

**Matter of Zenquis v New York City Hous. Auth.**

2013 NY Slip Op 30386(U)

February 20, 2013

Supreme Court, New York County

Docket Number: 401786/12

Judge: Joan B. Lobis

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

PRESENT: LOBIS Justice

PART 6

Index Number : 401786/2012  
ZENQUIS, FELIX  
vs  
NYC HOUSING AUTHORITY  
Sequence Number : 001  
ARTICLE 78

INDEX NO. \_\_\_\_\_  
MOTION DATE 12-17-12  
MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to 17, were read on this motion to for Art. 78 Petition

Notice of Motion/Order to Show Cause — Affidavits — Exhibits Petition | No(s). 1-3

Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). 4-17

Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

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

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

THIS MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION  
*motion and 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: 2/20/13

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

-----X  
In the Matter of the Application of  
FELIX ZENQUIS,

Petitioner, Index No. 401786/12

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

-against-

THE NEW YORK CITY HOUSING AUTHORITY, **UNFILED JUDGMENT**  
Respondent. **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).**  
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JOAN B. LOBIS, J.S.C.:

Felix Zenquis, who is proceeding pro se, petitions this Court pursuant to Article 78. He is challenging the decision by the New York City Housing Authority (NYCHA) denying Zenquis's application to vacate the dismissal of Zenquis's remaining-family-member grievance based on Zenquis's failure to appear at the grievance hearing. In refusing to vacate the default decision, NYCHA found that Zenquis had failed to show excusable default. Respondent answers the petition and seeks a denial. For the reasons discussed below, the petition is granted, and the proceeding is remanded.

Petitioner Felix Zenquis is Spanish-speaking and neither writes nor speaks English. He lives in public housing in the Bronx at Apartment 7D, 721 Tinton Avenue, known as John Adams Houses. The record varies regarding how long Zenquis has lived there; documents show anywhere from five years to as many as fifteen years. He moved into the apartment to care for his ailing mother, Maria Hernandez. Ms. Hernandez died on July 10, 2011. The record shows that rental payments were current at the time of Ms. Hernandez's death, and automatic payments were continued to be received through October 17, 2011.

On July 18, 2011, management for the public housing complex informed Mr. Zenquis that he was occupying the apartment without a lease and may be subject to eviction by NYCHA as a licensee. The unsigned notice, which was in English, indicated that Mr. Zenquis could grieve the issue and seek to be classified as a remaining family member (RFM). As an RFM, he would be provided with a lease for an apartment of appropriate size provided he were otherwise eligible for public housing. As a condition of pursuing RFM status, however, the notice indicated that Mr. Zenquis would have to remain current in the payment of use and occupancy of the apartment, an amount equal to the rent previously paid by his mother as tenant.

The following month, on August 10, 2011, the project manager at John Adams Houses denied Zenquis's claim for RFM status. The notice, which was in English, referenced a meeting on July 19, 2011, and stated that Zenquis was being denied that status because his mother had not requested permission from NYCHA for him to join her household. The notice did not dispute Zenquis's claim that he had resided there for several years as his mother's caretaker. On September 12, 2011, NYCHA sent Zenquis a letter in English stating that his denial would be reviewed and that he could submit documentation or request an interview.

Later the same month, on September 22, 2011, NYCHA's borough manager sustained the project manager's denial of Zenquis's application for RFM status. This notice, which was written in English, stated that "Felix Zenquis did not appear for a review of his Family Member Grievance." It went on to find that Zenquis was ineligible for two reasons: (1) any occupancy was "without the written

permission of" NYCHA, and (2) NYCHA rules require that the tenant of record "must have obtained permission from management in writing to allow the remaining family member to reside in the household one year before" that tenant ceases occupying the apartment. On October 17, 2011, NYCHA affirms that it received the last rent payment for apartment 7D.

Review of the September 2011 disposition affirming denial of Zenquis's application was set for a hearing on May 4, 2012. On February 16, 2012, the Office of Impartial Hearings wrote a letter to Zenquis, in English, notifying him of that hearing. Zenquis failed to appear for the May 4th hearing. In an order dated the same day, which was presented by NYCHA's counsel and so ordered by the hearing officer, Zenquis's grievance was dismissed, subject to approval by NYCHA, for failure to appear at the hearing. The order further provided that any restoration by NYCHA of the matter to the administrative hearing calendar would nullify the dismissal order. A notice in English dated May 7, 2012, was sent to Zenquis enclosing the decision.

Zenquis requested a new hearing on May 23, 2012. That request is memorialized in a NYCHA form entitled "Request to the Hearing Officer for a New Hearing" and is attached to NYCHA's answer as Exhibit J. That form reflects that Zenquis met with an official Spanish interpreter who interpreted and witnessed completion of the form. The interpreter noted on the form that "Tenant [sic] doesn't write or speak English." Section E of the form requires grievants to provide an "Excuse for missing hearing." Zenquis' response to that section is interpreted as "The appointment letter got lost so I did not know the exact date until I received a letter saying that I missed my appointment. Please give me another opportunity to be heard. Thank you." Section F of the form requires grievants to provide a "Good

Claim.” Zenquis’s response to that section is interpreted as “I’ve lived with my mother for 11 years taking care of her.” Pending Zenquis’s request for a new hearing, NYCHA approved the hearing officer’s dismissal of Zenquis’s grievance on June 6, 2012, without explanation.

NYCHA opposed any vacating of the hearing officer’s default decision dismissing Zenquis’s RFM grievance. In an affirmation in opposition dated July 2, 2012, it contended that Zenquis had neither established excusable default nor a meritorious defense in this proceeding to warrant reopening the dismissal of his RFM grievance. In support NYCHA Counsel’s affirmation states emphatically that use and occupancy payments are in arrears: “The last payment that was made to this account was on **October 17, 2011** approximately eight months ago!” The affirmation further refers to Zenquis’s statement as interpreted that he lost his appointment letter: “Considering his disregard toward the use and occupancy arrears, such an excuse should not suffice.” The following day, the hearing officer upheld her determination granting the dismissal on default. She found that Zenquis failed to show excusable default for failure to appear. Citing NYCHA’s proof of arrears submitted in opposition to reopening the matter, she further found that Zenquis was not entitled to a hearing on the merits of his grievance “since he is not current in use and occupancy [payments].”

Later that month, on July 23, 2012, the project manager at John Adams Houses issued Zenquis a holdover licensee 10-day notice to quit. Zenquis now petitions this Court for relief. Petitioner argues that he lived in that apartment for many years caring for his mother. He himself is bipolar and suffers from depression. He will be rendered homeless by NYCHA’s actions.

Petitioner, as a pro se litigant, is entitled to a liberal construction of his pleadings. Pezhman v. City of New York, 29 A.D.3d 164, 168 (1st Dep't 2006). In this case, Petitioner is being deprived of a right to have his grievance heard on the merits. Accordingly it must be assured that the deprivation is not arbitrary and capricious. The burden rests on NYCHA to establish that the requisite notice of an action or hearing was given. Bludson v. Popolizio, 166 A.D.2d 346, 347 (1st Dep't 1990). Zenquis's notice was in English, and it is uncontroverted that he does not write or speak that language. While it is well-established that NYCHA's requirement of use and occupancy payments is not arbitrary and capricious, Garcia v. Franco, 248 A.D.2d 263, 264-65 (1st Dep't 1998), there is nothing in this record that shows that Petitioner, as a non-English speaker, knew of that requirement. Cherry v. New York City Hous. Auth., 67 A.D.3d 438, 439 (1st Dep't 2009). Nowhere in its papers, other than submitting the request for a new hearing as an exhibit, does NYCHA acknowledge that Petitioner is a non-English speaker, and none of its authorities cited in support of upholding the result in this case addressed any issue of language proficiency.

The First Department, in Consortium Consulting Group, Inc. v. Tsaj, 2 A.D.3d 177 (2003), recognized non-English proficiency as a basis for vacating judgment by default. In that case plaintiff sued the defendant for a real estate brokerage commission. Defendant defaulted due to his lack of proficiency in English and an inability to retain counsel. On appeal the court found that plaintiff was not prejudiced by the delay between the default and the motion to vacate the default. Defendant, who was represented by counsel on appeal, further showed a meritorious defense, and the grant of the motion to vacate was affirmed. The First Department has recognized that NYCHA's good cause requirement for reopening the default of a hearing on the merits is the equivalent to the excusable default requirement for vacating a

judicial proceeding. Daniels v. Popolizio, 171 A.D.2d 596, 597 (1st Dep't 1991).

In this case the record is unclear whether Petitioner possesses any meritorious defense. NYCHA denies that Ms. Hernandez obtained any written permission by management to have her son lawfully occupy the apartment with her, but the support for that contention merely appears in the August 10, 2011, notice denying Zenquis's application. There is no affidavit or affirmation supporting that factual contention. Compare Ward v. City of Long Beach, No. 3, 2013 WL 530660 (N.Y. Feb. 14, 2013) (denial of application for supplemental disability benefits without hearing was arbitrary and capricious where applicant not given notice of allegations or opportunity to respond to them) with Aponte v. New York City Hous. Auth., 48 A.D.3d 229 (1st Dep't 2008) (denial of grievance on basis that written permission had not been obtained is neither arbitrary nor capricious where supported by documentary evidence). In Zenquis's pro se request for a new hearing, under the section for "Good Claim," he asserts that he lived with his mother for many years while taking care of her, but it is not clear whether any of the other NYCHA communications had been interpreted and whether he has any written permission. Based on the foregoing, this Court holds that the determination to uphold the default decision is not rationally based, but rather arbitrary and capricious. Accordingly, it is

ADJUDGED that the petition is granted; the denial of the motion to vacate is vacated and the proceeding is remanded for further proceedings consistent with this decision and order.

Dated: February 20, 2013

  
JOAN B. LOBIS, J.S.C

**UNFILED JUDGMENT**

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