SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

Index Number : 400552/2013
REED, EVA
vs
NYC DEPARTMENT OF HOUSING
Sequence Number : 001
ARTICLE 78

IA PART 16

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 granted to the extent provided in the accompanying memorandum decision.

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).

NOV 07 2013

Dated: November 4, 2013

Alice Schlesinger, J.S.C.
ALICE SCHLESINGER

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

----------X

EVA REED,

Petitioner,

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

-against-

NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, and MATTHEW WAMBUA, as Commissioner of the New York City Department of Housing Preservation and Development,

Respondents.

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400552/13

Index No. ~~400522/13~~
Motion Seq. No. 001

SCHLESINGER, J.:

This case is a most unfortunate example of errors, omissions, and abuses of process by a City agency that caused a self-represented tenant and her family to become homeless after residing for over ten years in subsidized housing without incident. The petitioner here is Eva Reed, who is thirty-seven years old and suffers from HIV, depression, anxiety, and insomnia, for which she is prescribed medication. Until the incidents at issue here, she and her two children, now 20 and 23 years old, and her three young grandchildren resided in Apartment 4A at 1776 Weeks Avenue in the Bronx with a rent subsidy granted pursuant to the Section 8 voucher program. The Section 8 program is administered by respondent New York City Department of Housing Preservation and Development (HPD) pursuant to 42 U.S.C. § 1437 and implementing federal regulations.

By Notice of Determination dated November 27, 2012, HPD terminated Ms. Reed's subsidy after an informal hearing, and Ms. Reed was subsequently compelled to move out of the apartment due to her inability to pay the rent without the help of the

subsidy. With the assistance of *pro bono* counsel, she has commenced this Article 78 proceeding to annul HPD's determination as arbitrary and capricious, in violation of lawful procedure and due process of law, and an abuse of discretion as to the penalty imposed. Ms. Reed seeks to have her Section 8 subsidy reinstated retroactive to the termination date, or in the alternative, to have the matter remanded for a new hearing in accordance with due process of law.

Background Facts

As noted above, before HPD terminated her Section 8 rent subsidy, Ms. Reed had lived in Apartment 4A in the Bronx with her family for over ten years, using the subsidy to pay the rent. In addition to her limited employment as a home healthcare aide, she was the primary caretaker for her three young grandchildren. Beginning in or about November 2010, Ms. Reed participated in a case management program through Bronx-Lebanon Hospital Center due to her various complex medical issues. Despite the challenges she faced, Ms. Reed's tenancy was without incident until the summer of 2011.

According to testimony later given by Ms. Reed at the HPD hearing, she was returning to her apartment at about 6:30 p.m. on July 29, 2011 after visiting with her neighbor Jeremy Bair, who is the father of her grandchildren. She was accompanied home by Mr. Bair, his friend Lamont Lynch, and another young man. Ms. Reed entered the apartment, while the others waited in the hallway.

Shortly thereafter, six plainclothes police officers entered the apartment, made everyone sit on the living room floor, and then searched the apartment, allegedly with a warrant that they never showed to Ms. Reed. Claiming that they found marijuana in a

baby stroller in the living room — a claim which Ms. Reed never confirmed — the police arrested Ms. Reed, her son Preston Johnson who was in the apartment, Mr. Bair, and Mr. Lynch. According to the Petition verified by Ms. Reed, Ms. Reed pled guilty to Disorderly Conduct pursuant to Penal Law § 240.20 in or about August of 2012. As respondents repeatedly acknowledge in their Verified Answer, the records relating to the Criminal Court proceedings for Ms. Reed were thereafter sealed pursuant to Criminal Procedure Law § 160.55 (see, e.g., n. 2, 3 and 5).[1]

However, while the Criminal Court proceeding was still pending, the Bronx District Attorney sent Ms. Reed's arrest report to her landlord, Weeks Avenue HDFC. Although Ms. Reed had not been convicted of any crime, the landlord sent her a 10-Day Notice to Vacate Premises, dated December 21, 2011, stating that the lease was being terminated because the apartment was being used "in the distribution and sale of controlled substances in violation of law" (Answer, Exh E).

