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| Matter of MOTT v HPD |
| 2013 NY Slip Op 30784(U) |
| April 15, 2013 |
| Supreme Court, New York County |
| Docket Number: 400536/12 |
| Judge: Doris Ling-Cohan |
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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY
PRESENT: Hon. Doris Ling-Cohan, Justice

Part 36

In the Matter of the Application of
EUGENE MOTT, JR.,

Petitioner,

For a judgment pursuant to Article 78 of the CPLR

-against-

HPD,

Respondent.

INDEX NO. 400536/12

MOTION SEQ. NO. 001

FILED

APR 18 2013

NEW YORK
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The following papers, numbered 1-3 were considered on this Article 78:

PAPERS

NUMBERED

Notice of Motion/Order to Show Cause, — Affidavits — Exhibits _____
Answering Affidavits — Exhibits _____
Replying Affidavits _____

1, 2
3

Cross-Motion: [] Yes [X] No

Upon the foregoing papers, it is ordered that this Article 78 proceeding is decided as indicated below.

Petitioner Eugene Mott, Jr. (Mott), *pro se*, seeks an order pursuant to Article 78 of the CPLR: (i) reversing respondent New York City Department of Housing Preservation and Development's (HPD) denial of his request for a reasonable accommodation; and (ii) vacating respondent HPD's determination to change his Section 8 voucher, from an enhanced voucher, to a regular voucher.

BACKGROUND

Petitioner Mott received Section 8 subsidy pursuant to the United States Housing Act of 1937 (Act). Section 8 of the Act authorizes the Secretary of Housing and Urban Development (HUD), "to enter into annual contributions contracts with public housing agencies pursuant to which such agencies

may enter into contracts to make assistance payments to owners of existing dwelling units in accordance with this section.” 42 U.S.C. § 1437f(b)(1). Respondent HPD is one of the public housing agencies charged with the duty and responsibility of administering the Section 8 subsidy pursuant to the Act. Respondent HPD administered petitioner Mott’s Section 8 subsidy.

When petitioner Mott was admitted into the Section 8 program, he qualified for an enhanced Section 8 voucher, or “sticky voucher”, pursuant to 42 U.S.C. § 1437f(t). The enhanced voucher provides assistance to tenants of buildings in which the private owner has left a HUD project-based subsidy program by providing subsidies to pay the difference between the reasonable market price of the unit and the greater of 30% of the tenant’s household income or the rental amount the household was paying when the tenant first became eligible for the voucher. Based on the household composition at the time petitioner was approved for a Section 8 subsidy, he was housed in a three bedroom apartment with his family. Sometime thereafter, petitioner’s household composition changed. After a long history with HPD, not at issue in this Article 78 proceeding, petitioner Mott’s household composition was clarified.

Petitioner Mott is currently living alone in a three bedroom apartment. On May 18, 2011, respondent HPD notified petitioner Mott, by letter, of his overhoused status. Thereafter, petitioner Mott requested an exception to the Section 8 subsidy standards, which was denied on June 7, 2011. Petitioner Mott then requested an informal hearing. Such hearing was held on August 26, 2011. Petitioner Mott, who was represented at the hearing, agreed that he was overhoused but requested a reasonable accommodation, arguing that a medical exception be granted based on his medical and psychological conditions.

Thereafter, the hearing officer issued a hearing determination, dated December 1, 2011 (Hearing Decision), upholding HPD’s initial decision to deny petitioner Mott’s request for an exception to the Section 8 subsidy standards. On December 9, 2011, HPD sent petitioner Mott a letter offering him an

available one bedroom unit approximately one block from his current unit. Petitioner opted to stay in his current apartment and HPD changed his enhanced Section 8 voucher to a one bedroom regular voucher.

Petitioner now brings this Article 78 proceeding to reverse the Hearing Decision, and to vacate respondent HPD's decision to change his enhanced voucher to a regular voucher.

