Guillaume v Russ
2020 NY Slip Op 32994(U)
September 10, 2020
Supreme Court, New York County
Docket Number: 450990/2020
Judge: Carol R. Edmead

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. CAROL R. EDMEAD** **PART** **IAS MOTION 35EFM**

Justice

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RONALD GUILLAUME,

Plaintiff,

- v -

GREGORY RUSS, C. & M. REALTY ENTERPRISES, INC.

Defendant.

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INDEX NO. 450990/2020

MOTION DATE 4/13/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, it is

ADJUDGED that the petition for relief, pursuant to CPLR Article 78, of petitioner Ronald Guillaume (motion sequence number 001) is denied; and it is further

ORDERED that the cross motion, pursuant to CPLR 3211, of the respondents New York City Housing Authority and Gregory Russ (motion sequence number 001) is granted and the petition is dismissed in its entirety as against said respondents, and the Clerk of the Court is directed to enter judgment accordingly in favor of said respondents; and it is further

ORDERED that the cross motion, pursuant to CPLR 3025 (b), of petitioner Ronald Guillaume (motion sequence number 001) is denied; and it is further

ORDERED that this Court's stay of the Housing Court eviction proceeding by Order dated March 5, 2020 is vacated; and it is further

ORDERED that counsel for respondents shall serve a copy of this order along with notice of entry within 20 days of this order.

In this Article 78 proceeding, petitioner Ronald Guillaume (Guillaume) seeks an order to overturn a determination of the respondent New York City Housing Authority (NYCHA) as arbitrary and capricious. NYCHA and its Chair, Gregory Russ, cross-move to dismiss the petition, and Guillaume also cross-moves for leave to serve an amended petition (together, motion sequence number 001). For the following reasons, the petition is denied, the first cross motion is granted and this proceeding is dismissed, and the second cross motion is denied as moot.

FACTS

Guillaume is the tenant of apartment 2E in a building located at 217 East 182nd Street in the County of the Bronx, City and State of New York (the "building"). *See* verified petition, ¶ 3. Co-respondent C. & M. Realty Enterprises, Inc. (C&M) is the building's owner. *Id.*, ¶ 7. Until December 2018, Guillaume was a participant in the "Section 8 Housing Assistance Program for Existing Housing," a voucher-based, low-income, rental assistance program that is administered by NYCHA. *Id.*, ¶ 4.

Participants in "Section 8" programs are required to submit annual income recertification statements that demonstrate their continued eligibility for program benefits, and the failure to do so may result in a participant's termination from a program. 24 CFR §§ 982.551 (b) (2), 982.552 (c) (1) (i). NYCHA asserts that Guillaume failed to submit a complete income recertification statement for 2018. *See* notice of cross motion (NYCHA), Kramer affirmation, ¶ 9. NYCHA has presented copies of: 1) a "T-3 termination notice," dated August 16, 2018, which notified Guillaume that his Section 8 subsidy would be terminated 45 days thereafter unless he made a timely request for a termination hearing; 2) a letter dated September 14, 2018 that informed Guillaume that he could also call NYCHA's "recertification hotline" between 10:00 a.m. and

3:00 p.m. on October 9, 2018 to complete the 2018 recertification process; and 3) three letters that it sent to Guillaume in 2019 in response to his repeated requests to restore his Section 8 subsidy, each of which stated that "effective 12/31/2018 you were no longer a participant in the Section 8 program." *Id*., exhibits E, F, J. NYCHA has also presented proof of service of the "T-3 termination notice" via regular mail with a certificate of mailing *Id.*; Ho aff, exhibits 1-3. For Guillaume's part, his counsel asserts that he "never received the notice of default," and that NYCHA failed to comply with the applicable mailing requirements. *See* notice of cross motion (Guillaume), Rockoff affirmation, ¶¶ 41-59.

After NYCHA's termination decision, C&M commenced a summary holdover proceeding against Guillaume on November 14, 2019 under Index No. LT-46597-19/BX in the Housing Part of the Civil Court of the City of New York, County of the Bronx (the Housing Court proceeding). *See* Blau affirmation in opposition to order to show cause, ¶ 18; exhibit A. That matter was adjourned several times for Guillaume to obtain counsel. *Id*. After he had done so, Guillaume commenced this Article 78 proceeding on March 3, 2020, and the next day also submitted an Order to Show Cause that requested a stay of the Housing Court proceeding. *See* verified petition; order to show cause. The court granted Guillaume's application on March 5, 2020. C&M moved to oppose Guillaume's order to show cause; however, the court denied C&M's application to vacate its stay of the Housing Court proceeding in an order dated April 13, 2020. On May 11, 2020, rather than file an answer, NYCHA cross-moved to dismiss this proceeding. *See* notice of cross motion (NYCHA). On August 12, 2020, Guillaume submitted his own cross motion for leave to file and serve an amended Article 78 petition. *See* notice of cross motion (Guillaume). At this point, all motions and cross motions are fully submitted (collectively, motion sequence number 001).

