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| Matter of Coyle v Rhea |
| 2012 NY Slip Op 32176(U) |
| August 13, 2012 |
| Supreme Court, New York County |
| Docket Number: 106555/2011 |
| Judge: Alice Schlesinger |
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: ALICE SCHLESINGER
--Justice

PART 1A PART 16

Index Number : 106555/2011
COYLE, LORRAINE
vs.
RHEA, JOHN B.
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 _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this ~~motion is~~ Article 78 petition is granted in accordance with the accompanying memorandum decision.

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

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).

Dated: AUG 13 2012

Alice Schlesinger, J.S.C.
ALICE SCHLESINGER

- 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

-----X
In the Matter of the Application of
LORRAINE COYLE, as Receiver,

Petitioner,

Index No. 106555/2011
Motion Seq. No. 001

For an Order Pursuant to Article 78 of the Civil
Practice Law and Rules

-against-

JOHN RHEA, as Chairman of the
New York City Housing Authority, and the
NEW YORK CITY HOUSING AUTHORITY,

Respondents.

-----X
SCHLESINGER, J.:

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).

Petitioner Lorraine Coyle commenced this Article 78 proceeding against respondents John Rhea, as chairman of the New York City Housing Authority (NYCHA), and NYCHA seeking to recover \$244,171.20 in unpaid rent subsidies for thirty apartments located at 876, 878, 880, and 882 Bryant Avenue and 1321 and 1327 Seneca Avenue in the Bronx. Coyle asserts that NYCHA wrongfully suspended the subsidy payments for several months without sending her notice, even though she had informed NYCHA of her status as the court-appointed Receiver for the properties. After the proceeding was commenced, NYCHA in its Answer indicated that it had paid \$187,924.03 of the monies at issue and was processing an additional payment of \$15,103.32 for a total of \$203,027.35. However, NYCHA claims that the remaining payment of \$41,143.85 was properly withheld due to housing quality standard (HQS) violations in five of the apartments. Coyle asserts that NYCHA has no right to withhold those payments because it never notified her of the violations and an opportunity to

correct them, but instead improperly sent the notifications to the property owner 876-882 Bryant LLC, which was no longer in control of the premises.

Background Facts

On December 1, 2009 , Lorraine Coyle was appointed Receiver to the premises owned by 876-882 Bryant, LLC, pursuant to an order by Judge Edgar G. Walker in a foreclosure action captioned *LSREF NOVA v 876-882 Bryant, LLC et al.*, index number 308975/09 (Petition, Exh 1). The buildings housed 30 tenants who were receiving rent subsidies pursuant to 42 U.S.C. §1437f, commonly known as Section 8. Section 8 is a tenant-based housing assistance program that provides rent subsidies to low-income families through funding from the United States Department of Housing and Urban Development. NYCHA is one of several agencies charged with administering the Section 8 housing program in New York City, which entails distributing federal funds to participating owners on behalf of eligible tenants, assuming both parties comply with the requirements of law.

To participate in Section 8 the tenant and the owner must enter into a Housing Assistance Payments contract, which sets out the specific obligations an owner must fulfill to receive the rent subsidies. For example, an owner must maintain the property in accordance with housing quality standards (HQS). See 24 C.F.R. §824.404 (a)(1). HQS are basic habitability requirements such as heat and hot water, an adequate electrical supply, and a safe and sanitary premises. 24 C.F.R §982.401(a)(2)(ii). If an owner does not maintain these standards, NYCHA may exercise any available remedy, including suspension of the rent subsidy payments for the affected apartment, until the owner corrects the defects. See 24 C.F.R. §824.404 (a)(2).

Soon after being appointed the Receiver for the subject buildings, Coyle retained a realty management firm named Commercial Realty Resolution, LLC, to manage the six buildings. Then, by letter dated January 14, 2010 written on her attorney stationery, Coyle notified NYCHA that she was the court-appointed Receiver for the buildings, and she requested that all Section 8 monthly rent subsidy checks be made payable to her and sent to her agent (Exh 3):

As per your request, I am enclosing a copy of the Court Order appointing me, Lorraine Coyle, Esq., as the receiver for 876-882 Bryant Avenue ... Further, it is my understanding that upon receipt of this letter you will direct that all monthly rent checks for those tenants who are currently receiving Section-8 subsidy may be made payable to Lorraine Coyle, Receiver for Bryant Avenue and sent directly to Commercial Realty Resolution, LLC.¹

NYCHA does not dispute receipt of this notice. Nevertheless, over the next ten months, NYCHA continued to send the rent subsidy checks to the owner 876-882 Bryant, LLC, rather than to Coyle or her agent Commercial Realty Resolution.