DISCUSSION

In deciding whether an agency's determination was arbitrary, capricious or an abuse of discretion, courts are limited to an assessment of whether a rational basis exists for the administrative determination and their review ends when a rational basis has been found. *See Heintz v Brown*, 80 NY2d 998, 1001 (1992); *Sullivan County Harness Racing Assoc., Inc. v Glasser*, 30 NY2d 269, 277-278 (1972). Judicial review of an administrative determination is limited to whether the determination was made "in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion..." CPLR 7803 (3). The Court of Appeals explained the "arbitrary and capricious" standard in *Matter of Pell v Board of Educ.*, 34 NY2d 222, 231 (1974) as follows:

"The arbitrary or capricious test chiefly 'relates to whether a particular action should have been taken or is justified ... and whether the administrative action is without foundation in fact.' (1 N.Y. Jur., Administrative Law, § 184, p. 609). Arbitrary action is without sound basis in reason and is generally taken without regard to the facts."

Thus, a court may not substitute its judgment for that of an administrative agency, if there is a rational basis for the agency's determination. *See Matter of Nehorayoff v Mills*, 95 NY2d 671, 675 (2001). The court may not overturn the determination of an administrative agency merely because it would have reached a contrary result. *See Matter of Sullivan County Harness Racing Assoc., Inc. v Glasser*, 30 NY2d 269, 278 (1972); *Matter of Kaplan v Bratton*, 249 AD2d 199, 201 (1st Dep't 1998).

Here, it is uncontroverted that petitioner Mott is overhoused. Petitioner Mott, instead, argues that an accommodation, based on his medical and psychological conditions, must be provided as the process of moving would further exacerbate his conditions. In support of the petition, it appears that

petitioner Mott proffered the same medical documentation as he provided to the hearing officer. At the hearing, the hearing officer explained that, to qualify for an accommodation, respondent HPD will consider whether “there’s a nexus between the disability or the condition, and the need to stay in the household.” Transcript, p.50, l. 11-13. In a thorough, 12 page decision, the hearing officer determined that HPD’s initial denial of petitioner’s request for an accommodation was reasonable. The hearing officer stated that “[w]hile [petitioner] Mott’s conditions are a serious consideration...[he] does not present medical documentation indicating the presence of a mental or physical impairment which require medical treatment or equipment which would necessitate the additional space in his current 3 bedroom unit.” Hearing Decision, p. 9. Significantly, the hearing officer found that:

“[t]he letters submitted in support of [petitioner Mott’s] argument, from [his] doctors and medical professionals...fail to address whether a move will adversely affect [petitioner] Mott’s condition. Instead they very generally state that for a limited period each week (2-3 days), [petitioner Mott] may experience flu-like symptoms and limited functionality as a result of treatment. Further, in the letters provided, only one medical professional discusses the possible side effects of the treatment. None of the letters establish a nexus between [petitioner] Mott’s specific medical conditions and the effects moving would have on this treatment or health. Neither do any of the letters affirmatively assert that [petitioner] Mott has and will experience any of the listed side-effects. ...The letters fail to demonstrate any medical impact moving would have on [petitioner] Mott’s condition. ... Supporting documentation from [petitioner] Mott’s medical condition fails to illustrate...a connection between his condition and the need for a reasonable accommodation in this instance.”

Hearing Decision, p. 9-10. Further, the hearing officer specifically noted that petitioner “Mott’s desire to stay in his current apartment and his feared stress of moving to a smaller apartment is not enough to constitute an extraordinary circumstance, especially when unsupported by the documents provided from his physicians.” Hearing Decision, p. 11.

As the hearing officer noted, respondent HPD “may ask some families to endure what the family may consider to be a hardship, so that other families will not have to endure homelessness.” Hearing Decision, p. 10. Petitioner Mott provides no arguments or any sufficient evidence to support the within petition. Where, as here, the Hearing Decision is based on testimony as well as evaluation of

documentary evidence submitted by both sides, judicial review of an administrative determination is limited to whether the determination was made "in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion..." CPLR 7803 (3). Here, the Hearing Decision was not arbitrary and capricious, given the hearing officer's findings, his consideration of all of the evidence and testimony, and the issuance of a thorough Hearing Decision.

Accordingly, it is

ORDERED that the petition is denied and this proceeding dismissed; and it is further

ORDERED that within 30 days of entry of this order respondent HPD shall serve a copy upon petitioner Mott with notice of entry; and it is further

ORDERED that all further proceedings, including the stay previously issued, shall continue for 30 days, at which time the stay is lifted.

This constitutes the decision of this Court.

Dated: 4/15/13


DORIS LING-COHAN, J.S.C.

Check one: FINAL DISPOSITION
Check if Appropriate: DO NOT POST

NON-FINAL DISPOSITION

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