DISCUSSION

Normally, a court's role in an Article 78 proceeding is to determine, upon the facts before the administrative agency, whether the determination had a rational basis in the record or was arbitrary and capricious. *See Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County* , 34 NY2d 222 (1974); *Matter of E.G.A. Assoc. Inc. v New York State Div. of Hous. & Community Renewal* , 232 AD2d 302 (1st Dept 1996). Guillaume's petition asks the court to find that NYCHA's decision to terminate him from the Section 8 program was an arbitrary and capricious act. *See* verified petition, ¶¶ 36-42. However, NYCHA's cross motion asserts that the court cannot perform the normal Article 78 analysis in this case because Guillaume's petition is time-barred. *See* notice of cross motion (NYCHA), Kramer affirmation, ¶¶ 16-32. For the following reasons, the court agrees.

In *Matter of Banos v Rhea* (25 NY3d 266 [2015]), which reviewed the notice and termination procedures for Section 8 programs that the U.S. District Court for the Southern District of New York approved in the consent decree that it entered in *Williams v NYCHA* (81 Civ 1801 [SDNY 1984]), the Court of Appeals held as follows:

> "The plain language of the *Williams* consent judgment draws a distinction between what is required to commence the limitations period for a challenge to a termination of Section 8 benefits, on the one hand, and what is required for NYCHA to establish the merit of such a termination - including NYCHA's full compliance with the notice requirements - on the other hand. The consent judgment addresses the statute of limitations in paragraph 22 (f) as follows: '[F]or the purposes of Section 217 and Article 78 of the [CPLR], the determination to terminate a [Section 8] subsidy shall, in all cases, become final and binding upon receipt of the Notice of Determination pursuant to paragraph "22(a)" hereinabove, or the notice of Default, pursuant to paragraph "3 (e)" above' - i.e., the T-3 letter - with an exception that is not relevant here.
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> "For these reasons, we hold that the timeliness of a proceeding against NYCHA challenging a termination of Section 8 benefits is measured from the tenant's receipt of the T-3 letter, regardless of whether NYCHA proves that it mailed the other two notices. While this rule may result in the dismissal of petitions for some tenants with otherwise meritorious claims, such a result is inherent in any limitations period. However, statutes

> of limitations embody an important public policy of providing finality for agency determinations and reflect a legislative judgment to shield parties from having to defend against stale claims. In arriving at the terms of the *Williams* consent judgment, this policy - set forth in paragraph 22 (f) - was evidently balanced against the policy underlying the procedural requirements of paragraphs 2 and 3 for a valid termination of benefits.
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> "Turning to the contentions of [respondents] that NYCHA failed to establish that it properly mailed the T-3 letters, paragraph 22 (g) of the *Williams* consent judgment contains a rebuttable presumption that the T-3 letter is received 'on the fifth day following the date of mailing.' *In each case before us, the Appellate Division found, either explicitly or implicitly, that NYCHA established proper mailing of the T-3 letter. Those factual determinations are supported by the record in each case, and each petitioner's bare denial of receipt is insufficient to rebut the presumption contained in paragraph 22 (g) of the consent judgment. Thus, the statute of limitations began to run five days after mailing of the T-3 letters, notwithstanding the absence of proof regarding mailing of the warning letters or T-1 letters.* The parties do not dispute that, under this interpretation of the consent judgment, each of these proceedings was untimely if measured from the applicable date."

25 NY3d at 276-282 (internal citations omitted, emphasis added). In this case, NYCHA has presented a copy of the U.S. Post Office certificate of mailing that shows that the Authority's General Services Department placed Guillaume's August 16, 2018 T-3 termination notice in the mail on August 30, 2018. *See* notice of cross motion (NYCHA), Ho aff, ¶ 6; exhibit 2. Pursuant to the holding of *Matter of Banos v Rhea*, "paragraph 22 (g) of the *Williams* consent judgment contains a rebuttable presumption that the T-3 letter is received 'on the fifth day following the date of mailing.'" 25 NY3d at 280. In this case, that means that a rebuttable presumption arose that Guillaume had received the T-3 notice on September 4, 2018, which was also the day on which the four-month statute of limitations applicable to Article 78 proceedings began to run. However, Guillaume did not commence this Article 78 proceeding until March 3, 2020 - a year and three months after the limitations period expired on January 2, 2019. *See* verified petition. Therefore, pursuant to the holding of *Matter of Banos v Rhea*, Guillaume's Article 78 petition is untimely, his claim is time-barred, and this proceeding must be dismissed. *See also Matter of Vuksan Realty, LLC v Olatoye*, 179 AD3d 465 (1st Dept 2020).

