

Junior v City of New York

2014 NY Slip Op 31664(U)

June 26, 2014

Sup Ct, New York County

Docket Number: 102435/12

Judge: Margaret A. Chan

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARGARET A. CHAN
Justice

PART 52

Index Number : 102435/2012
JUNIOR, KELLY ANN
vs.
CITY OF NEW YORK
SEQUENCE NUMBER : 003
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to 5, were read on this motion to/for summary judgment
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). 1, 2, 3
Answering Affidavits — Exhibits _____ No(s). 4, 5
Replying Affidavits _____ No(s). _____

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

**MOTION DETERMINED PURSUANT TO
ANNEXED DECISION AND ORDER**

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

FILED

JUN 30 2014

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 6/26/14

HON. MARGARET A. CHAN, 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 — NEW YORK COUNTY

PRESENT: Hon. Margaret A. Chan

PART 52

Justice

INDEX NO. 102435/12

KELLEY ANN JUNIOR, VICTORIA OZERSKAYA,
ANNA SANCHEZ, JOAN STAMPER, AND
ON BEHALF OF ALL HOLDERS OF ENHANCED VOUCHERS
SIMILARLY SITUATED IN THE CITY OF NEW YORK,

Plaintiffs,

- v -

CITY OF NEW YORK AND HOUSING PRESERVATION
AND DEVELOPMENT CORP. AND
HUDSONVIEW TERRACE, INC., JOHN DOES AND
JANE DOES AS FICTITIOUS AND YET TO BE IDENTIFIED

Defendants.

FILED

JUN 30 2014

COUNTY CLERK'S OFFICE
NEW YORK

The named plaintiffs are residents at Hudsonview Terrace at 747 10th Avenue in the County, City, and State of New York. Defendant owner, Hudsonview Terrace, Inc. (Hudsonview), had participated in the New York State Mitchell-Lama housing program¹ prior to 2003. On December 13, 2003, Hudsonview underwent a housing conversion in which it paid off its mortgage, opted out of the Mitchell-Lama program and privatized the development, which allowed it to raise rents to market rates. At that point, HPD stepped in to allow those tenants who chose to remain in the building to apply for Enhanced Section 8 Vouchers (Enhanced Vouchers) to meet the increased rent. The Department of Housing Preservation and Development Corp. (HPD) administers the Section 8 program in accordance with the statutes, regulations and directives set by the Housing Urban Development Corp. (HUD) in determining how much financial assistance a recipient receives. Plaintiffs take issue with the method by which the tenant's share of the rent is calculated for the Enhanced Vouchers without a hearing to determine a tenant's economic hardship or the adverse effects they would suffer, and that they were not informed of the terms of the Enhanced Vouchers in 2003. Thus, plaintiffs seek a declaratory judgment that defendants misconstrued HUD regulation 24 CFR 982.555 (a) and 42 U.S.C. 1437f, and that they were deprived of their due process rights

¹The Mitchell-Lama Program herein is administered by New York City and HUD. It provides affordable housing for moderate and middle income families by limiting profits to developers. In return, developers receive low-interest government loans and tax exemptions.

* 3]
because defendants failed to have a hearing to address their hardship prior to recertification and giving them their new rental assistance amount.

Procedural History

Upon plaintiffs' filing of their complaint against HUD and the above-captioned defendants, HUD removed the case to the United States District Court for the Southern District of New York. The case was heard by Hon. Paul A. Crotty. HUD moved to dismiss the complaint for lack of subject matter jurisdiction; HPD moved for summary judgment. HUD's motion was granted; HPD's motion was also granted on the federal claims, but the state claims were remanded to state court for further proceedings. This resulted in plaintiffs' second OSC on May 6, 2013 to amend the complaint, to remove HUD as a defendant, and to determine the state due process claim. The latter two requests were granted on consent; only the state due process claim remains. Defendants were granted leave to move for summary judgment. The City of New York and HPD (City defendants) and Hudsonview filed their motions for summary judgment to which plaintiffs opposed. The decision and order as to their motions (motion sequence number #003 and #004) is as follows.

State Due Process Claim

As the claim is triggered by an increase in plaintiffs' respective share of the rent, a brief review of the determination to increase the amount is helpful. As stated earlier, HPD administers the Section 8 program in accordance with the HUD promulgated rules and regulations. The City provided in its supporting papers an affidavit by Evelyn Ruiz, the executive Program Director of HPD. She avers to the following information: pursuant to 42 USC § 1437f(t)(1)(A), a recipient of an Enhanced Voucher must pay for rent no less than the dollar amount she was paying at her admission into the Enhanced Voucher Section 8 Program (Defts' Motion, Ruiz Aff. ¶¶ 3, 17; Exh D at p 29). If a recipient's gross income decreases at least 15 percent after her admission into the Enhanced Voucher program, then her share of the rent is the gross rent for the unit minus the greatest of:

- (i) 30 percent of the recipient's adjusted family income;
- (ii) 10 percent of the family monthly income;
- (iii) the welfare rent in as-paid states;
- (iv) the enhanced voucher minimum rent;
- (v) such other minimum rent established by the PHA as authorized by Federal law (see 24 CFR § 5.60).

(Exh. D at p 33 (4); Ruiz Aff. ¶ 4).

