

Matter of Muhammad v Rhea
2012 NY Slip Op 32890(U)
December 3, 2012
Sup Ct, NY County
Docket Number: 403345/10
Judge: Barbara Jaffe
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: BARBARA JAFFE
J.S.C. Jaffe
Justice

PART 5

Muhammad

INDEX NO. 403315/10

-v-

MOTION DATE 9/27/12

Rhea

MOTION SEQ. NO. 001

The following papers, numbered 1 to _____, were read on this motion to/for Article 78 review
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). 1
Answering Affidavits — Exhibits _____ No(s). 2
Replying Affidavits _____ No(s). 3, 4, 5, 6, 7

Upon the foregoing papers, it is ordered that this motion is

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION. ~~ORDER~~ JUDGMENT

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: 12/3/12
DEC 03 2012

BARBARA JAFFE, J.S.C.
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

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 5

-----X
In the Matter of the Application of

TAALIBA MUHAMMAD,

Petitioner,

Index No. 403345/10

Motion Date: 9/27/12

Motion Seq. Nos.: 001,

Calendar No.: 74

DECISION & JUDGMENT

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

-against-

JOHN B. RHEA, as Chairperson and Member of the New
York City Housing Authority, and the NEW YORK CITY
HOUSING AUTHORITY,

Respondents.
-----X

BARBARA JAFFE, JSC:

For petitioner:

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For respondents:

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By verified petition dated November 8, 2010, petitioner brings this Article 78 proceeding seeking an order annulling respondent New York City Housing Authority's (NYCHA) August 11, 2010 determination that she is ineligible to receive a Section 8 subsidy or, in the alternative, ordering NYCHA to grant her a rehearing. Respondents oppose, and by notice of cross-motion dated February 8, 2011, move pursuant to CPLR 3211 and 7804(f) for an order dismissing the petition as moot.

UNFILED JUDGMENT

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By order to show cause dated April 26, 2011, petitioner moves for an order permitting her to amend her petition to set forth an additional claim for attorney fees and directing respondents to restore her to the position she would have been in had respondents not improperly found her ineligible for a Section 8 subsidy. Respondents oppose.

I. FACTUAL AND PROCEDURAL BACKGROUND

By decision dated August 11, 2010, NYCHA denied petitioner's application for a Section 8 subsidy for her failure to verify her family composition. (Ver. Pet., Exh. A). Sometime thereafter, respondents voluntarily resumed processing petitioner's application, scheduling a new eligibility interview for May 23, 2011. (Affirmation of Kimberly W. Wong, Esq., in Reply, dated May 19, 2011, Exhs. 6, 7).

On May 23, 2011, petitioner's second eligibility interview occurred, and NYCHA then requested that she provide additional documentation of her income before rendering its decision. (Petitioner's Factual Update, dated July 5, 2012 [Pet. Fact.]; Respondents' Factual Update, dated July 2, 2012 [Resp. Fact.], Exh. F).

By interim order dated July 29, 2011, the petition, cross-motion, and motion to amend were held in abeyance pending the outcome of NYCHA's second review of petitioner's Section 8 subsidy application, and the parties were directed to jointly notify the court of the result.

Petitioner did not submit documentation of her income to NYCHA until January 19, 2012. (Resp. Fact., Exh. F). On February 21, 2012, NYCHA determined that petitioner is ineligible for a Section 8 subsidy, as her reported income is exceeded by her expenses and is thus unrealistic. (*Id.*, Exh. G; Pet. Fact., Exh. B). Petitioner thereafter requested a hearing. (Pet. Fact.).

On August 27, 2012, petitioner's hearing occurred, and by decision dated September 12, 2012, the hearing officer reversed NYCHA's February 21, 2012 finding of ineligibility as petitioner presented sufficient evidence demonstrating that her income is realistic. (Letter of petitioner dated Sept. 20, 2012). The decision provides that "[d]ue to funding constraints, NYCHA is not currently processing applications for Section 8 assistance. When NYCHA resumes processing applications, the Application and Tenancy Administration will contact [petitioner]." (*Id.*).

II. CONTENTIONS

By letter dated September 27, 2012, petitioner asserts that her petition should not be dismissed as moot as NYCHA has not yet found her eligible for a Section 8 subsidy, and thus, there exists a significant issue that is likely to evade review.

By letter of the same date, respondents counter that the proceeding is moot as NYCHA voluntarily annulled its August 11, 2010 decision and has continued to process petitioner's application. Moreover, they assert that the claims petitioner seeks to add to her petition regarding her placement on the Section 8 wait list are premature as NYCHA has not yet finished processing her application.

III. ANALYSIS

Article 78 review of an administrative determination is limited to whether the decision "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed." (CPLR 7803[3]). Only final determinations are subject to such review. (CPLR 7801[1]; *Essex County v Zagata*, 91 NY2d 447, 452-53 [1998]).

A proceeding is moot “where a change in circumstances prevents a court from rendering a decision that would effectively determine an actual controversy.” (*Citineighbors Coalition of Historic Carnegie Hill v New York City Landmarks Preserv. Commn.*, 2 NY3d 727, 728-29 [2004]). However, a court may “retain jurisdiction despite mootness if recurring novel or substantial issues are sufficiently evanescent to evade review.” (*Id.* at 729).

As NYCHA voluntarily annulled its original determination of ineligibility and has found, after a second review of petitioner’s case, that she is not ineligible for a Section 8 subsidy, vacatur of the August 11, 2010 determination would have no effect on her ability to obtain the relief she seeks. Thus, the instant proceeding is moot. (*See Matter of Hernandez v Dept. of Hous. Preserv. & Dev.*, 68 AD3d 407 [1st Dept 2009] [Article 78 proceeding challenging termination of subsidy dismissed as moot where respondent modified determination and reinstated subsidy after proceeding commenced, as vacating determination would “have no practical effect”]).

To the extent that petitioner now challenges the September 12, 2012 decision insofar as the hearing officer did not expressly state that she is eligible for a Section 8 subsidy, such a challenge is premature, as NYCHA has not finished processing her application and thus has not rendered a final determination. Accordingly, there exist no issues likely to evade review that warrant retaining jurisdiction over this matter.

As the instant proceeding is moot, petitioner’s motion for leave to amend her petition need not be addressed.

IV. CONCLUSION

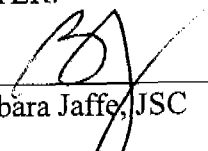
Accordingly, it is hereby

ORDERED and ADJUDGED, that the petition is denied in its entirety and the proceeding

is dismissed; and it is further

ORDERED, that petitioner's motion for an order granting her leave to amend the petition is denied.

ENTER:


Barbara Jaffe, JSC

BARBARA JAFFE
J.S.C.

DATED: December 3, 2012
New York, NY

DEC 03 2012

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