, June 28, 2011 and August 4, 2011 on the charges of petitioner's non-desirability based on criminal activity in her apartment relating to the March 3, 2010 arrests.

The hearing officer heard testimony and reviewed documentary evidence from NYPD Detective Louis D'Ambrosio that based on the illegal narcotics he recovered from petitioner's apartment on March 3, 2010, which included crack/cocaine and marijuana, he arrested petitioner and Shaborn Dickerson on numerous drug related charges. NYCHA submitted into evidence Dickerson's plea minutes and a certificate of disposition showing that he pled guilty to a class A misdemeanor, criminal possession of a controlled substance in the seventh degree.

NYCHA also presented petitioner's plea minutes from criminal court wherein she pled guilty to criminal possession of a controlled substance in the seventh degree, as well as criminal possession of a controlled substance in the third degree, knowing and unlawful possession of cocaine with the intent to sell it, a class B felony. In her plea, petitioner told the criminal court

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<sup>1</sup>Meanwhile, in November, 2010, while petitioner was awaiting notification of a new hearing date on the charges of non-desirability based on the drugs found in her apartment (and chronic rent delinquency, which was later withdrawn), the police again executed a search warrant in petitioner's apartment and again found drugs. As a result, on November 19, 2010, the police arrested petitioner for possession of crack cocaine.

that she pled guilty of her own free will and the process had been explained to her by her attorney.

Nevertheless, petitioner testified at the hearing before hearing officer Tomacic-Hines that she only owned and used marijuana and that she knew nothing about the cocaine found in her apartment or that cocaine was being sold out of her apartment. The hearing officer heard this testimony but rejected it based on petitioner's admission in her plea allocution: that is, that on March 3, 2010 she knowingly and unlawfully possessed cocaine with the intent to sell. As such, it was not arbitrary or capricious or contrary to law for the hearing officer to sustain charges 1 and 2 alleging non-desirability based on the results of the execution of a search warrant in the subject apartment on March 3, 2010.

Nor was it arbitrary or capricious or contrary to law for the hearing officer to sustain charges 3-5 alleging non-desirability based on Shaborn Dickerson's possession and sale of a controlled substance in the petitioner's apartment. NYPD Detective Michael Demeglio testified as to drug sales Dickerson made to undercover police officers from petitioner's apartment, and Dickerson's subsequent plea to an A misdemeanor, criminal possession of a controlled substance in the seventh degree, based on those sales.

Petitioner has not demonstrated that the hearing officer's decision to sustain charge 8, alleging breach of the rules and regulations pertaining to illegal activity in the subject apartment, was arbitrary or capricious or contrary to law based on the record presented.<sup>7</sup>

Finally, the hearing officer heard petitioner's testimony that she was trying to improve herself with a drug treatment program, parenting classes and the possibility that she might try to

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<sup>7</sup> NYCHA withdrew charge 6 relating to chronic nonpayment of rent and the hearing officer did not sustain charge 7 alleging the unauthorized occupancy of Dickerson.

have her conviction reduced or dismissed in the future. In light of petitioner's guilty plea, there was nothing arbitrary or capricious or contrary to law about the hearing officer's refusal to impose a milder sanction.

#### Standard of review

Petitioner's position in this proceeding is that the termination of her tenancy should be reversed because she has been living in the apartment "for five years with no past history", was at work for 12 hours a day and did not know that he [Dickerson] was "doing that in my home", that she deserves a second chance and that she is attempting to do positive things (pet., para. 3). Each of these self-serving claims echoes testimony heard and rejected by the hearing officer; it is not grounds for reversing that administrative decision or for this Court to impose a milder sanction.

In reviewing an administrative agency's determination as to whether it is arbitrary and capricious under CPLR Article 78, the test is whether the determination "is without sound basis in reason and... without regard to the facts" (*Matter of Pell v Board of Education*, 34 NY2d 222, 231 [1974]). Moreover, the determination of an administrative agency, "acting pursuant to its authority and within the orbit of its expertise, is entitled to deference, and even if different conclusions could be reached as a result of conflicting evidence, a court may not substitute its judgment for that of the agency when the agency's determination is supported by the record" (*Matter of Partnership 92 LP & Bldg. Mgt. Co., Inc. v State of New York Div. of Hous. & Community Renewal*, 46 AD3d 425, 429 [1st Dept 2007], *aff'd* 11 NY3d 859 [2008]).

The Appellate Division, First Department routinely has upheld determinations to terminate tenancies for illegal drug activity when the charges are supported by substantial evidence. *See*

*Rodriguez v New York City Hous. Auth.*, 84 AD3d 630 (1st Dept 2011). Based on its review of the record, the Court finds that a rational basis exists for NYCHA's decision to terminate petitioner's tenancy, and thus that decision cannot be disturbed by this Court. Here, at a minimum, the illegal drug activity in the apartment was admitted by petitioner's plea. As such, contrary to being arbitrary and capricious, NYCHA's decision to terminate petitioner's tenancy is in keeping with its statutory obligation to adhere to its procedures for the safety and well-being of all public housing tenants.

Accordingly, it is ORDERED and ADJUDGED that this Article 78 petition is denied and the proceeding is dismissed. Any stays are hereby vacated.

This is the Decision, Order and Judgment of the Court.

Dated: June 22, 2012  
New York, New York



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HON. ARLENE P. BLUTH, JSC

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