

Matter of Reavis v New York City Hous. Auth.

2014 NY Slip Op 31382(U)

May 23, 2014

Sup Ct, NY County

Docket Number: 400452/14

Judge: Cynthia S. Kern

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

Index Number : 400452/2014

REAVIS, TWAINA

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
MAY 29 2014
NEW YORK
COUNTY CLERKS OFFICE

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

Dated: 5/23/14

PK, 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 55

-----X
In the Matter of the Application of

TWAINA REAVIS,

Petitioner,

Index No. 400452/14

For an Order 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.

FILED
MAY 29 2014
NEW YORK
COUNTY CLERKS OFFICE

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.....	<u>1</u>
Cross-Motion and Affidavits Annexed.....	<u>2</u>
Replying Affidavits.....	<u> </u>
Exhibits.....	<u>3</u>

Petitioner Twaina Reavis brings the instant proceeding pursuant to Article 78 of the Civil Practice Law and Rules (“CPLR”) seeking to challenge respondent New York City Housing Authority’s (“NYCHA”) denial of her application to open her default and its termination of her tenancy. NYCHA cross-moves for an Order dismissing the petition. For the reasons set forth below, NYCHA’s cross-motion is granted and the petition is denied.

The relevant facts are as follows. Petitioner was the tenant of record of Apartment 3A at 2945 West 23rd Street, New York, New York in NYCHA’s Carey Gardens housing development (the “subject apartment”). In May 2007, NYCHA’s Property Manager sent petitioner two letters

requesting a meeting to discuss petitioner's chronic rent delinquency and advising her that NYCHA was considering terminating her lease. After petitioner failed to appear or otherwise respond to the letters, NYCHA advised her it would forward her tenant folder to another department for the preparation of charges. Thereafter, NYCHA preferred charges against petitioner, alleging that she was chronically rent delinquent and had violated a prior probation. The notice advised petitioner of her hearing date and that she was entitled to an attorney or representative of her choice. Instead of proceeding with the hearing, petitioner admitted to the charges, agreed to subject her tenancy to a two-year probationary period and promised to timely pay her rent each month going forward (the "2008 Settlement"). NYCHA's Board approved the 2008 Settlement on February 28, 2008. Accordingly, petitioner's probationary period ran from February 28, 2008 through February 28, 2010.

When petitioner again stopped paying her rent on time, in June 2008, NYCHA's Property Manager requested petitioner meet with him to discuss her rent delinquency and advised her that NYCHA was considering terminating her lease. After petitioner failed to appear or otherwise respond to the letter, NYCHA advised her that it would forward her tenant folder to another department for the preparation of charges. In September 2008, NYCHA preferred charges against petitioner alleging that she had violated her probation as set forth in the 2008 Settlement and was chronically rent delinquent. The notice advised petitioner of her hearing date and that she was entitled to an attorney or another representative of her choice. Instead of proceeding with the hearing, petitioner admitted the charges, agreed to subject her tenancy to another two-year probationary period and again promised to timely pay her rent each month going forward (the "2009 Settlement"). Petitioner also agreed that if she did not comply with the 2009 Settlement, NYCHA could seek to terminate her tenancy for violation of probation. On April 7, 2009, NYCHA's Board

approved the 2009 Settlement and petitioner's new probationary period commenced.

Petitioner allegedly immediately violated the 2009 Settlement by failing to pay her rent in full in April 2009, May 2009 and June 2009. NYCHA's Property Manager again invited petitioner to meet to discuss her ongoing rent delinquency, her violation of probation and the possible termination of her tenancy. However, as the issue could not be resolved, NYCHA notified petitioner that it would forward her record to another department for the preparation of charges. In January 2010, NYCHA preferred charges against petitioner for chronic rent delinquency and violation of her probation as set forth in the 2009 Settlement. The notice advised petitioner that NYCHA had scheduled a hearing for February 4, 2010 and that she was entitled to be represented by counsel or another representative of her choice. Petitioner failed to appear or send a representative on her behalf for the hearing. Thus, the Hearing Officer sustained the charges against petitioner on default and NYCHA's Board adopted the Hearing Officer's decision and terminated petitioner's tenancy. Thereafter, petitioner applied to open her default, without objection from NYCHA, and the Hearing Officer granted her application.

