

**Vega v New York City Hous. Auth.**

2012 NY Slip Op 33517(U)

October 9, 2012

Supreme Court, New York County

Docket Number: 400120/11

Judge: Manuel J. Mendez

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. MANUEL J. MENDEZ PART 13**  
*Justice*

**NANCY VEGA,**  
**Petitioner,**

INDEX NO. 400120/11  
MOTION DATE 08-29-12  
MOTION SEQ. NO. 003  
MOTION CAL. NO. \_\_\_\_\_

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

**-against-**

**NEW YORK CITY HOUSING AUTHORITY,**  
**Respondent.**

The following papers, numbered 1 to 4 were read on this motion to/ for Renew and Reargue :

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...  
Answering Affidavits — Exhibits \_\_\_\_\_ cross motion \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED	
1 - 2	_____
3	_____
4	_____

**Cross-Motion: Yes X No**

Upon a reading of the foregoing cited papers, it is Ordered that respondent's motion pursuant to CPLR § 2221[d],[e], to reargue and/or renew this Court's Order dated February 27, 2012, is granted.

Respondent seeks to reargue and/or renew this Court's Decision and Order dated February 27, 2012, which granted the Article 78 petition seeking to annul the determination of the hearing officer and denied respondent's cross-motion to dismiss.

A Court has discretion to grant a motion to reargue upon a showing that it, "overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law "(Foley v. Roche, 68 A.D. 2d 558, 418 N.Y.S. 2d 588 [N.Y.A.D. 1<sup>st</sup> Dept., 1979]). Reargument is not intended to afford an unsuccessful party successive opportunities to reargue issues previously decided, or to present arguments different from those originally asserted (Foley v. Roche, 68 A.D. 2d 558, supra and Ul Haque v. Daddazio, 84 A.D. 3d 940, 922 N.Y.S. 2d 548 [N.Y.A.D. 2<sup>nd</sup> Dept., 2011]). Renewal requires the submission of new evidence not available at the time the original motion was submitted and a reasonable justification for not offering it at the time of the initial motion (Laura Vazquez v. JRG Realty Corp., 81 A.D. 3d 555, 917 N.Y.S. 2d 562 [N.Y.A.D. 1<sup>st</sup> Dept., 2011]and Prime Income Asset Mgt., Inc. v. American Real Estate Holdings, L.P., 82 A.D. 3d 550, 918 N.Y.S. 2d 467 [N.Y.A.D. 1<sup>st</sup> Dept., 2011]).

**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):

A motion that is described as one for leave to reargue and renew may be treated exclusively as a motion to reargue, where it is not based upon new facts or offer a reasonable justification for failure to present the new facts with the original motion (*Chelsea Piers Management v. Forrest Electric Corporation*, 281 A.D. 2d 252, 722 N.Y.S. 2d 29 [N.Y.A.D. 1<sup>st</sup> Dept., 2001] and *Berkas v. McMilian*, 40 A.D. 3d 563, 835 N.Y.S. 2d 388 [N.Y.A.D. 2<sup>nd</sup> Dept., 2007]).

Respondent makes this motion pursuant to CPLR § 2221 [d],[e], to reargue the Order of this Court dated February 27, 2012 (Mot. Exh. R), claiming it misapprehended the law and facts. Respondent contends that this Court misapprehended the petitioner's failure to obtain personal jurisdiction; relied on documentation that was not submitted as part of the administrative record; and misapprehended the precedent regarding no fault evictions for criminal drug activity. It further contends petitioner did not have an unblemished tenancy, and had previously been on probation for five years based on a drug charges.

Respondent bases its motion to renew on a "so-ordered" stipulation entered by the Hon. Sabrina Kraus, in Housing Court on January 31, 2012, prior to this Court's Decision and Order, in which petitioner consented to a judgment of possession in favor of the respondent (Mot. Exh. Q). Respondent claims this Court cannot collaterally attack the Housing Court's award of final judgment of possession.

Petitioner appears in this proceeding by her guardian ad litem (GAL), she opposes the motion claiming that respondent, misstates the law on jurisdiction; has misconstrued the scope of review, and the motion to reargue is untimely. Respondent appeared in this action pursuant to a decision of this Court dated November 15, 2011, granting its motion to vacate the default in appearance (Mot. Exh. O). Petitioner did not oppose the relief sought and claims there was no prejudice suffered by the respondent. Petitioner claims the Criminal Court dismissed and sealed the petitioner's conviction, after the hearing officer's determination. Petitioner also claims that there is no basis for renewal, the stipulation consenting to a judgment of possession entered into on January 31, 2012, based on NYCHA's misrepresentations, was vacated on June 13, 2012, by "so ordered" stipulation, signed by the Hon. Verna L. Saunders (Opp. Exh. C). Respondent has misstated the status of the Housing Court case.

Failure to serve the petition on the respondent at its designated address, resulting in no receipt of service, is a jurisdictional defect. The resulting lack of personal jurisdiction, pursuant to CPLR §3211[a][8] warrants dismissal of the Article 78 proceeding (*Peterkin v. Marcy Houses*, 87 A.D. 3d 649, 928 N.Y.S. 2d 474 [N.Y.A.D. 2nd Dept., 2011]).


Upon review of the papers submitted, this Court finds that respondent has asserted a basis to reargue. Petitioner's failure to obtain personal jurisdiction by serving the petition at the address authorized for service on respondent, 250 Broadway, 9<sup>th</sup> Floor, New York, NY 10007 (Reply Exh. 1) is a basis for denial of the petition and dismissal of the proceeding.

[\* 3]  
Accordingly, it is ORDERED that respondent's motion pursuant to CPLR §2221[d],[e], to reargue and/or renew this Court's Order dated February 27, 2012, is granted, and it is further,

ORDERED and ADJUDGED that, the Article 78 petition is denied and the proceeding is dismissed.

ENTER:

MANUEL J. MENDEZ  
J.S.C.

  
\_\_\_\_\_  
MANUEL J. MENDEZ,  
J.S.C.

Dated: October 9, 2012

Check one:  FINAL DISPOSITION     NON-FINAL DISPOSITION  
Check if appropriate:     DO NOT POST                       REFERENCE

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