The landlord thereafter commenced a holdover proceeding returnable on February 2, 2012 in Housing Court to evict Ms. Reed and her family from the apartment. Ms. Reed appeared representing herself and, on the very first day that the proceeding was scheduled to be heard, she entered into a Stipulation of Settlement in which she agreed to vacate the apartment by April 30, apparently without any understanding of her rights, as her consistent position has been that she was not involved "in the distribution and sale of controlled substances in violation of law," as alleged in the Housing Court papers.

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[1] Ms. Reed's papers indicate that the charges against her son were similarly dismissed (Petition, ¶ 25), and the Hearing Officer confirmed that those records, as well as the records of the co-defendants who did not live in the apartment, were also sealed before the HPD hearing was concluded. (Exh O, p 7).

In addition to proceeding against Ms. Reed in Housing Court, the landlord sent its files to respondent HPD. On April 2, 2012, HPD mailed Ms. Reed a Pre-Termination Notice of Section 8 Non-Compliance, advising her that her Section 8 rent subsidy would be terminated based on drug activities at the premises and the Housing Court Stipulation of Settlement in which Ms. Reed had agreed to vacate the apartment. (Answer, Exh F). The central reason stated for the proposed termination of benefits was that: "Household family member committed drug-related criminal activity at the assisted Apartment [that] affected the right to peaceful enjoyment of the premises by other residents."

Ms. Reed promptly requested a conference, which ultimately was held on June 6, 2012. Ms. Reed appeared at the HPD conference with the assistance of counsel from the Bronx Defender's Office and signed a Statement of Understanding. In the Statement, HPD acknowledged receipt of certain information about Ms. Reed's medical condition, and Ms. Reed agreed in exchange to provide HPD with an update of the Housing Court proceeding and the Criminal Court proceeding, both of which were still pending, as counsel had moved to vacate the Housing Court Stipulation and the criminal matter was proceeding slowly.

Nevertheless, on July 31, 2012, HPD mailed Ms. Reed a Notice terminating her Section 8 subsidy effective August 31, 2012 based on the ongoing criminal and housing cases (Exh J). Like the Pre-Termination Notice, this Notice stated that the termination was based on violations of family obligations and the lease in that: "Household members committed drug related criminal activities as the assisted unit that threatens the health, safety and right of peaceful enjoyment of the premises of other residents and persons residing in the immediate vicinity of the premises."

Ms. Reed timely appealed, and HPD scheduled an informal hearing for October 4, 2012. As the criminal matter had by then been concluded, Ms. Reed's counsel produced at the hearing a document from the Criminal Court confirming that Ms. Reed's records had been sealed. Nevertheless, HPD offered into evidence various papers relating to Ms. Reed's arrest, which included: Criminal Justice Agency reports for Ms. Reed and her three co-defendants; property clerk invoices; laboratory reports; arrest reports; and the July 30, 2011 affidavit of Officer Alston regarding the execution of the search warrant at the apartment and the arrest of Ms. Reed and others (Answer, Exh L). Hearing Officer Maurice Robinson admitted those documents into evidence over the strenuous objection of Ms. Reed's counsel based on the sealing order (Exh K).

Also, as neither Officer Alston, nor any representative of the Criminal Justice Agency had appeared, Ms. Reed had no opportunity to cross-examine witnesses against her. Ms. Reed, testifying on her own behalf, spoke of her confusion about the various proceedings, the stress she was undergoing, her medical issues, and her good record as a long-term tenant.

The Hearing Officer's Decision

The Hearing Officer issued his decision on November 27, 2012 (Exh O). The decision began with a List of Evidence Submitted. That list confirmed the admission into evidence on behalf of HPD of the following evidence from the Criminal Court file — the very file that had been sealed pursuant to the Criminal Procedure Law:

> HPD Exhibit # 8: Affidavit of NYC Police Officer Merlin Alston, 07/30/2011: re: Execution of search warrant at the Premises on July 29, 2011 and arrest of Eva Reed [and others] for offenses of Criminal Possession of Marijuana;