NYCHA notified petitioner of her new hearing date and the updated charges. The hearing was adjourned several times until, by letter dated July 19, 2011, NYCHA notified petitioner that her hearing would take place on August 16, 2011. Again, petitioner failed to appear for the hearing or send a representative to appear on her behalf and thus, the Hearing Officer sustained the charges on default. NYCHA's Board adopted the Hearing Officer's decision and terminated petitioner's tenancy. In December 2011, petitioner applied to open her default claiming that she did not receive her mail, a neighbor belatedly gave her notice of the hearing, she paid her arrears, she was working sporadic hours but now has more stable employment and that she is a good tenant other than "some difficulties for a couple of years." The Hearing Officer granted her application and opened her

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default.

In January 2012, NYCHA's Property Manager again offered petitioner an opportunity to discuss her rent delinquency. On February 1, 2012, petitioner met with management and promised to pay her arrears "in a few days" and her rent on time going forward. In March 2012, after petitioner had neither paid her arrears nor timely paid her monthly rent, NYCHA notified petitioner of updated charges against her and of a new hearing date, which was later adjourned to June 19, 2012. Petitioner failed to appear for the hearing and on that date, the Hearing Officer conducted an inquest. At the inquest, several NYCHA employees testified regarding how petitioner received notice of the hearing date and that petitioner was significantly behind in her rent. In July 2012, the Hearing Officer sustained the charges finding that petitioner failed to honor her basic responsibility to pay rent, had not had a zero balance in over one year, prior probationary periods had not provided petitioner with sufficient incentive to adhere to her rent payment obligations and that in light of her "egregious rent payment history and the time that has elapsed since any rent has been tendered," termination of tenancy was the appropriate sanction. On August 1, 2012, NYCHA's Board adopted the Hearing Officer's decision and terminated petitioner's tenancy.

On February 20, 2013, petitioner applied to open her default claiming that she failed to appear for the hearing because she "was not notified of" the hearing date. As a defense to the charge of chronic rent delinquency, petitioner stated "I am current in my rent" but did not address her history of failing to timely pay her rent. Petitioner failed to state any defense to her violation of probation charge. NYCHA opposed petitioner's application asserting that petitioner's application was untimely and that petitioner failed to establish a reasonable excuse because, at the inquest, NYCHA established that petitioner received notice of the hearing date by various means. NYCHA further argued that petitioner failed to state a meritorious defense to the charges preferred against

her as she failed to and cannot defend the violation of probation charge and that belated payments do not absolve petitioner of her history of failing to timely pay rent on an ongoing basis. On March 28, 2013, the Hearing Officer denied petitioner's application to open her default, rejecting petitioner's excuse for failing to appear at her hearing as disingenuous and crediting NYCHA's evidence that it notified petitioner of the hearing date by regular and certified mail, in person and provided a letter to petitioner's daughter. The Hearing Officer also concluded that petitioner failed to state a meritorious defense because, although she became current in her rent in February 2013, she had not had a zero balance in over three years and petitioner has an "erratic and egregious rent payment history sans any justifiable explanation." Thereafter, NYCHA commenced a holdover proceeding against petitioner in Civil Court based on petitioner's refusal to vacate the subject apartment.