The court notes that Guillaume's counsel argues that "petitioner's request to reopen his default is not time-barred because petitioner never received the notice of default." *See* notice of cross motion (Guillaume), Rockoff affirmation, ¶¶ 41-46. The court also notes that counsel's bare allegation is not accompanied by an affidavit of merits from Guillaume himself, or by any evidence to overcome the rebuttable presumption that Guillaume received the T-3 notice on September 4, 2018. The court finally notes the Court of Appeals' directive that "[a] petitioner's bare denial of receipt is insufficient to rebut the presumption contained in paragraph 22 (g) of the consent judgment." *Matter of Banos v Rhea*, 25 NY3d at 280. Therefore, the court rejects counsel's first opposition argument.

Guillaume's counsel also argues that "NYCHA failed to comply with the *Williams* consent decree mailing requirements" by omitting an additional attempt at serving the T-3 notice via certified mail. *See* notice of cross motion (Guillaume), Rockoff affirmation, ¶¶ 47-59. However, neither the terms of the *Williams* consent decree nor the Court of Appeals' holding in *Matter of Banos v Rhea* includes or imposes a certified mailing requirement for T-3 notices. Neither does Guillaume's counsel identify any subsequent appellate case law that recognizes such a requirement. Therefore, the court rejects counsel's second opposition argument as unsupported.

Finally, Guillaume's counsel argues that "in the alternative, termination of petitioner's subsidy was procedurally improper and arbitrary and capricious, and the voucher should be restored." *See* notice of cross motion (Guillaume), Rockoff affirmation, ¶¶ 60-63. This argument mirrored counsel's earlier assertions that NYCHA acted improperly by not affording Guillaume a hearing, or some other type of opportunity, to demonstrate "good cause" to vacate the termination of his Section 8 subsidy. *Id*., ¶¶ 15-40. However, the Court of Appeals was very

clear that it is improper for a trial court to consider such notice-based arguments where a petitioner's claim is time-barred. The Court stated that "the timeliness of a proceeding against NYCHA challenging a termination of Section 8 benefits is measured from the tenant's receipt of the T-3 letter, regardless of whether NYCHA proves that it mailed the other two notices," and observed that "[w]hile this rule may result in the dismissal of petitions for some tenants with otherwise meritorious claims, such a result is inherent in any limitations period." *Matter of Banos v Rhea*, 25 NY3d at 279-280. Therefore, the court rejects Guillaume's final opposition arguments as inapposite.

Accordingly, the court concludes that Guillaume's Article 78 petition should be denied and that NYCHA's cross motion should be granted; and that, as a consequence, Guillaume's cross motion for leave to amend his petition should also be denied as moot. It is not sufficient to simply make these findings, however.

In its order dated April 13, 2020, the court noted as follows:

> "These are extraordinary times. As you all are well aware, the City of New York is the epicenter of the COVID-19 virus. As Governor Cuomo and Mayor de Blasio have constantly iterated, keeping New Yorkers safe, secure and in place in their homes is paramount. The issues of rent are on "Pause." Notwithstanding and fully understanding the financial hardship facing Respondent C&M Realty, vacating the stay of Respondent C&M's Landlord Tenant summary proceeding to recover the apartment from Petitioner Mr. Guillaume at this point in time would be egregious error by this court."

The times remain extraordinary. The court is well aware that dismissing Guillaume's Article 78 petition necessarily vacates the stay that it imposed on the Housing Court proceeding in its April 13, 2020 order. This, in turn, renews the possibility that Guillaume might be evicted, should the Housing Court enter a judgment of possession against him. However, on August 12, 2020, the Office of Court Administration extended its moratorium on residential evictions in New York City until October 1, 2020. Further, on September 4, 2020, the Centers for Disease Control and Prevention - an agency of the U.S. Department of Health and Human Services - issued an

additional moratorium on residential evictions through December 31, 2020 pursuant to a contemporaneous presidential executive order. 42 USC § 264; 42 CFR § 70.2. With these protections in place, the court no longer deems it an "egregious error" to vacate its stay of C&M's Housing Court proceeding. Nevertheless, the court directs counsel for Guillaume and C&M to include a copy of this order in any applications that they may submit to the Housing Court for leave to resume their litigation of the summary holdover proceeding.

DECISION

ACCORDINGLY, for the foregoing reasons it is hereby

ADJUDGED that the petition for relief, pursuant to CPLR Article 78, of petitioner Ronald Guillaume (motion sequence number 001) is denied; and it is further

ORDERED that the cross motion, pursuant to CPLR 3211, of the respondents New York City Housing Authority and Gregory Russ (motion sequence number 001) is granted and the petition is dismissed in its entirety as against said respondents, and the Clerk of the Court is directed to enter judgment accordingly in favor of said respondents; and it is further

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ORDERED that counsel for respondents shall serve a copy of this order along with notice of entry within 20 days of this order.

9/10/2020
DATE

HON. CAROL R. EDMEAD, J.S.C.
J.S.C.

CHECK ONE:	x	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED	x	DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE