

**Matter of 12th & 14th Street Inv., LLC v New York
City Hous. Auth.**

2013 NY Slip Op 30696(U)

April 4, 2013

Sup Ct, New York County

Docket Number: 103830/12

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: _____
Justice

PART _____

Index Number : 103830/2012
12TH & 14TH STREET INVESTOR
vs.
NYC HOUSING AUTHORITY
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

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

is decided in accordance with the annexed decision.

FILED
APR -9 2013
COUNTY CLERKS OFFICE
NEW YORK

FILED
APR -9 2013
COUNTY CLERKS OFFICE
NEW YORK

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

Dated: 4/4/13

(Signature), 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
COUNTY OF NEW YORK: Part 55

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

12th & 14th STREET INVESTOR, LLC

Petitioner,

Index No. 103830/12

For a Judgment Pursuant to Article 78 of the Civil
Practice Law & Rules

DECISION/ORDER

-against-

THE NEW YORK CITY HOUSING AUTHORITY
and JOHN B. RHEA,

FILED

APR -9 2013

Respondents.

COUNTY CLERKS OFFICE
NEW YORK

HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	_____ 1 _____
Answering Affidavits.....	_____ 2 _____
Cross-Motion and Affidavits Annexed.....	_____ 3 _____
Answering Affidavits to Cross-Motion.....	_____ 4 _____
Replying Affidavits.....	_____ 5 _____
Exhibits.....	_____ 6 _____

Petitioner 12th & 14th Street Investor, LLC commenced the instant proceeding pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR") seeking to challenge respondents New York City Housing Authority ("NYCHA") and John B. Rhea's ("Mr. Rhea") decision to suspend petitioner's Section 8 subsidies and for a writ of mandamus to compel respondents to pay petitioner the unpaid Section 8 rents. Respondents cross-move for an Order dismissing the petition on the ground that it is time-barred. For the reasons set forth below, NYCHA's cross-

motion to dismiss the petition is granted and petitioner's petition is dismissed in its entirety.

The relevant facts are as follows. Petitioner is the owner and landlord of the building located at 252 12th Street, Brooklyn, New York (the "building"). At the time petitioner purchased the building, the building housed tenants who held and/or hold Section 8 vouchers pursuant to Section 8 of the United States Housing Act of 1937, which is administered by NYCHA. Petitioner leased Apartment 3A (the "subject apartment") in the building to tenant Elizabeth Valentin (hereinafter the "tenant" or "Ms. Valentin") who held a Section 8 voucher.

The requirements for the Section 8 program are set forth in the regulations promulgated by the United States Department of Housing and Urban Development ("HUD") and codified at 24 C.F.R. 982. Pursuant to 24 C.F.R. §§ 982.305(a)(2), (b)(1)(I) and 982.405(a), NYCHA is required to inspect all apartments before commencing Section 8 assistance, and at least annually thereafter, to ensure that they meet housing quality standards ("HQS") established by HUD. Further, NYCHA "must not make any housing assistance payments for a dwelling unit that fails to meet the HQS, unless the owner corrects the defect within the period specified by [NYCHA] and [NYCHA] verifies the correction." 24 C.F.R. § 982.404(a)(3) Pursuant to 24 C.F.R. § 982.404, NYCHA must afford petitioner at least 30 days to correct any non-life threatening HQS violation unless NYCHA extends the deadline.

On July 10, 2009, Ms. Valentin's apartment failed an HQS inspection. NYCHA sent an NE-1 notice to petitioner which advised petitioner that NYCHA would suspend the Section 8 subsidy for Ms. Valentin's apartment on August 7, 2009 unless the HQS violations listed were corrected. Specifically, the NE-1 notice stated that

Reinstatement of subsidy will not be considered until the apartment is reinspected to determine if the apartment again complies with HQS...Reinstatement of subsidy will not be considered until we

receive and accept the certification, or until we receive notification of completed repairs from you and we reinspect the apartment to determine that the unit again complies with HQS...You may be entitled to reimbursement for some or all of any subsidy suspension if you can establish, in the judgment of our inspection unit, that the majority of the above violations were caused by the tenant, or that you were delayed in completing repairs of the above violations because the tenant failed to provide access to the apartment.

The NE-1 notice also provided that “[i]f the subsidy is suspended for 180 consecutive days, the HAP Contract automatically terminates and the tenants’ voucher for the subject apartment also terminates.”

Petitioner failed to respond to the NE-1 notice. Thus, the subsidies for the subject apartment were suspended effective August 31, 2009 and thereafter, the tenant was moved out, effective February 28, 2010, due to the subsidy being suspended for 180 days. In or around June 2012, petitioner filed its notice of claim against NYCHA demanding payment of the subsidies and in or around September 2012, it filed the instant Article 78 proceeding challenging NYCHA’s revocation of Section 8 subsidies for the subject apartment.

In the instant action, petitioner’s petition must be denied on the ground that it is time-barred. There is a four month statute of limitations to bring an Article 78 proceeding to challenge an administrative determination that is measured from the date the determination becomes final and binding upon the petitioner. *See* NY CPLR § 217. Agency action is “final and binding upon a petitioner” when the agency has reached a definitive position on the issue that inflicts actual, concrete injury and when the injury inflicted may not be prevented or significantly ameliorated by further administrative action or steps available to the complaining party. *Best Payphones, Inc. v. Department of Information, Technology and Communications of City of New York*, 5 N.Y.3d 30 (2005).