On or about May 9, 2013, petitioner commenced an Article 78 proceeding seeking to challenge the Hearing Officer's March 2013 decision. In a decision issued in July 2013, Justice Eileen A. Rakower held that the March 2013 decision denying petitioner's application to open her default was "rational" and denied the petition and dismissed the proceeding (the "2013 Order"). On July 18, 2013, NYCHA served Notice of Entry of the 2013 Order. Further, on or about August 1, 2013, Justice Rakower declined to sign petitioner's proposed Order to Show Cause seeking leave to reargue the 2013 Order. In July 2013, petitioner served a Notice of Appeal of the 2013 Order on NYCHA. In October 2013, petitioner made a motion in the Appellate Division, First Department for poor person relief, a stay of the holdover proceeding and a temporary restraining order ("TRO") pending determination of the motion. The Appellate Division denied petitioner's request for a TRO and stated that petitioner could seek a stay of the holdover proceeding in the Appellate Term. On January 14, 2014, the Appellate Division denied petitioner's motion in its entirety and reiterated that

petitioner could instead seek a stay in the Appellate Term. Petitioner then commenced the instant Article 78 proceeding with the filing of her Verified Petition on April 3, 2014 seeking to challenge NYCHA's decision denying her application to open her default and terminate her tenancy.

As an initial matter, the petition must be denied on the grounds of *res judicata*. The principles of *res judicata* and collateral estoppel bar parties to a previous litigation from litigating matters which were decided in a prior proceeding. See *Schwartz v. Public Administrator of the County of Bronx*, 24 N.Y.2d 65 (1969). It is well-settled that once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy. See *O'Brien v. City of Syracuse*, 54 N.Y.2d 353 (1981). Here, petitioner's petition is barred by the doctrine of *res judicata* based on the final determination in the prior Article 78 proceeding. Petitioner has already brought an Article 78 proceeding against NYCHA challenging its denial of her application to open her default and the termination of her tenancy. In that proceeding, petitioner raised the same arguments, namely, that she did not know about the hearing date. However, that proceeding was "brought to a final conclusion" when Justice Rakower issued her July 2013 Order upholding NYCHA's determination and dismissing the petition. Further, the fact that petitioner served a Notice of Appeal does not render the July 2013 Order non-final. See *Plaza PH2001 LLC v. Plaza Residential Owner LP*, 98 A.D.3d 89, 92 (1st Dept 2012)("the pending appeal did not alter the applicability of the doctrine of *res judicata*"); see also *People ex rel. McGoldrick v. Baldwin Gardens, Inc.*, 283 A.D. 897, 898 (2d Dept 1954)("the final order in the article 78 proceeding, between the same parties and involving the same question is *res judicata* and conclusive upon the parties...notwithstanding that an appeal has been taken from that order"); see also *Samhammer v. Home Mut. Ins. Co.*, 120 A.D.2d 59, 64 (3d Dept 1986)("it is well established that the fact that the time in which to appeal a

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judgment is still open or that an appeal from the judgment has actually been taken does not divest the judgment of finality for the purposes of collateral estoppel.”)

Moreover, even if this proceeding was not barred pursuant to the doctrine of *res judicata*, which it is, it must also be dismissed on the ground that it is time-barred. 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 NYCHA’s “denial of [a] petitioner’s application to vacate [a] default constitutes the final, binding determination from which the four-month Statute of Limitations is measured.” *Matter of Yarbough v. Franco*, 95 N.Y.2d 342, 347 (2000). Further, an affidavit of a NYCHA employee attesting to the Hearing Office’s regular course of business for mailing decisions to tenants or grievants who fail to appear for their hearings and apply to vacate their defaults gives rise to a presumption that the petitioner received such decision. *See Nassau Ins. Co. v. Murray*, 46 N.Y.2d 828 (1978). Here, it is undisputed that NYCHA mailed petitioner its denial of her application to vacate the default entered against her and the termination of her tenancy on March 28, 2013, as evidenced by the affidavit of Doris Hoffler, an employee in NYCHA’s Office of Impartial Hearings. Further, Ms. Hoffler has affirmed that the United States Post Office did not return the decision mailed to petitioner as undelivered or unclaimed. Moreover, petitioner has not alleged that she did not receive the determination and indeed must have received it as she filed the first Article 78 proceeding challenging it in May 2013. Thus, as petitioner did not commence the instant proceeding within four months of NYCHA’s decision, but instead waited until April 2014, the petition must be denied.

To the extent NYCHA seeks an injunction preventing petitioner from commencing future litigation against NYCHA, such request is denied as NYCHA has failed to provide a sufficient basis

