

**Matter of Chevalier v New York City Dept. of Hous.
Preserv. & Dev.**

2013 NY Slip Op 32656(U)

October 17, 2013

Supreme Court, New York County

Docket Number: 400934/2013

Judge: Jr., Alexander W. Hunter

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

Index Number : 400934/2013

CHEVALIER, ROSA

vs

NYC DEPARTMENT OF HOUSING

Sequence Number : 001

ARTICLE 78

ALEXANDER W. HUNTER, JR.

PART 33

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to 20, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s) 1-7

Answering Affidavits — Exhibits _____ | No(s) 8-20

Replying Affidavits _____ | No(s) _____

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

*decided in accordance with the attached
Decision and Judgment annexed hereto.*

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

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: 10/17/13

J.S.C.

ALEXANDER W. HUNTER, JR.

- 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

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 33**

-----X
In the Matter of the Application of the Rosa Chevalier,

Index No.: 400934/2013

Petitioner,

Decision and Judgment

-against-

New York City Department of Housing
Preservation and Development,

Respondent.

UNFILED JUDGMENT

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-----X
HON. ALEXANDER W. HUNTER, JR.

Pro se petitioner's application for an order pursuant to CPLR article 78, annulling respondent's final determination terminating petitioner's Section 8 rent subsidy, is denied and the proceeding is dismissed without costs and disbursements to either party.

Petitioner Rosa Chevalier resides at 565 Academy Street, Apartment 24, New York, NY (the "subject premises"). Petitioner first applied for a Section 8 rent subsidy in 1985. According to the records of respondent New York City Department of Housing Preservation and Development ("HPD"), petitioner submitted required recertification packages and was recertified for participation in the Section 8 program for each year until 2011.

On or about June 27, 2011, petitioner submitted a Section 8 recertification package (the "2011 recertification package") in which petitioner reported her son Richard Vidal ("Vidal") as a household member. In the 2011 recertification package, Vidal was reported as having an annual salary of \$23,400. However, Vidal's employer verified that his annual salary was \$41,600.

On September 2, 2011, HPD sent petitioner a rent breakdown letter, which informed petitioner that based upon petitioner's household income, petitioner's contract rent was \$989 of which respondent's share was to be \$0.00. The effective date of HPD's new rent calculation was November 1, 2011. The rent breakdown letter further informed petitioner that her Section 8 rent subsidy would automatically terminate, however, HPD would review her case if there were changes to her income, rent, or household composition prior to April 29, 2012 causing petitioner to require a subsidy. HPD records indicate that there was no reported change in petitioner's income, rent, or household income prior to April 29, 2012.

On April 24, 2012, HPD sent petitioner a Notice of Section 8 Rent Subsidy Termination (the "termination notice") informing petitioner that her Section 8 subsidy had been terminated because petitioner demonstrated "no rent hardship...." (Respondent exhibit C). The termination notice stated that petitioner's subsidy could be reinstated if there was a documented decrease in income or increase in rent by April 29, 2012. Petitioner reported no change in household income or rental charges to HPD before April 29, 2012.

The Housing Choice Voucher Program herein referred as the Section 8 program, is a federally funded program administered by the United States Department of Housing and Urban Development ("HUD") pursuant to the Housing and Community Development Act of 1974. See 42 U.S.C. 1437f. The purpose of the Section 8 program is to aid low-income families in obtaining affordable rental housing. HUD's regulations for the Section 8 program are set forth in Part 982 of Title 24 of the Code of Federal Regulations ("CFR"). The HUD Handbook sets forth the procedures and guidelines for implementing the Section 8 program. See 24 CFR 982. In New York City, HPD is one of three public housing agencies that administer the Section 8 program. Pursuant to 24 CFR 982.54, HPD must adopt an Administrative Plan containing the local policies that will govern its Section 8 program.

Pursuant to Chapter 13 of its Administrative Plan, HPD conducts annual recertifications of a Section 8 program participant's income and family composition after rent subsidy payments commence. If HPD determines that a participant has not demonstrated a rent hardship, HPD will cease making housing assistance payments. Pursuant to CFR 982, a tenant's participation in the Section 8 program automatically terminates 180 days after HPD determines that a tenant has no rent hardship. Chapter 15 of the Administrative Plan also mandates that HPD terminate program assistance within 180 days of determining that a tenant has no rent hardship.

Here, petitioner's household was correctly deemed a zero subsidy household and respondent correctly calculated petitioner's household income. Petitioner's household income was based, in part, on Vidal's verified annual income of \$41,600. Moreover, petitioner's household did not experience a change in income, rent, or household composition prior to April 29, 2012 causing petitioner to require a Section 8 subsidy. Therefore, respondent's decision to terminate petitioner's Section 8 rent subsidy was neither arbitrary nor capricious.

Accordingly, it is hereby,

ADJUDGED that the petition is denied and the proceeding is dismissed without costs and disbursements to either party. Respondent's cross-motion to dismiss is granted.

Dated: October 17, 2013

ENTER

J.S.C.

UNFILED JUDGMENT

ALEXANDER W. HUNTER, JR.

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