

Matter of Reavis v New York City Hous. Auth.

2013 NY Slip Op 31537(U)

July 12, 2013

Sup Ct, New York County

Docket Number: 400775/2013

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

Index Number : 400775/2013
REAVIS, TWAINA
vs
NYC HOUSING AUTHORITY
Sequence Number : 001
ARTICLE78

PART 15

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). <u>1</u>
Answering Affidavits — Exhibits _____	No(s). <u>2, 3</u>
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):

FILED

JUL 16 2013

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 7/12/13


HON. EILEEN A. RAKOWER 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 15

-----X

In the Matter of the Application of
TWINA REAVIS,

FILED
Petitioner,
JUL 16 2013

Index No.
400775/2013

- against -

COUNTY CLERK'S OFFICE
NEW YORK

**DECISION
and ORDER**

NEW YORK CITY HOUSING AUTHORITY,
CAREY GARDENS,

Mot. Seq. 001

Respondent.

-----X

HON. EILEEN A. RAKOWER, J.S.C.

Petitioner Twiana Reavis ("Petitioner"), appearing *pro se*, brings this Article 78 proceeding seeking to annul the decision of Respondent New York City Housing Authority ("NYCHA") to terminate Petitioners' tenancy in a residential building unit owned and operated by NYCHA for chronic rent delinquency.

Petitioner is the tenant of record at Apartment 3A at 2945 West 23rd Street, Brooklyn, NY in the NYCHA's Carey Gardens development. She has been the tenant of record since April 2002. In May 2007, the Property Manager sent two letters to the Petitioner requesting that she meet with him to discuss her chronic rent delinquency and advising her that NYCHA was considering terminating her lease. After Petitioner failed to appear or otherwise respond to the letters, management advised her that it would forward her tenant folder to another department for the preparation of charges.

On September 18, 2007, NYCHA charged Petitioner with chronic rent delinquency and with violating a prior probation. Instead of proceeding by a hearing, Petitioner admitted the charges, agreed to subject her tenancy to a two-

year probationary period, and promised to timely pay rent each month going forward. Accordingly, Petitioner's probationary period ran from February 28, 2008 through February 28, 2010.

In September 2008, NYCHA charged Petitioner with violating her probation as set forth in the 2008 Settlement, as she was chronically delinquent in paying rent. Instead of proceeding by a hearing, Petitioner admitted the charges on April 7, 2009, and agreed to another two-year probationary period, and promised to timely pay her rent each month going forward.

In January 2010, NYCHA again charged Petitioner with chronic rent delinquency and violation of her probation set forth in the 2009 Settlement. Petitioner was advised of a scheduled hearing for February 4, 2010. On February 4, 2010, Petitioner failed to appear at the hearing. Hearing Officer Arlene Ambert ("HO Ambert") sustained the charges on default, and the NYCHA Board adopted HO Ambert's decision and terminated Petitioner's tenancy.

On February 9, 2010, Petitioner applied to open her default. NYCHA did not object to her application, and HO Ambert granted her application. Petitioner was notified of her new hearing date and the updated charges. By letter dated July 19, 2011, NYCHA notified Petitioner that the hearing would take place on August 16, 2011.

On August 16, 2011, Petitioner failed to appear at the hearing. HO Ambert again sustained the charges on default. The NYCHA Board adopted HO Ambert's decision and terminated Petitioner's tenancy. In December 2011, Petitioner applied to open her default, stating:

I did not receive the mail. A Tenant in apartment 3A building 2946 west 23 gave the mail to me on Sept 2. As soon as I received the mail I called Mr. Ramos line and spoke to a Lisa. I told her what happened. She told me to speak to my housing manager. I spoke to Mrs. Richards. She ask me did the letter say default. I told her yes. She told me don't worry about I just pay the rent. I have proof. I am

not responsible for not getting the mail and my rent is paid up as of now. I am a single parent I was working 24 or less and sometimes I did not have any work. Now I have a stabilized schedule for working. I have been in housing 23 yrs and was always a good tenant. I was having some difficulties for a couple of years.

Petitioner's application to reopen her default was granted on March 26, 2012, and a new hearing was scheduled for April 18, 2012. The hearing was adjourned for Petitioner to obtain an attorney. On May 25, 2012, a hearing was held. According to HO Ambert, "the record was to remain open until close of business ..., June 18th, 2012, to allow this tenant the opportunity to submit documentation regarding rent payment receipts, and proof that the balance has been paid."

Pursuant to a "telephone link malfunction on 5/25/12 all hearing sessions that occurred on that date were not recorded. All efforts to retrieve the sessions by IT were unsuccessful." A notice issued by NYCHA stated that "all matters must be rescheduled." Petitioner's hearing was rescheduled for June 19, 2012. Petitioner did not submit any additional documents prior to June 18, 2012.

Petitioner failed to appear for the hearing on June 19, 2012, and HO Ambert conducted an inquest, noting that the most recent charges are dated March 26, 2012. At the hearing, Miriam Saillant, an employee for Carey Gardens, testified "[t]he last time I saw Ms. Reavis was on June 5th in landlord-tenant court, when I personally informed her of the hearing date". She further alleges, "[o]n the same day, in the management office, the assistant manager handed the notice to [Ms. Reavis's] daughter to let her know." Maribel Cesario, a Secretary for NYCHA, attested at this hearing that she mailed a notice rescheduling the hearing for June 19, 2012, by regular and certified mail to Petitioner on June 5, 2012.

