

Matter of Voker v New York City Hous. Auth.
2012 NY Slip Op 31764(U)
June 29, 2012
Supreme Court, New York County
Docket Number: 401357/11
Judge: Judith J. Gische
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. JUDITH J. GISCHE
Justice

PART 10

Voker

Plaintiff (s),

INDEX NO.

401357/11

MOTION DATE

MOTION SEQ. NO.

001

- v -

MCHA

Defendant(s).

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

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, It is ordered that this motion

motion (s) and cross-motion(s)
decided in accordance with
the annexed decision/order
of even date.

FILED

JUL 05 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 6/28/12

[Signature]
HON. JUDITH J. GISCHE, J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE ☐ SETTLE/SUBMIT ORDER

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 10**

----- x
In the Matter of the Application of

MOSES VOKER,

Petitioner,

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

----- x

Recitation, as required by CPLR 2219 [a], of the papers considered in review of this (these)
motion(s):

Papers	Numbered
Pet's petition [art. 78] w/ MV verified petition w/exhs.....	1
Resp answer w/ NMH affirm, w/exhs.....	2

Upon the foregoing papers, the decision and order of the court is as follows:

GISCHE, J.:

Petitioner, Moses Voker (hereafter "Voker"), is a tenant of respondent landlord, New York City Housing Authority (hereafter "NYCHA"). The petitioner has brought this Article 78 summary proceeding challenging a hearing officer's decision to terminate his tenancy. The Hearing Officer determined that Voker was ineligible to continue living at his residence as a result of his "chronic delinquency in the payment of rent" pursuant to NYCHA's guidelines, which enumerate the grounds on which it may terminate a lease. Voker has now brought this Article 78 summary proceeding to challenge this decision.

For the reasons set forth below, the petition is denied.

Decision/Order

Index No.: 401357/11

Seq. No.: 001

FILED

JUL 05 2012

Present:

Hon. Judith J. Gische NEW YORK
J.S.C. COUNTY CLERK'S OFFICE

FACTS

The facts and events surrounding this case are largely undisputed. Voker has been living at his residence in public housing for over thirty years. In July of 2008, Voker entered into a new lease agreement with NYCHA at a rate of \$759 per month. During the first two years of his tenancy, Voker had an extensive history of failing to pay rent both on time and in full. As a result of his chronic rent delinquency, NYCHA sent Voker a letter in early June of 2010. The letter informed him that NYCHA was considering termination of his lease and requested that he meet with the Housing Manager to discuss his rent problems. Voker did not respond to the letter. Approximately one week later, NYCHA sent Voker a second letter, again offering him an opportunity to discuss the matter with the Housing Manager. Again, Voker did not respond. In late July of 2010, NYCHA sent Voker a letter indicating that it was moving to terminate his lease due to his chronic rent delinquency and that prior to making its final decision, he would be offered an opportunity to appear with counsel at a hearing. After multiple adjournments, as a result of Voker's requests for more time to secure counsel, Voker appeared at his hearing in February of 2011 and stated that he would represent himself.

At the hearing, NYCHA proffered evidence detailing the past deficiencies in Voker's rent. Specifically, NYCHA's ledger showed that Voker had failed to pay his rent on time from August of 2009 through December of 2009 and that he had not paid any rent from January of 2010 through September of 2010. The ledger also indicated that as a result of Voker's failure to pay rent during the latter time period, as well as, during other periods throughout his tenancy, he was in arrears of approximately \$7,800 in back-rent. In addition, NYCHA submitted to the Hearing Officer a rent notice that it had provided to Voker in May of 2010. The rent notice informed Voker that his rent was being lowered in order to reflect the decrease in his annual income after losing and then changing his job in August of 2009. NYCHA also

provided the Hearing Officer with Voker's most recent affidavit of income from March of 2010, which showed he was currently earning approximately \$24,100 per year.

In response, Voker admitted to the charges of chronic rent delinquency proffered against him. Voker argued that the loss of his job and subsequent change in employment interfered with his ability to pay rent. He also stated that a number of other "issues" had arisen which prevented him from paying his rent, but did not provide any evidence to substantiate those assertions.. Finally, Voker informed the Hearing Officer that he recently applied for a "one-shot deal" with the New York City Department of Human Services in order to catch-up on his rent and that he would receive an answer on the status of his application within the next two weeks.

