

Matter of Day v New York City Hous. Auth.
2013 NY Slip Op 30054(U)
January 11, 2013
Sup Ct, New York County
Docket Number: 401002/12
Judge: Peter H. Moulton
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respect the this proceeding"; that petitioner "failed to establish an excusable default since she failed to establish that she was not properly notified" and that petitioner "continues to be chronically late in the payment of rent and therefore has no meritorious defense. She presently owes \$3,726 in outstanding rent . . . for the months of June 2011 through January 2012."¹ Respondent criticizes petitioner's "running up arrears and then applying for assistance [as] an acceptable way to pay her rent."

In her January 2012 decision, Ambert fully adopts respondent's reasoning. Ambert concludes that petitioner failed to establish an excusable default in light of NYCHA's affidavit of mailing of the notice by both certified and regular mail. All rent due in the amended Specification of Charges (from July 1, 2010 to June 2011) was paid prior to Ambert's decision. Nevertheless, she found that petitioner failed to present a meritorious defense "in light of the Tenant's egregious rent payment history" and lack of "a viable plan to become current with the rent and remain current with future payments."

Discussion

NYCHA's good cause requirement is similar to the "excusable default" requirement for vacating a judicial proceeding under CPLR

¹Although outside of the scope of review, those arrears were subsequently paid. However, as of July 2012, petitioner was a few months behind in rent.

§ 5015 and requires the party to demonstrate both an excusable default and a meritorious defense (see *Matter of Daniels v Popolizio*, 171 AD2d 596 [1st Dept 1991]; see also *Gore v New York City Hous. Auth.*, 300 AD2d 541 [2d Dept 2002]). The hearing officer's decision, regarding whether the tenant established excusable default and a meritorious defense, must be upheld unless it is irrational or arbitrary and capricious (*Matter of Daniels*, 171 AD2d 596, *supra*).

The court is constrained to deny the petition, although the result is unduly harsh. Ambert's improperly focused on petitioner's failure to pay rent for a period of time subsequent to that specified in the amended Specification of Charges (see *Matter of Butler v Christian*, 88 AD2d 952 [2d Dept 1982]) [petitioner was deprived of due process because the hearing officer in a chronic rent delinquency hearing reached his determination based on tenant's failure to pay rent outside of the period that was specified in the charges]). As to that period, petitioner had previously alleged a meritorious defense.²

However, Ambert's decision not to reopen petitioner's default, because petitioner did not establish an excusable

²In moving to vacate her prior default, which was granted, petitioner cited a loss of employment. Accordingly, for the period specified in the amended Specification of Charges, petitioner alleged a meritorious defense.

default, is not arbitrary and capricious. NYCHA submitted evidence that a notice was mailed by both certified and regular mail one month prior to the hearing. It is not arbitrary and capricious for the hearing officer to reject petitioner's statement that she did not receive either form of mailing, absent any explanation as to how that could be the case. Although this court may have reached a different conclusion, it is not arbitrary and capricious for Ambert to have implicitly concluded that petitioner ignored the notice - - with harsh consequences.

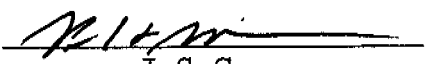
Accordingly, it is

ADJUDGED that the petition is denied and the proceeding is dismissed.

This Constitutes the Decision and Judgment of the Court.

Dated: January 11, 2013

ENTER:


J.S.C.

HON. PETER H. MCQUILTON
SUPREME COURT