HPD Exhibit # 9: Certification (index of arrest record documents): Office of the District Attorney, Bronx County, 11/03/2011
a) Four (4) Arrest Reports for Eva Reed [and 3 others], 7/30/2011
b) NYPD Property Clerk Invoice, Arrest Evidence: (items vouchered for arrest evidence for Eva Reed [and 3 others]), voucher invoice no. 2000011362, 07/29/2011
c) NYPD Laboratory Report/Controlled Substance Analysis for voucher invoice no. 2000011362, 08/05/2011

The Hearing Officer also listed among the evidence submitted on behalf of Ms. Reed as Exhibit F the "Certificates of Disposition for Eva Reed and 3 co-defendants," which confirmed that while Ms. Reed had pled to Disorderly Conduct, she had not been convicted of any drug-related offense. The Hearing Officer further noted (at p 7) that Ms. Reed's counsel had documented that Ms. Reed's Criminal Court records had been sealed pursuant to CPL § 160.55 and that those of all three co-defendants, including her son, had similarly been sealed pursuant to CPL § 160.50. Interestingly, while HPD in this proceeding defends the Hearing Officer's consideration of the Criminal Court records, it repeatedly states that it cannot provide copies of the records to this Court, absent a court order, because the files have been sealed (Verified Answer, n 1, 2, 3, 5).

After confirming that CFR Part 982.555(e)(6) requires that his findings of fact "shall be based on a preponderance of the evidence presented at the Informal Hearing," the Hearing Officer proceeded with a three-page recitation of his findings. There, he confirmed that Ms. Reed had commenced her tenancy with her two young children with Section 8 benefits in 2001. Although the entire tenant file was made a part of the hearing record, the Hearing Officer did not note any problems until HPD issued a Notice of Section 8 Rent Subsidy Termination on July 31, 2012 based on documents that the landlord had received from the District Attorney and then provided to HPD

regarding Ms. Reed's arrest and then ongoing Criminal and Housing Court cases. In reciting his "Findings of Fact", the Hearing Officer heavily relied on, and directly cited, the documents included in the sealed Criminal Court file.

The Hearing Officer also acknowledged documentary evidence and testimony by Ms. Reed confirming her medical condition and her belief that her condition affected her ability to understand the Stipulation she had signed in Housing Court agreeing to vacate the apartment. As to any alleged drug-related activity referenced in the Housing Court proceeding, Ms. Reed testified that she understood that the Police had come to her building, but not her apartment, on prior occasions because of alleged criminal activity. As to the Police search of her apartment, she testified that the Police did not find any drugs in her presence and that she was never selling or using drugs in her apartment. In direct rebuttal of the charge that her conduct was threatening the health and safety of other residents, she added, and documented, that her neighbors never had an issue with her tenancy. Lastly, she emphasized that the loss of her Section 8 subsidy would result in her homelessness, as her wages were insufficient to pay the rent.

Last, but certainly not least, the Hearing Officer stated in the Findings of Fact that: "Participant's [Ms. Reed's] counsel objected to the admission, use or reliance of any records relating to the criminal charges of Eva Reed, stating her criminal records were sealed pursuant to 160.50." He confirmed that counsel had submitted Certificates of Disposition and evidence of sealing as to Ms. Reed, her son, and the other two co-defendants.

The Hearing Officer then turned to the "Analysis" section of the decision and began by reciting the relevant laws governing the Section 8 program. He noted that

HPD bars the tenant household from "[engaging] in drug-related criminal activity, violent criminal activity, other criminal activity, or alcohol abuse that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises." Section 1437 (d)(*l*)(6) of the United States Housing Act of 1937 allows the eviction of a tenant when she, or any member of the household or other person under the tenant's control, engages in criminal or drug-related activity. The basis for the termination of tenancy here was the above-cited HPD rule, a violation of which must be established "based on a preponderance of the evidence" (p 9).

