

Matter of King v New York City Hous. Auth.
2012 NY Slip Op 32850(U)
October 25, 2012
Sup Ct, New York County
Docket Number: 401201/12
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH
Justice

PART 4

Index Number : 401201/2012
KING, SADE C.
vs.
NYC HOUSING AUTHORITY
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO: _____
MOTION DATE: _____
MOTION SEQ NO: _____

The following papers, numbered 1 to 2, were read on this motion to/for Article 78
cross motion for dismissal
 Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s) 1
 Answering Affidavits — Exhibits _____ | No(s) 2
 Repeating Affidavits _____ | No(s) _____

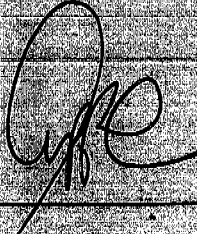
Upon the foregoing papers, it is ordered that this ^{cross} motion is granted and
this proceeding is dismissed

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).

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

Dated: 10/25/12



J.S.C.

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 NY
COUNTY OF NEW YORK: PART 4**

Index No.: 401201/12

**In the Matter of the Application of
Sade King,**

Petitioner,

-against-

New York City Housing Authority,

Respondent.

**DECISION, ORDER
AND JUDGMENT**

Present: HON. ARLENE P. BLUTH

Petitioner, who is self-represented, commenced this Article 78 proceeding to challenge respondent New York City Housing Authority's ("NYCHA") determination dated July 25, 2011 which denied her application to vacate her July 2010 default. On July 6, 2010, petitioner failed to appear at a hearing on termination-of-tenancy charges based on chronic rent delinquency; her application to vacate that default, made over a year after the default, was denied because the hearing officer found that petitioner failed to show both a reasonable excuse and a meritorious defense. NYCHA cross-moves to dismiss the petition on various grounds, including that the proceeding is barred by the Statute of Limitations. For the reasons set forth below, NYCHA's cross-motion is granted, the petition is denied and the proceeding is dismissed.

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).

Here, NYCHA submits the affidavit of Doris Hoffler, a NYCHA employee, who states

that in accordance with her office's regular business practice, on July 25, 2011 she placed a copy of the NYCHA's Hearing Officer Desiree Miller's decision in an envelope, took it to NYCHA's mailing center and handed it to an employee who imprinted it with appropriate postage and then she took the envelope and placed it in a USPS receptacle. Annexed as exhibit 2 to Ms. Hoffler's affidavit is a copy of the mailing log noting that on July 25, 2011 she mailed the decision denying petitioner's application to open her July 6, 2010 default.

Curiously, Ms. Hoffler states, in a purely conclusory manner, that NYCHA's records reflect that the envelope was not returned as undelivered or unclaimed; that conclusion is not supported by any facts regarding the procedures NYCHA follows when envelopes are returned. That is, this Court was not advised, when a piece of mail is returned, whether that fact is logged into the computer records and Ms. Hoffler checked the computer, whether the envelope is placed into a file and she checked the file, whether the mailing log is updated, or something else.

There is a presumption that regular mail is received within five (5) days of mailing, in this case, July 30, 2011; *see* CPLR §2103(b)(2). Contrary to NYCHA's argument, petitioner absolutely does, in her moving papers, deny receipt of the decision declining to vacate her default (see her description of exhibit "B" which states that she received the decision in May 2012, and paragraph 3 of the petition which describes her mailbox problems.) Apparently, the July 25, 2011 decision was properly mailed but never received.

The Court notes that contrary to NYCHA's absurd position (see footnote #2 on page 7), the presumption of receipt absolutely can be overcome. And here, the Court finds that petitioner overcame that presumption; NYCHA only proved mailing, not delivery and petitioner denied

receipt in her moving papers. Because the statute of limitations does not start to run until receipt, it did not begin to run until May 2012, when petitioner admits that she received the decision. Thus, this proceeding, commenced on May 31, 2012 (see stamped date on RJI) is timely.

The sole issue before the Court in this Article 78 proceeding is whether the hearing officer's denial of petitioner's request to vacate her default was rational. See *Matter of Daniels v Popolizio*, 171 AD2d 596, 597 (1st Dept 1991). The underlying charge was based upon chronic rent delinquency; petitioner failed to pay her \$139 timely, if at all (see exhibit "B" to cross-motion). In her application to vacate her default dated July 11, 2011, petitioner admitted "my rent is not up to date but will be this week"(exh D to cross-motion). Significantly, petitioner did not deny any of the underlying charges, which involve the period of June 2009 to May 2010. Therefore, the hearing officer rationally found that petitioner failed to demonstrated that she had a meritorious defense to the underlying charges.¹ The Court notes that the petitioner likewise fails to dispute the underlying charges of chronic rent delinquency from June 2009 to May 2010.

Petitioner has failed to submit any papers in opposition to the cross-motion.

Accordingly, the Court finds that Hearing Officer Miller's July 25, 2011 decision denying petitioner's application to vacate her July 2010 default was rational because petitioner never demonstrated a meritorious defense to the underlying charges.

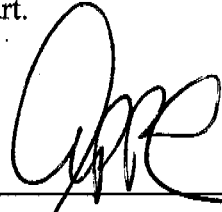
It is hereby ORDERED and ADJUDGED that the cross-motion to dismiss the petition is

¹In fact, at the time of her application to vacate the default, petitioner had not paid *any* rent for over a year. Moreover, in the housing court stipulation submitted by petitioner, she admits owing \$3,058 through April 30, 2012; this is the 22 month period since her default at the hearing in July 2010. Petitioner has not paid any rent at all since her default in July 2010.

granted and the proceeding is dismissed. Any stays issued by this Court are vacated.

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

Dated: October 25, 2012
New York, New York



HON. ARLENE P. BLUTH, JSC