

<b>Matter of Cahill v Rhea</b>
2014 NY Slip Op 33291(U)
July 2, 2014
Supreme Court, Bronx County
Docket Number: 260395/13
Judge: Jr., Kenneth L. Thompson
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SUPREME COURT OF THE STATE  
COUNTY OF BRONX IA 20

10 Aug

In the Matter of the Application of

Index No. 260395/13

KEVIN CHAILL, AS RECEIVER,  
CHAILL

Petitioners,

DECISION/ORDER

For a Judgment pursuant to Article 78 of the Civil  
Practice Laws and Rules,

Present:  
HON. KENNETH L. THOMPSON, Jr.

-against-

JOHN B. RHEA, as Chairman of the New York City  
Housing Authority, and the NEW YORK CITY HOUSING  
AUTHORITY,

Respondents.

The following papers numbered 1 to 5 read on this motion,

*for an article 78 judgment and  
a motion to dismiss.*

No On Calendar of 03/07/14

PAPERS NUMBERED

Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----	1
Answering Affidavit and Exhibits-----	4
Replying Affidavit and Exhibits-----	5
Notice of Cross Motion-----	2
Memorandum Of Law-----	3
Stipulation -- Referee's Report --Minutes-----	
Filed papers-----	

Upon the foregoing papers and due deliberation thereof, the Decision/Order on this motion is as follows:

Petitioner brings this Article 78 for a judgment finding that respondent, NYCHA, failed to perform its duty and further seeks a judgment compelling respondents to pay petitioner Section 8 subsidies in the amount of \$158,732.64. Petitioner is a receiver in an apartment building that includes residents receiving section 8 assistance. Petitioner alleges that NYCHA failed to pay the subsidy for eleven tenants rendering the total due as \$158,732.64.

Respondent, NYCHA, cross-moves to dismiss the Petition on grounds that Petitioner failed to comply with PHL 157 by failing to serve a Notice of Claim, the Petition is time barred by the four month Statute of Limitations under CPLR 217(1), lack of standing to assert claims for retroactive and prospective subsidies for Armisia Vega; lack of merit to claims for subsidies for Alyna Smith, Mayda Marquez, Valerie Lopez and Brenda Serrano, whose subsidies were suspended for failed federal Housing Quality Standards. (HQS).

On July 2, 2012, Petitioner was appointed as a receiver for property that was in foreclosure. On or about August 13, 2012 Petitioner requested that section 8 payments from NYCHA be paid to Petitioner, the newly appointed receiver. No payments were received for the 11 apartments. Petitioner provided proof of service of a Notice of Claim on April 18, 2013 for the Section 8 payments. Petitioner served this petition on May 30, 2013.

#### STATUTE OF LIMITATIONS

NYCHA argues that the Petitioner's four month period to bring this proceeding began to run on September 1, 2012, when NYCHA failed to make payments as demanded by Petitioner on August 13, 2012. "An article 78 proceeding must be commenced within four months after the administrative determination to be reviewed becomes "final and binding upon the petitioner" (CPLR 217 [1]; *New York State Assn. of Counties v Axelrod*, 78 NY2d 158, 165). An administrative determination becomes "final and binding" when the petitioner seeking review has been aggrieved by it." (*Matter of Yarbough v Franco*, 95 N.Y.2d 342, 347 [1<sup>st</sup> Dept 2000]). NYCHA argues that Petitioner was aggrieved when NYCHA failed to send Petitioner the Section 8 subsidies on September 1, 2012. However, NYCHA took no action in response to Petitioner's request that Section 8 payments be sent to him. "[I]f the position taken by the department in reference to the application is regarded as inaction rather than as action, the period in which to institute an article 78 proceeding would still commence to run within a reasonable time after the matter was submitted to it. (*Matter of Barry v Mulrain*, 4 A.D.2d 628, [1<sup>st</sup> Dept 1957]). Petitioner commenced this Petition within nine months from the time Petitioner did not receive the requested subsidy payments, in other words, within nine months of the commencement of NYCHA's inaction with respect to Petitioner's demand for payment of the subject subsidies. As of the time of commencement of this Article 78 no final action had been

taken by NYCHA. It is undisputed that during the nine month period of NYCHA's inaction, Petitioner had been in contact with NYCHA to have the subsidy payments sent to Petitioner. Therefore, Petitioner has commenced this proceeding within a reasonable time after the matter was submitted to NYCHA.

#### NYCHA'S ACTION WITH RESPECT TO THE ELEVEN TENANTS

With respect to the claim for retrospective and prospective subsidies for Alyna Smith, Mayda Marquez, Valerie Lopez and Brenda Serrano, their Section 8 subsidies were suspended for failed federal Housing Quality Standards. (HQS). The previous owners failed to file a timely Article 78 proceeding challenging the HQS determinations. Therefore, the Statute of Limitations defense is effective against the claims for subsidies from the aforementioned four tenants' tenancy.

Petitioner lacks standing to assert claims for retroactive and prospective subsidies for Armisia Vega, as Ms. Vega was terminated from the Section 8 program for failure to comply with requirements of the Section 8 program. (*Matter of Lakins v New York City Hous. Auth.*, 67 A.D.3d 604 [1<sup>st</sup> Dept 2009]).

It is undisputed that the Section 8 subsidies are currently being paid to the Petitioner for the remaining six tenants, Pagan, Rosario, Pena, Smith, Marquez and Velasquez.

#### CONCLUSION

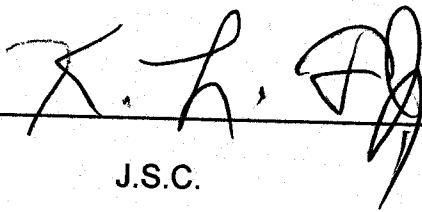
Respondent's cross-motion is granted to the extent that Petitioner's claims are dismissed with respect to subsidies for the apartments of the following tenants: Alyna Smith, Mayda Marquez, Valerie Lopez, Brenda Serrano and Armisia Vega. The claims for prospective subsidies for Pagan, Rosario, Pena, Smith, Marquez and Velasquez are dismissed as moot. The cross-motion is denied with respect to retroactive Section 8 subsidies for the apartments of

Pagan, Rosario, Pena, Smith, Marquez and Velasquez. Respondent is directed to serve an answer to the Petition within 45 days of the date of entry of this decision and order.

Furthermore, the parties are directed to appear for a settlement/disclosure conference on September 15, 2014 in Courtroom 703 at 10:30 AM.

The foregoing shall constitute the decision and order of the Court.

Dated: JUL 0 8 2014

  
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J.S.C.  
KENNETH L. THOMPSON, JR.