Next, the decision contained a section entitled "Review of Seal[ed] Records." In a true display of sophistry, the Hearing Officer first acknowledged that Ms. Reed's Criminal Court records had been sealed before the HPD hearing had begun, but he nevertheless concluded that he could consider the records because they had not been sealed on the date that HPD made its determination. In other words, the Hearing Officer opined that it was not his role to determine whether the decision to terminate Ms. Reed's Section 8 subsidy was a proper one of the merits. Instead, his role was limited to determining whether HPD had properly reached its determination based on the evidence available to the agency on the day its decision was rendered. Specifically, he stated (at p 10) that:

> Again, this informal hearing is not an eviction proceeding or a proceeding to determine whether or not HPD should terminate, but rather a review hearing to determine whether or not HPD properly terminated the Participant [Ms. Reed] pursuant to relevant federal rules, regulations, and its own administrative plan.

He added that, in that he was presiding over an administrative hearing, "the rules may be more or less informal and technical rules of evidence and procedure may be

disregarded," so long as such disregard did not "infect the proceeding with unfairness." The Hearing Officer further opined, albeit with marked uncertainty, that a sealing under CPL § 160.55 (as opposed to 160.50) was not a complete sealing of all court records. Additionally, the Housing Court records, and Ms. Reed's own testimony, referenced the arrest, thereby justifying the admission into evidence of all related records, he opined.

In reliance primarily on the sealed Criminal Court records, which included the Officer's affidavit but no sworn testimony, the Hearing Officer concluded (at p 12) that "HPD has sufficiently established that Ms. Reed, her son and/or her guests have engaged in criminal activity on the premises." He added that the allegation in the Housing Court proceeding, although never proven, "bolsters HPD's reasonable belief of drug related activity in the premises by the participant and her 3 co-defendants."

By Notice dated November 27, 2012 (Exh P), HPD advised Ms. Reed in a single line that it was upholding the Hearing Officer's decision terminating her Section 8 subsidy effective December 31, 2012. This Article 78 proceeding ensued.

Discussion

The threshold issue is whether this Court may render a determination in this matter or whether instead, as respondent urges, the Court is required to transfer this proceeding to the Appellate Division pursuant to CPLR § 7804(g) for a determination whether HPD's decision after the hearing was based on substantial evidence.[2] Based on the statute itself, as well as case law, this Court finds that a transfer is not warranted.

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[2] To the extent petitioner's counsel suggested in a footnote that a transfer based on substantial evidence might be appropriate, at oral argument counsel opposed any such transfer, and the footnote was withdrawn.

CPLR § 7804(g) in fact ***requires*** the Court to determine certain issues prior to any substantial evidence transfer, stating that:

> Where such an issue [of substantial evidence] is raised, the court shall first dispose of such other objections as could terminate the proceeding, including but not limited to lack of jurisdiction, statute of limitations and res judicata, without reaching the substantial evidence issue.

The Appellate Division has repeatedly applied that provision precisely as written. Thus, in *Matter of Cannings v State of N.Y. Dept. of Motor Vehs. Appeals Bd.*, 84 AD3d 610 (1st Dept 2011), the Appellate Division affirmed this Court's decision denying the respondent agency's request for a transfer based on substantial evidence, stating that:

> Transfer to this Court was properly denied by the IAS court because petitioner's due process claims "are dispositive and sufficient to 'terminate' this proceeding within the meaning of CPLR 7804(g)."

In so stating, the First Department was quoting its prior decision in *Earl v Turner,* 303 AD2d 282, 282 (2003), *lv denied* 100 NY2d 506 (2003), and also cited its decision in *McCarter v Franco,* 227 AD2d 358, 358-359 (1996). In both of those cases, as in *Cannings*, the Appellate Division affirmed the Supreme Court's decision denying a transfer request in favor of a determination of the Article 78 proceeding based on claims of due process.

Precisely the same result applies here, because the Hearing Officer's decision is fatally flawed based on violations of due process of law. The most egregious violation relates to the Hearing Officer's admission into evidence, and heavy reliance on, records from the Criminal Court proceedings that had undeniably been sealed. That reliance on sealed records contravened the letter and the spirit of the sealing statutes as interpreted by our appellate courts and deprived Ms. Reed of her right to a fair hearing

with all the protections of due process of law in keeping with *Goldberg v Kelly*, 397 US 254 (1970).