Miriam Saillant also testified at this hearing that Petitioner's outstanding rent was \$3,350.45, or approximately six months of rent. She attests that the last time Carey Gardens received a payment from Petitioner was February 13, 2012, in the amount of \$500.

On July 2, 2012, HO Ambert charged Petitioner with a violation of probation and chronic delinquency in the payment of rent. HO Ambert states:

The timely payment of rent is a basic responsibility that the tenant has failed to honor. The Tenant has not enjoyed a zero balance to her account in over a year. The most recent payment to the account was credited on February 13, 2012 and prior to that payment on December 13, 2011 (Exhibit 8).

This tenancy has repeatedly been placed on probation (Exhibits 5 and 6) and it appears that probation does not provide the Tenant with sufficient incentive to adhere to her tenancy obligations, including the obligation to pay rent in a timely manner.

In light of the amount due, the egregious rent payment history and the time that has elapsed since any rent payment has been tendered by the Tenant, there is nothing in the record to support a mitigated sanction.

On August 1, 2012 NYCHA's Board adopted HO Ambert's decision and terminated Petitioner's tenancy.

On February 20, 2013, Petitioner applied to open her default. Petitioner claimed that she failed to appear because she was "not notified" of the hearing date and that she is now current with her rent. NYCHA opposed Petitioner's application, in that Petitioner did not open her third default in a reasonable time inasmuch as she waited over five months, and because she failed to establish a reasonable excuse of why she failed to attend the hearing. NYCHA also argued on the merits that Petitioner cannot defend the violation of probation charge, belated payments do not absolve her history of failing to timely pay her rent on an ongoing basis, and her history shows a repeated failure and refusal to pay her rent timely.

On March 28, 2013, HO Ambert denied Petitioner's application to reopen her default. She rejected Petitioner's excuse for failing to appear at her hearing as disingenuous and credited NYCHA's evidence that it notified Petitioner of the

hearing date by regular mail, certified mail, in person, and a letter provided to her daughter. HO Ambert also concluded Petitioner did not state a meritorious defense because, although she became current in February 2013, she had not had a zero balance in over three years, and she has an “erratic and egregious rent payment history sans any justifiable explanation.”

The issue before this court is whether HO Ambert properly denied Petitioner’s request to open her default for a third time.

It is well settled that the “[j]udicial review of an administrative determination is confined to the ‘facts and record adduced before the agency’.” (*Matter of Yarborough v. Franco*, 95 N.Y.2d 342, 347 [2000], quoting *Matter of Fanelli v. New York City Conciliation & Appeals Board*, 90 A.D.2d 756 [1st Dept. 1982]). The reviewing court may not substitute its judgment for that of the agency’s determination but must decide if the agency’s decision is supported on any reasonable basis. (*Matter of Clancy -Cullen Storage Co. v. Board of Elections of the City of New York*, 98 A.D.2d 635,636 [1st Dept. 1983]). Once the court finds a rational basis exists for the agency’s determination, its review is ended. (*Matter of Sullivan County Harness Racing Association, Inc. v. Glasser*, 30 N.Y. 2d 269, 277-278 [1972]). The court may only declare an agency’s determination “arbitrary and capricious” if it finds that there is no rational basis for the determination. (*Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 231 [1974]).

The annexed “NYCHA Termination of Tenancy Procedures” provide:

8. If the tenant fails to answer or appear at the hearing the Hearing Officer shall note the default upon the record and shall make his/her written decision on the record before him. Upon application of the tenant made within a reasonable time after his/her default in appearance, the Hearing Officer may, for a good cause shown, open such default and set a new hearing date.

A NYCHA tenant who seeks to open his or her default must demonstrate both a reasonable excuse for the default, and a meritorious defense to the charges (*See Cherry v. New York City Hous. Auth.*, 67 AD3d 438 [1st Dept 2009]). Here, it

was not arbitrary or capricious for HO Ambert to find that Petitioner had no reasonable excuse for her failure to appear at the hearing. NYCHA provided multiple witnesses who testified that they provided notice of the hearing to Petitioner by regular and certified mail, in person and by a letter given to her daughter. Mere denial of receipt of a notice or other pleading is insufficient to controvert evidence of service and does not constitute reasonable excuse for default. (*Baez v. Edne Reatly Corp.*, 78 AD3d 578 [1st Dept 2010]). Furthermore, given the fact that Petitioner had not had a zero balance in over three years, and had chronically failed to pay her rent, it was not arbitrary or capricious for HO Ambert to find that Petitioner did not have a meritorious defense. Accordingly, there was a rational basis for denying Petitioner's application to reopen her hearing.

Wherefore, it is hereby,

ORDERED that this petition is denied and the proceeding is dismissed.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: July 12, 2013



EILEEN A. RAKOWER, J.S.C.

FILED

JUL 16 2013

COUNTY CLERK'S OFFICE
NEW YORK