

Samuels v New York City Hous. Auth.

2012 NY Slip Op 32507(U)

September 28, 2012

Sup Ct, New York County

Docket Number: 400623/12

Judge: Arlene P. Bluth

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

PRESENT: BLUTH
Justice

PART 4

SAMUELS, KATHERINE

INDEX NO. 400623/12

MOTION DATE _____

- v -
N.Y.C. HOUSING AUTHORITY

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

The following papers, numbered 1 to 3 were read on this motion to/for Article

petition
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
X motion to dismiss
Answering Affidavits — Exhibits
Replying Affidavits

PAPERS NUMBERED	
1	_____
2	_____
3	_____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ^{cross} motion to dismiss the petition as time-barred is granted; proceeding is dismissed.

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: 9/26/12 _____
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE
 SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

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

SUPREME COURT OF THE STATE OF NY
COUNTY OF NEW YORK: PART 4

Index No.: 400623/12

In the Matter of the Application of
Katherine Samuels,

DECISION, ORDER
AND JUDGMENT

Petitioner,

Present: HON. ARLENE P. BLUTH

-against-

New York City Housing Authority,

UNFILED JUDGMENT

Respondent.

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, who is self-represented, commenced this Article 78 proceeding to reverse respondent New York City Housing Authority's ("NYCHA") determination dated July 19, 2011 which dismissed her remaining family member grievance. NYCHA cross-moves to dismiss the proceeding on several grounds, including that it is time-barred. For the reasons set forth below, NYCHA's cross-motion is granted, the petition is denied and the proceeding is dismissed.

On July 19, 2011, after meeting with petitioner, NYCHA's Borough Manager dismissed petitioner's remaining family member grievance (exh L to cross-motion). That determination, the one-page District Summary Grievance, stated that petitioner's mother, Ermine Samuels, was the tenant of record of the subject apartment (apartment 12A at 2931 Eighth Avenue in Manhattan) until her death on March 19, 2011. It further stated that NYCHA's file showed that management never granted permission for petitioner to join the household, and as such, she was an unauthorized occupant of the apartment, and not entitled to succeed to her mother's public housing lease. Finally, the determination noted that petitioner was not current with the payment of use and occupancy.

Significantly, NYCHA's Borough Manager checked the box on the District Summary Grievance that the grievance was dismissed on the grounds that petitioner failed to make any showing to substantiate her claim. Because the grievance was dismissed, the form instructed the Manager to "cross out note to grievant in the box below". That note informed a grievant that he/she could request a hearing. However, under the circumstances presented here, that language was crossed out. Petitioner had no further right of appeal to a hearing officer, and there was nothing in the District Grievance Summary that told petitioner she had such right; accordingly, the July 19, 2011 determination is NYCHA's final determination.

The four month statute of limitations governing Article 78 proceedings which challenge an administrative determination begins to run on the date the determination becomes "final and binding" upon the petitioner, which is the date petitioner receives notice of the decision. *See* CPLR §217(1); *Matter of Metropolitan Museum Historic District Coalition v De Montebello*, 20AD3d 28, 796 NYS2d 64 (1st Dept 2005).

In support of its cross-motion, NYCHA submits the affidavit of Eneida Reveron, NYCHA's Borough Manager who prepared the District Summary Grievance and oversaw its mailing. Ms. Reveron states that in accordance with her office's regular business practice, one copy of the District Summary Grievance was sent by regular mail to "Ermine Samuels (Deceased) (TOR) and Katherine Samuels (RFM)" to the subject apartment and the other by certified mailing #7009 2250 0001 4624 1517 (exh 2) to petitioner at the subject apartment. Annexed as exhibit 3 to Ms. Reveron's affidavit is the USPS.com Track and Confirm printout for this item which shows the envelope containing the District Summary Grievance was delivered to petitioner on

August 22, 2011.

Accordingly, NYCHA has established its mailing of the District Summary Grievance, and that petitioner received it; and petitioner has not denied that she received it. Therefore, the four month statute of limitations to commence an Article 78 proceeding challenging this determination expired four months after August 22, 2011, which would be on December 22, 2011. Petitioner did not commence this Article 78 proceeding until March 19, 2012, when she filed her petition, approximately three (3) months after the statute of limitations expired.

In her reply, petitioner alleges that an unnamed NYCHA employee “blocked” her from timely commencing this Article 78 proceeding. These claims are vague and lack detail, as petitioner does not say who allegedly blocked her or how she was allegedly blocked from timely commencing this proceeding to challenge NYCHA’s final decision. To the extent that petitioner alleges that a NYCHA employee “blocked” her by giving her misinformation and she relied upon such statements, that it is not a basis for reversing NYCHA’s determination, as an agency cannot be estopped from invoking its regulations; *see Taylor v New York State Dept. of Hous. & Comm. Renewal*, 73 AD3d 634 (1st Dept 2010).

Petitioner also claims, without providing details, that she sought additional time to bring this Article 78 proceeding, and as proof she annexes a doctor’s unsworn letter which states petitioner has severe back pain. That letter does not request additional time for anything and does not state that it was medically impossible for petitioner to come to the courthouse at any time within the four month statute of limitations period to commence this proceeding. Besides, CPLR

§217(1) provides that the Article 78 proceeding must be commenced within the four months discussed above.

Based on the foregoing, the Court need not address the other ground for dismissal cited in NYCHA's motion papers, that the petition fails to state a cause of action.

Accordingly, because petitioner commenced this proceeding to challenge NYCHA's District Summary Grievance after the four month statute of limitations had expired, it is

ORDERED and ADJUDGED that the cross-motion to dismiss the petition is granted and the proceeding is dismissed. All stays are vacated.

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

Dated: September 28, 2012
New York, New York



HON. ARLENE P. BLUTH, JSC

UNFILED JUDGMENT

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