The applicable sealing statutes are included in the Criminal Procedure Law in §160.50 and §160.55; the former applies to a criminal action terminated in favor of the accused, and the latter applies to a criminal action terminated by a conviction for a violation. Here, it appears that Ms. Reed's records were sealed pursuant to 160.55 due to her plea to disorderly conduct, while those relating to her son, who was about 18 years old, were sealed pursuant to 160.50 . Despite that distinction, the courts strictly construe the sealing statutes in favor of the accused, and the rationale in cases interpreting 160.50 apply equally to 160.55. See, McKinney's Supplemental Practice Commentaries, CPL § 160.55, Preiser, Peter (2005).

As recently as 2005, in *Matter of Katherine B. v Cataldo*, 5 NY3d 196, the Court of Appeals emphasized the breadth and significance of the sealing statute and the need to strictly construe the exceptions so as to preserve the confidentiality of the records. Relying on its prior decisions in *Matter of Harper v Angiolillo*, 89 NY2d 761 (1997) and *Hynes v Karassik*, 47 NY2d 659 (1979), the *Katherine B.* court stated (at p 202) that:

> "The sealing requirement was designed to lessen the adverse consequences of unsuccessful criminal prosecutions by limiting access to official records and papers in criminal proceedings which terminate in favor of the accused" (*Harper*, 89 NY2d at 766). "That detriment to one's reputation and employment prospects often flows from merely having been subjected to criminal process has long been recognized as a serious and unfortunate by-product of even unsuccessful criminal prosecutions. The statute's design is to lessen such consequences" (*Hynes*, 47 NY2d at 662 [citations omitted]).

> Consistent with this design and the "plain intendment of the statutory scheme," the "***general proscription*** against releasing sealed records and materials [is] subject only to a few narrow exceptions" ... (emphasis in original, citations omitted).

Applying this rationale, the Court of Appeals reversed the Appellate Division's affirmance of the trial court and held that the sealing statute provided no exception that allowed the Board of Education to use sealed records from a criminal court proceeding in a disciplinary hearing against a teacher. *Matter of Joseph M. (New York City Bd. of Educ.)*, 82 NY2d 128 (1993).

Consistent with these holdings and the rationale, the First Department in *Lino v City of New York*, 101 AD3d 552 (2012), just last year reiterated that the legislature's purpose in enacting the sealing statutes was "to remove any stigma related to ***accusations*** of criminal conduct" [emphasis in original, citing *People v Patterson*, 78 NY2d 711, 716 (1991)]. The Court added that the statute was designed to "ensure protection for exonerated individuals that is 'consistent with the presumption of innocence, which simply means that no individual should suffer adverse consequences merely on the basis of an accusation, unless the charges were ultimately sustained in a court of law'" (*Matter of Joseph M., supra* at 131-132, quoting Governor's Approval Mem, 1976 McKinney's Session Laws of NY at 2451).

The Appellate Division arguably went even further in *Property Clerk of N.Y. City Police Dept. v Taylor*, 237 AD2d 119 (1st Dep't 1997). There the appellate court affirmed the lower court's decision granting a post-trial motion to dismiss an action seeking forfeiture of defendant's automobile. The appellate court found that the trial court had properly stricken the testimony of the chemist that the substances tested

were cocaine and marijuana, finding that the witness had no independent recollection but was relying on her review of lab reports that had been sealed pursuant to CPL 160.50. Without the evidence, plaintiff could not show that defendant had committed a crime and had used her car in furtherance of that crime.

The clear and compelling language in the sealing statutes and cases discussed here compels a finding that HPD's Hearing Officer committed an egregious error of law by admitting into evidence and relying upon the records from Ms. Reed's criminal proceedings that had undeniably been sealed. In so doing, the Hearing Officer circumvented both the letter and the intent of the law to protect exonerated individuals from the stigma and adverse consequences associated with mere accusations of criminal conduct.

Wholly disingenuous — and unavailing — is the Hearing Officer's opinion that he was legally permitted to consider the records because his role was simply to determine whether HPD's decision was correct ***on the day it was made***, and the criminal proceedings were still pending and the records not yet sealed at the time. The question before the Hearing Officer was whether HPD could properly terminate Ms. Reed's Section 8 subsidy because she had violated the prohibition against "[engaging] in drug-related criminal activity, violent criminal activity, other criminal activity, or alcohol abuse that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises." Without the sealed records, no such finding could be made based on a preponderance of the evidence. Further, while a Hearing Officer may not be bound to follow all the rules of evidence, even the Hearing Officer here was compelled to acknowledge that he may not ignore the rules if the result is to "infect the proceeding with unfairness" (see p 8 above).

