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

PRESENT: Lobis Justice PART 6

Annette Murph

-v-

John B. Rhea

INDEX NO. 400967/12

MOTION DATE 7-24-12

MOTION SEQ. NO. ____

MOTION CAL. NO. ____

The following papers, numbered 1 to 38 were read on this motion to/for annul determination.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1-5
Answering Affidavits — Exhibits	16-19; x-mot 20-26
Replying Affidavits	27-30; 31-33
	x-mot reply 34-38

Cross-Motion: ☑ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

THIS MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DEC

Dated: 9/28/12

JOAN B. LOBIS 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 NEW YORK
NEW YORK COUNTY: IAS PART 6

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In the Matter of the Application of
ANNETTE MURPH

Petitioner,

Index No. 400967/12

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

Decision and Order

-against-

JOHN B. RHEA, as Chairman of THE NEW YORK CITY HOUSING AUTHORITY, THE NEW YORK CITY HOUSING AUTHORITY ("NYCHA"), and BEACH 84TH STREET I LLC,

Respondents.

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JOAN B. LOBIS, J.S.C.:

Petitioner Annette Murph brings this special proceeding under Article 78 of the C.P.L.R. seeking an order annulling the determination of respondents to terminate her Section 8 subsidy in January 2011 and retroactively reinstating her to the Section 8 program. Respondents John B. Rhea, as Chairman of the New York City Housing Authority, and the New York City Housing Authority ("NYCHA") cross-move to dismiss the petition on the grounds that it is untimely as having been brought more than four months from the date petitioner knew or should have known that NYCHA terminated her participation in the Section 8 program.

This case is yet another instance where, in its cross motion to dismiss, NYCHA relies solely on petitioner's landlord as a means of notice to petitioner that she had been terminated from the Section 8 program. Apparently, NYCHA decided to terminate petitioner's participation in the Section 8 program in January 2011, after petitioner allegedly failed to submit her annual income

certification. The only termination notice that NYCHA annexes to its papers is a letter to petitioner's landlord, co-respondent Beach 84th Street I LLC ("Beach"), which states that, effective February 1, 2011, NYCHA was terminating petitioner's rent subsidy and that the tenant (petitioner) had been advised of this decision. NYCHA fails to annex any notices that were mailed directly to petitioner. Petitioner concedes that in May 2011, she learned she had been terminated from the Section 8 program due to a telephone call from Beach during which Beach informed petitioner that NYCHA had stopped making her Section 8 payments. She denies having received any written notices directly from NYCHA. In August 2011, Beach commenced a nonpayment proceeding against petitioner in Queens County Housing Court, which appears to have been dismissed in September 2011 and revived in December 2011. Meanwhile, petitioner contends that in January 2012, she submitted a new annual recertification package to the Bronx NYCHA leasing office, though NYCHA has failed to process the package. Petitioner did not commence this petition until April 27, 2012.

NYCHA argues that the petition should be dismissed, pursuant to C.P.L.R. § 217(1), Rule 3211(a)(5), and § 7804(f), on the grounds that it is time barred, because petitioner failed to commence the proceeding within four months of May 2011, when she learned she was terminated by the telephone call from her landlord. Primarily citing to a Second Department case from 1983, Bigar v. Heller, 96 A.D.2d 567, NYCHA insists that the statute of limitations began to run when petitioner knew or should have known that she was terminated, i.e., in May 2011. Thus, NYCHA argues, the latest time petitioner could have brought this petition was September 2011, and as this petition was not brought until April 2012, the court should dismiss it as untimely. Again, in its cross

motion to dismiss the petition, NYCHA makes no attempt to show the court that it did, indeed, send petitioner any notice of her pending termination before she was terminated.

The case of Bigar v. Heller did not pertain to notice of termination requirements of Section 8 tenancies; rather, it pertained to notice to a municipality when a tidal wetlands permit was issued by the New York Sate Department of Environmental Conservation. Bigar, 96 A.D.2d at 567. The Second Department's holding, in the context of this tidal wetlands permit case from 1983, was that, "[i]n a situation in which a party would be expected to receive notice of the determination of a public agency pursuant to statutory requirements, but has not, the applicable Statute of Limitations begins to run when he knows or should know that he has been aggrieved by a determination." Id. at 568 (internal quotation marks omitted, citations omitted). Compare the holding in Bigar to the well-known, authoritative First Partial Consent Judgment from the case of Williams v. New York City Hous. Auth., 81 Civ. 1801 (R.J.W.) (S.D.N.Y.1984) ("Williams Consent Judgment"), which specifically pertains to the Section 8 program. The Williams Consent Judgment sets forth that termination of a tenant's subsidy or eligibility as a participant in the Section 8 program shall be made only after a determination in accordance with the Williams Consent Judgment, which requires, in pertinent part: (1) a warning letter sent to the participant by regular mail, specifically stating the basis for the proposed adverse action and, where appropriate, seeking the participant's compliance; (2) after the first warning letter, a notice sent to the participant by certified mail and regular mail, containing information about the proposed adverse action, NYCHA's grounds for termination, requesting a hearing, an optional pre-hearing conference, and responding to the notice; (3) and a

notice of default if the participant fails to respond to the aforementioned notice, containing the procedures for vacating the default.

It is clear that there is a distinction between simple notice of a final determination, as in Bigar, and a final determination of termination from the Section 8 program that cannot be made without compliance with the notice requirements contained in the Williams Consent Judgment. In cases of termination from the Section 8 program, it is not just a matter of the tenant expecting notice of a final determination of termination; rather, the tenant is not terminated from the Section 8 program unless NYCHA sends the required notices. See In re Fair v. Finkel, 284 A.D.2d 126 (1st Dep't 2001). Without proof that the required notices were sent in accordance with the Williams Consent Judgment, there is no proof of a final determination from which the statute of limitations could be calculated. The court does not accept NYCHA's proposition that a landlord's telephone call to a Section 8 participant, informing the participant that NYCHA had stopped paying the subsidy, could ever serve as the tenant's actual or constructive notice of his or her termination from the Section 8 program, because the landlord's telephone call contains none of the required protections or levels of notice mandated in the Williams Consent Judgment for a termination to occur. Having presented no proof in its cross motion that the required notices were sent to petitioner, and thus not having shown that a final determination of termination ever occurred, NYCHA's cross motion to dismiss the petition on the grounds that the statute of limitations expired is denied. Accordingly, it is hereby

ORDERED that the cross motion to dismiss the petition is denied; and it is further

ORDERED that respondent NYCHA is directed to serve an answer to the petition within twenty (20) days after service of a copy of this order with notice of entry; and it is further

ORDERED that the parties shall appear for a settlement conference on October 9, 2012, at 9:30 a.m.

Dated: Sept. 28, 2012

ENTER:

JOAN B. LOBIS, J.S.C.