

Matter of Wright v New York City Hous. Auth.

2014 NY Slip Op 30334(U)

January 31, 2014

Supreme Court, New York County

Docket Number: 401791/13

Judge: Cynthia S. Kern

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This opinion is uncorrected and not selected for official publication.

SCANNED 2/26/2014

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

Index Number : 401791/2013

WRIGHT, BARBARA

vs

NYC HOUSING AUTHORITY

Sequence Number : 001

ARTICLE 78

PART _____

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
FEB 06 2014
NEW YORK
COUNTY CLERK'S OFFICE

RECEIVED
FEB 06 2014
GENERAL CLERK'S OFFICE
NYS SUPREME COURT - CIVIL

Dated: 1/31/14

CR, J.S.C.

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

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

BARBARA WRIGHT,

Petitioner,

Index No. 401791/13

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

DECISION/ORDER

-against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

-----x

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
Notice of Cross Motion and Answering Affidavits.....	2
Affirmations in Opposition to the Cross-Motion.....	_____
Replying Affidavits.....	_____
Exhibits.....	3

FILED

FEB 06 2014
NEW YORK
COUNTY CLERK'S OFFICE

Petitioner Barbara Wright commenced the instant proceeding pursuant to Article 78 of the CPLR seeking to challenge respondent New York City Housing Authority's ("NYCHA") termination of her Section 8 subsidy. NYCHA cross-moves to dismiss 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 the petition is denied.

The relevant facts are as follows. Petitioner is the tenant in apartment 3A at 250 West 124th Street, New York, New York and receives a Section 8 housing subsidy from NYCHA. In

February 2012, after petitioner failed to recertify her income to NYCHA, NYCHA mailed petitioner a T-3 Notice by regular and certified mail. The T-3 Notice informed petitioner that she had violated her obligations by failing to submit her annual recertification packet, that her Section 8 subsidy would be terminated 45 days from the date of the letter and that she could request a hearing within that 45-day period or otherwise commence an Article 78 proceeding. Petitioner never requested a hearing to challenge the termination of her Section 8 subsidy and did not otherwise respond to the T-3 Notice. On May 31, 2012, NYCHA terminated petitioner's Section 8 subsidy for failing to comply with NYCHA's policy concerning annual recertification.

On or about January 4, 2013, NYCHA received petitioner's written request for restoration of her Section 8 subsidy. In her request, petitioner informed NYCHA that her "property manager" informed her in June 2012 that NYCHA had terminated her Section 8 subsidy for failing to submit income documents. On or about April 1, 2013, NYCHA informed petitioner that it would consider her request for restoration of her Section 8 subsidy if (1) petitioner completes and submits an affidavit of income and required documents; (2) petitioner's apartment passes inspection in accordance with the federal Housing Quality Standards ("HQS"); and (3) petitioner submits a current lease and her landlord signs a new Housing Assistance Payment ("HAP") contract. The letter further informed petitioner that all documents must be submitted to NYCHA by May 1, 2013.

On or about August 23, 2013, NYCHA denied petitioner's request for restoration of her Section 8 subsidy on the ground that petitioner failed to submit the documents required to complete her restoration and notified petitioner that her Section subsidy remained terminated as of May 31, 2012. On or about October 7, 2013, petitioner commenced the instant Article 78

proceeding seeking to challenge NYCHA's termination of her Section 8 subsidy.

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 CPLR § 217. It is well-settled that "the determination to terminate a subsidy shall, in all cases, become final and binding upon receipt of...[the T-3] Notice of Default." *Williams v. New York City Hous. Auth.*, (US Dist Ct., SD NY, 81 Civ 1801, Ward., J., 1984); see also *Matter of Lopez v. New York City Hous. Auth.*, 93 A.D.3d 448 (1st Dept 2012)(where NYCHA terminates a petitioner's Section 8 subsidies, the four month statute of limitations begins "to run on the date of receipt of respondent's letter notifying petitioner that her Section 8 subsidy would be terminated in 45 days if she did not request a hearing"; see also *Nieves v. Martinez*, 285 A.D.2d 410 (1st Dept 2001)("[NYCHA's] determination became final and binding upon petitioner's...receipt of the...T 3 letter.") Here, NYCHA has provided proof that it properly mailed the T-3 Notice to petitioner by regular mail with a certificate of mailing and that the United States Post Office received the letter on February 14, 2012. NYCHA has also provided proof that it mailed the T-3 Notice to petitioner by certified mail and that the United States Post Office delivered the letter to petitioner on February 8, 2012. As petitioner had four months from her receipt of the letter to commence an Article 78 proceeding unless she requested a hearing, which she did not, the instant petition is untimely as it was brought over fifteen months after petitioner's time to do so had already expired.

Petitioner's assertion that the petition is timely because she never received NYCHA's T-3 Notice is without merit. As an initial matter, the proof of mailing submitted by NYCHA creates a presumption of proper delivery and receipt of the T-3 Notice. See *Northern v. Hernandez*, 17

A.D.3d 285, 286 (1st Dept 2005)(NYCHA's "affidavits attesting to service by mail...creates a rebuttable presumption of proper delivery and receipt.") In response, petitioner failed to offer sufficient proof to rebut such presumption. Although petitioner attaches a letter from her landlord stating that petitioner's mailbox is broken, the letter is dated September 17, 2013, over one year after NYCHA mailed the T-3 Notice to petitioner, and it does not specify the time period during which petitioner's mailbox was allegedly broken. Additionally, petitioner's request for restoration of her Section 8 subsidy, which NYCHA received on January 4, 2013, failed to toll the statute of limitations. *See Nieves*, 285 A.D.2d at 411 ("any request for reconsideration did not toll the statute of limitations period.")

Accordingly, NYCHA's cross-motion to dismiss the petition is granted and the petition is denied and dismissed in its entirety. This constitutes the decision and order of the court.

Dated: 1/31/14

Enter: _____

PAK
J.S.C.

FILED

FEB 06 2014

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