Equally unavailing is the argument by HPD's counsel that the Hearing Officer could consider documents located in HPD's files, as opposed to the Criminal Court files, because the agency's files are not subject to the sealing statute. The sealing statute is broadly drafted to include "copies," and while it may not directly reference copies in an administrative agency's files, the intent is clearly to maintain the confidentiality of the documents so as to protect the exonerated individual, as was the case in *Matter of Joseph M., supra*. As to the Housing Court papers, the petition most likely consisted of nothing more than conclusory allegations unsupported by documentary proof. To the extent any of the Criminal Court files were appended to the Housing Court petition, the Hearing Officer's consideration of those files was erroneous.

Wholly misplaced is the reliance by HPD's counsel on *Dockery v NYC Housing Authority*, 51 AD3d 575 (1st Dep't 2008). The records at issue there were 911 recordings that had never been included in the official Criminal Court records relating to the petitioner's arrest and prosecution. Therefore, they were never subject to the sealing statute. In contrast here, the Hearing Officer considered and directly relied upon documents that had undeniably been sealed.

The due process violation resulting from the improper consideration of sealed records was compounded by a hearsay problem. The details of the search and seizure of alleged illegal substances was set forth in the Affidavit of Police Officer Alston. That Affidavit was part of the sealed records and should not have been considered. The Hearing Officer's decision to give great weight to the Affidavit became even more problematic in light of the fact that it was the ***only*** evidence supporting the allegation that drugs had been found in the apartment, and Ms. Reed had no opportunity to cross-

examine the Officer because he did not appear and testify. Again, while a Hearing Officer may consider hearsay, he may not base a decision solely on hearsay, when doing so infects the proceeding with fundamental unfairness.

Even if one were to find that the proceedings comported with due process of law — a point which petitioner vigorously disputes and which this Court cannot find — the penalty is disproportionate to the offense. Ms. Reed is a long-term disabled tenant with a family. Despite issues in the building, Ms. Reed's tenancy has been without incident, as documented by HPD's own files and a statement from neighbors. Ms. Reed had no prior criminal record, and the charges here did not result in any conviction for a drug-related offense for her or any member of her household. What is more, the records were all sealed. Under these circumstances, the termination of petitioner's tenancy is shocking to one's sense of fairness and must be annulled. *See Matter of Vazquez v New York City Hous. Auth.,* 57 AD3d 360 (1st Dep't 2008)(tenant's guilty plea to the felony offense of grand larceny in the third degree was an "isolated aberration" and mitigating circumstances such as petitioner's disabilities rendered the termination of the tenancy, as opposed to probation, shocking to the judicial conscience).

Last, but certainly not least, the Court notes that when the sealing statute is properly applied, HPD appears to have no evidence to support the termination of Ms. Reed's Section 8 subsidy. Therefore, it is questionable whether any purpose would be served by a new hearing on remand, as no factual or legal issues appear to be outstanding. Considering Ms. Reed's long-term participation in the Section 8 program, the fact that the termination of her benefits has rendered her homeless and disrupted the lives of her three young grandchildren for whom she cares, and the egregious errors

committed by HPD's Hearing Officer here, the agency's counsel is urged by this Court to work with the tenant's counsel to reach an amicable resolution restoring Ms. Reed's benefits effective immediately. While technically Ms. Reed's remedy here may be limited to a remand, the expense and delay inherent in a new hearing will result in a waste of agency resources and taxpayer money and continued hardship for Ms. Reed with no beneficial purpose.

Accordingly, it is hereby

ORDERED AND ADJUDGED that the Article 78 petition is granted, the November 27, 2012 decision by Hearing Officer Maurice Q. Robinson, as adopted by respondent HPD, is annulled, and the matter is remanded for further proceedings consistent with this decision.

Dated: November 7, 2013

NOV 07 2013

J.S.C.
ALICE SCHLESINGER

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).