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| <b>Matter of Jones v New York City Hous. Auth.</b>                                                                                                                                                                               |
| 2012 NY Slip Op 32331(U)                                                                                                                                                                                                         |
| September 6, 2012                                                                                                                                                                                                                |
| Supreme Court, New York County                                                                                                                                                                                                   |
| Docket Number: 402751/11                                                                                                                                                                                                         |
| Judge: Joan B. Lobis                                                                                                                                                                                                             |
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY: IAS PART 6**

-----X  
In the Matter of the Application of  
SKEETER JONES,

Petitioner,

Index No. 402751/11

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

**Decision, Order, and Judgment**

-against-

NEW YORK CITY HOUSING AUTHORITY  
and JOHN B. RHEA, as Chairperson and Member  
of the New York City Housing Authority, and  
LAYLA ASSOCIATES, LLC (Respondent Landlord),

Respondents.

-----X  
**JOAN B. LOBIS, J.S.C.:**

Petitioner Skeeter Jones brings this special proceeding under Article 78 of the CPLR seeking an order annulling the determination of respondent New York City Housing Authority (“NYCHA”) to terminate petitioner’s Section 8 subsidy on the grounds that petitioner was terminated in violation of lawful process and deprived of her right to a hearing to establish that she had not violated the terms of her subsidy. Petitioner seeks to stay Layla Associates, LLC (“Layla”), from evicting her from apartment 6E at 2641 Marion Avenue, Bronx, New York (the “Apartment”). Layla is the owner of the Apartment.

Prior to answering, NYCHA cross-moved to dismiss the petition on the basis that it has offered to restore petitioner to the Section 8 program, or, in the alternative, to provide petitioner with a transfer voucher. Petitioner opposed the cross motion on the grounds that the relief offered did not provide the relief that she is entitled to because it did not annul NYCHA’s underlying termination of her

subsidy, prevent Layla from evicting her, or remove what she characterized as the extreme prejudice that she had suffered. In an interim decision and order entered on March 20, 2012, the court denied NYCHA's cross motion and gave NYCHA time to answer the petition. Layla has not appeared. In its verified answer, NYCHA denies the substantive allegations in the verified petition and asserts that the petition is time barred; that petitioner lacks standing to appeal the termination of the Housing Assistance Payments ("HAP") contract; that petitioner is not entitled to a writ of mandamus compelling NYCHA to make subsidy payments without a valid HAP contract; that NYCHA's actions were rational and not arbitrary and capricious; and that NYCHA's interpretation of its statutes and rules is entitled to deference.

Petitioner has resided at the Apartment for thirty-two (32) years. When her mother moved out in 1990, she became the tenant of record and began receiving her own Section 8 subsidy. She recertified annually and complied with all applicable Section 8 rules and regulations. On September 23, 2010, petitioner resubmitted her recertification package after learning that her subsidy had been terminated during a non-payment proceeding brought by Layla, notwithstanding the fact that she was current in paying her portion of the rent. The non-payment proceeding was discontinued. On or about June 6, 2011, Layla commenced a holdover proceeding against petitioner, alleging a violation of her tenancy as a consequence of not paying the full rent. That proceeding is currently stayed as a result of an order of this court.

NYCHA maintains that petitioner's termination on November 30, 2010, was proper because she failed to recertify. The only notice of termination that petitioner received was a letter dated

March 21, 2011, which stated that petitioner had been terminated from the NYCHA Section 8 program on “November 30, 2011.” The date of termination of November 30, 2011, as set forth in NYCHA’s letter, must have been an error given that the letter is dated March 21, 2011. The letter goes on to inform petitioner that NYCHA would not restore her to the Section 8 program and that her request for a full hearing would be forwarded to the law department. Subsequently, by letter dated September 1, 2011, petitioner was informed that her request to be reinstated would be considered upon compliance with three terms: (1) she was required to submit an income affidavit and supporting documents; (2) the Apartment had to pass inspection for eligibility for Section 8; and (3) the landlord had to sign a HAP contract. By mid-November 2011, petitioner had provided the recertification documents and the Apartment had passed inspection. The delay in fully restoring petitioner to the Section 8 program was Layla’s failure to sign the HAP contract. According to a letter from Layla’s management, there is a dispute about a balance of \$11,359.90, representing the rent that was due during the period following petitioner’s termination, an increase of \$6.18 retroactive to September 2006, and payments for a period in 2007 during which the Apartment underwent repairs. NYCHA had agreed to restore petitioner to the program or provide her with a transfer voucher for new housing, neither of which has been accepted by petitioner.

In a petition under C.P.L.R. § 7803(3), the only questions that the court may determine are whether the determination violated lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion. NYCHA has failed to offer any documentation that petitioner’s termination was proper, with a written notice and the right to a hearing, as set out in the rules and regulations governing the Section 8 program and the procedures which were established in Williams v.

New York City Hous. Auth., 81 Civ. 1801 (R.J.W.) (S.D.N.Y.1984). See In re Fair v. Finkel, 284 A.D.2d 126 (1st Dep't 2001). Therefore, the termination must be annulled. NYCHA's statute of limitations defense is unavailing. The termination was not effective without NYCHA complying with the procedural requirements established under Williams. The argument that the statute of limitations runs from the time that petitioner learned of NYCHA's actions in landlord-tenant court is not enough to trigger the statute of limitations because petitioner could not have been terminated. The termination is final and binding only after a Notice of Default is mailed. Fair, 284 A.D.2d at 128. The file is devoid of any proof that the termination was final as to petitioner.

As to the other defense asserted, NYCHA is correct in that this court cannot require the agency to enter into a HAP contract with a private, non-consenting landlord. Therefore, the problem here is what remedy petitioner is entitled to in the absence of the cooperation of the landlord. As NYCHA previously offered, if NYCHA and Layla cannot agree on reinstating a HAP contract, Ms. Jones must be offered a transfer voucher allowing her to relocate. Accordingly, it is hereby

ORDERED and ADJUDGED that the petition is granted and the New York City Housing Authority is directed to annul the determination that terminated Skeeter Jones' Section 8 subsidy, and either prevent her from being evicted by reinstating her subsidy retroactively or provide her with an adequate transfer voucher to forestall rendering her and her family homeless.

Dated: September 6, 2012

ENTER:

  
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JOAN B. LOBIS, J.S.C.