The Hearing Officer sustained NYCHA's charges of chronic rent delinquency against Voker. In her findings, she noted that Voker's income had not changed within the last year and that "he just didn't have the money to pay rent." NYCHA adopted the Hearing Officer's decision and provided Voker with a notice to vacate which ordered him to leave the premises by April 30th, 2011.

In his Article 78 petition, Voker now claims that all arrears have been paid in full and that he is current on his rent. He also submitted documentation indicating that the New York City Department of Social Services approved his request for the "one shot deal" shortly after the hearing in the amount of \$6,598.00. Additionally, Voker also raises claims about a cardiovascular issue and a car accident that inhibited his ability to pay rent promptly and fully.

DISCUSSION

The standard for evaluating NYCHA's determination to terminate Voker's lease is whether that decision was made "in violation of lawful procedure, was affected by an error of

law or was arbitrary and capricious." CPLR § 7803[3]. A determination is arbitrary and capricious if it is made with unsound reason and without regard to the facts of the case. Thus, the question before the Court is whether, in light of the facts, NYCHA had a rational basis for reaching its decision. Pell v. Board of Education of Union Free School District No. 1 of Towns of Scarsdale and Mamaroneck, 34 N.Y.2d 222 (1974). Where, as here, NYCHA terminates a lease as a result of a tenant's default, the only determination subject to review is whether to vacate NYCHA's decision. Yarbough v. Franco, 95 N.Y.2d 342 (2000). Nevertheless, NYCHA's decision will not be vacated unless it is "so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness." Pell v. Board of Ed. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County, 34 N.Y.2d 222 (1974). Moreover, the Court's review is limited only to those claims and issues petitioner raised at the hearing. Featherstone v. Franco, 95 N.Y.2d 550 (2000). Petitioner may not supplement the record with information that he did not present to the hearing officer.

Applying the legal standard to the present set of facts, the Hearing Officer's decision to sustain the charges of chronic rent delinquency against Voker was not arbitrary and capricious. Despite Voker's claims in his petition that all arrears have been paid and that he is current on his rent, NYCHA's rent ledger shows that he is still behind on rent and owes approximately \$600 to NYCHA. Even if Voker had paid off all arrears and was current on his rent, the Hearing Officer's decision would still not be arbitrary and capricious since the decision was based upon Voker's history of failing to pay rent on time and in full during his tenancy and before many of the recent payments were made by Voker and DSS on his behalf. This is a sufficient basis to support NYCHA's decision.

Voker's contention, that his loss of and subsequent change in employment was a

singular situation that adversely affected his ability to pay rent, was properly rejected by the Hearing Officer. Voker lost his job in August of 2009, but was able to secure new employment the same month, earning only slightly less and has since remained employed. After receiving his March 2010 affidavit of income, NYCHA adjusted Voker's rent in order to reflect the decrease in his annual income. However, when the Hearing Officer asked whether anything happened after March of 2010 that hampered his ability to pay rent, Voker admitted that "nothing really happened" and that he just didn't have the money to pay rent. Thus, the Hearing Officer's decision was neither arbitrary nor capricious since Voker's change of employment in August of 2009 did not really bear upon his failure to pay rent timely and in full.

Lastly, in his petition, Voker for the first time contends that a medical issue as well as an automobile accident thwarted his ability to keep up with the rent. However, since he did not raise these issues before the Hearing Officer, this Court cannot address them in this preceeding. Featherstone, 95 N.Y.2d at 550.

CONCLUSION

Accordingly, the Hearing Officer's decision to terminate the petitioner's tenancy was neither arbitrary nor capricious since there was a rational basis for concluding that the petitioner is no longer a suitable tenant.

In accordance herewith, it is hereby ORDERED, DECREED and ADJUDGED that the petition is hereby dismissed with prejudice.

This constitutes the decision, order and judgment of the court.

Dated: New York, NY
June 29, 2012

So Ordered

HON. JUDITH J. GISCHE J.S.C.

FILED

JUL 05 2012