It appears that the owner forwarded the subsidy checks it received from NYCHA to Coyle. However, in November 2010, the amount received and forwarded was significantly reduced, and no payments at all were sent for the next seven months, from December 2010 through June 2011. It is undisputed that NYCHA failed to send any notice to Coyle or her agent about the suspension in payments.

¹ The wording of the letter, directed to Ms. Rodriguez at NYCHA, suggests that Ms. Coyle was writing to confirm a prior conversation with NYCHA during which she first gave NYCHA notice of her appointment.

In early January 2011 Michael Gallagher, an employee at the Receiver's managing agent company Commercial Realty Resolution, spoke with a NYCHA representative to inquire why NYCHA was no longer sending the Section 8 subsidy payments. NYCHA allegedly informed Mr. Gallagher that payments had been stopped due to a question of ownership. In response, Gallagher delivered to NYCHA a set of documents nearly identical to those that Coyle had sent the year before. According to Coyle, Gallagher contacted NYCHA again on February 15th, March 29th, April 11th, April 17th, April 25th, and April 28th, 2011 with little success (Exh 5 and 7). In addition, at the January 2011 meeting, Gallagher requested and obtained a complete list of all the HQS violations, and then promptly corrected them and gave NYCHA notice. Although on April 1, 2011 NYCHA sent a check for \$2180.00 — again to the owner instead of Coyle — no explanation was provided as to why the subsidy payments for the other 28 apartments were not being paid. This Article 78 proceeding ensued.

Discussion

As indicated earlier, in response to the commencement of this proceeding, NYCHA paid a substantial portion of the rent subsidies at issue. It insists that the Receiver is not entitled to the remaining \$41,143.85 due to an alleged failure to timely repair HQS violations. It has attached to its Answer various notices regarding the alleged violations in different apartments, most of which were issued in the months of April through July of 2010 and one of which is dated January 2011 (Exh C, E, G, I, and J). As those notices indicate, when an HQS violation is issued, the owner is given 20 days to notify NYCHA that the necessary repairs have been completed. The failure to do so will result in the suspension of the rent subsidies for the affected apartment.

[* 6]

A review of the notices confirms, and NYCHA does not in any way dispute, that all the notices were sent to the building owner. Even though NYCHA undeniably had received written notice on multiple occasions that the Receiver had been appointed to collect rent, NYCHA continued to send the notices to the wrong address. Even after the managing agent personally visited NYCHA's offices in January 2011, NYCHA continued to improperly send notice to the owner instead of the Receiver. (Answer, Exh I).

Since all the subsidies had been reinstated as of March 2012 when NYCHA filed its Answer, it appears that NYCHA is satisfied that all the HQS violations have been corrected. A dispute remains only as to certain periods of time when repairs were outstanding because the notices were being sent to the owner and not to the Receiver or her agent.

The Receiver cannot be penalized for failing to timely complete the necessary repairs when she was not directly notified of the violations that needed correction. Even if the owner had forwarded the notices — a point which is not at all clear² — the Receiver would not have had the time to which she was entitled to complete the work necessary to avoid suspension of the payments. Adequate notice is a prerequisite to the suspension of Section 8 rent payments, and NYCHA does not and cannot dispute here that it repeatedly failed to give notice to the Receiver, even though the agency knew full well that it was obligated to do so.

Accordingly, it is hereby

² Although the Receiver acknowledges that the owner forwarded the rent payments as required by the Order of Appointment, she does not acknowledge receipt of the HQS notices that NYCHA sent to the owner.

ORDERED AND ADJUDGED that the Article 78 petition is granted and respondent is directed to pay directly to the petitioner Receiver Lorraine Coyle at the proper address the \$41,143.85 in Section 8 rent subsidy payments that have been improperly withheld.

Dated: August 13, 2012

AUG 13 2012



J.S.C.

ALICE SCHLESINGER