The recipient thereafter is locked into that specific percentage of income for as long as she participates in the Enhanced Voucher program regardless of whether her income increases or decreases. The recipient is subject to annual recertification which requires her to submit information to HPD regarding family composition and income, which HPD verifies and determines the rent breakdown. The recipient is given the rent breakdown, which informs her of the new rent amount for the recipient and the amount of housing assistance. Recipients who dispute HPD's calculation have 30 days to so inform HPD in writing, and HPD which will then schedule either a conference

or an informal hearing to address the disagreement pursuant to 24 CFR § 982.555 (Ruiz Aff. ¶¶ 21-22). If the recipient cannot pay her share of the rent, then she can request a “move voucher” and be relocated elsewhere more suitable to her ability to pay her share (Ruiz Aff. ¶ 5).

The gist of plaintiffs’ state constitution claim, as restated in their opposition, is as follows:

It is unconscionable that Congress would qualify 42 U.S.C. Section 1437(f) with the statement that: “Except with a limit shall not be considered reasonable for purposes of this subparagraph if it adversely affects such assisted families,” but would have no such intent and protective concern as to enhanced vouchers.

(Plaintiffs’ Opp. ¶ 7).

Plaintiffs opined that the best way to show the adverse affects is by way of an evidentiary hearing. As there is none provided by the rules regarding the Enhanced Vouchers, plaintiffs posit that this violates there due process rights.

Plaintiffs’ citation here is either incorrect², and/or absent. In any event, due process rights are triggered if there is a property interest (*see Cadman Plaza North, Inc. v New York City Dept. of Housing Preservation and Development*, 290 AD2d 344 [1st Dept 2002] *quoting Board of Regents v Roth*, 408 US 564, 577). As Judge Paul A. Crotty stated in his decision on this case in District Court, section 8 tenants, of course, have a property interest in the housing assistance. However, what the plaintiffs want is more than what is allotted them because of their economic hardship. This, Judge Crotty found, was “insufficient to constitute a property interest for due process purposes” (*Junior v City of New York*, 2013 WL 646464 [SDNY 2013]).

The state constitution, while often broader than its federal counterpart, nonetheless, also requires a property interest to trigger due process rights. Plaintiffs’ complaint essentially criticizes the HUD policy and/or regulations because it does not provide for a formal hearing for hardship cases in the Enhanced Voucher program. Plaintiffs appear to argue that HPD should have held its own hearing to uphold due process rights under state authority. However, absent a directive from HUD, HPD, which is an administrator, cannot make policy decisions. As noted by Judge Crotty, whether HPD held a hearing is inconsequential as a hardship hearing does not alter HUD’s established calculations, rules or regulations that bind HPD (*id.*). In that plaintiffs are not complaining that they were denied their rights to the Enhanced Voucher program benefits, and their argument is that they should have been afforded an evidentiary hearing to address the adverse effect of HUD’s calculations, plaintiffs’ have failed to state a cause of action for denial of due process when there is no property interest that was deprived. Plaintiffs add that they were deprived of information that should they suffer a setback, their share of the rents would not be lowered. Perhaps plaintiffs missed the four posted meetings in September and October of 2003, and January and

²Subsection f does not exist under 42 USC 1437. This section is entitled “Declaration of policy and public housing agency organization, and ends with subsection b. However, 42 USC § 1437f relates to “Low-income housing assistance”. The Enhanced Vouchers program is specifically addressed in 42 USC § 1437f (t).


February of 2004 (City's motion, Exh B; Ruiz Aff. ¶12). Further, should plaintiffs disagree with the calculation, they can avail themselves of a conference or informal hearing by notifying HPD within 30 days of getting their recertification. Thus, plaintiffs' first and second causes of action are dismissed.

As to the remaining claims appearing in plaintiffs' proposed verified complaint, only a brief mention and determination are warranted as the only issue before this court should be only the constitutional issue. In any event, plaintiffs' claim that HPD did not adequately provide them with the terms of the Enhanced Voucher Program in 2003 is dismissed as it is beyond the time permitted to bring this claim. Plaintiffs' request for this court to convert this action or their claims regarding the HPD's recertification to an Article 78 proceeding is denied. Plaintiffs' arguments in neither their memorandum of law nor the opposing affirmation set forth straightforward facts or documents to support a conversion, especially when plaintiffs do not have any issue with how the Enhanced Voucher is calculated. Finally, plaintiffs' claims that Hudsonview breached the Housing Assistance Payment (HAP) agreement, although plaintiffs concede that "[they] cannot inform the Court as to the specific circumstances of the violation. . . ." (Deft Hudsonview's Motion, Exh A - proposed verified complaint ¶ 36) also must be dismissed for failure to state a cause of action. While plaintiffs hammer in that this court should view their case as a court of equity, this court cannot depart from constitutional edicts and rule of law because plaintiffs claim they are adversely affected by paying more than 30 percent of their adjusted income, rather than having the section 8 Enhanced Vouchers program absorbing more of the rent.

Accordingly, defendants' respective motions for summary judgment are granted in favor of the City of New York, Housing Preservation and Development Corp., and Hudsonview Terrace, Inc. The action is hereby dismissed and the clerk of the court is directed to enter judgment as such.

This constitutes the decision and order of the court.

Dated: June 26, 2014



Margaret A. Chan, J.S.C.

FILED

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NEW YORK