

<b>1920 Walton LLC v Russ</b>
2022 NY Slip Op 31289(U)
April 19, 2022
Supreme Court, New York County
Docket Number: Index No. 161078/2020
Judge: Debra James
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBRA JAMES PART 59

Justice

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1920 WALTON LLC,

Petitioner,

- v -

GREGORY RUSS, as Chairperson of New York City Housing Authority, NEW YORK CITY HOUSING AUTHORITY (NYCHA), and ELBA RAMIREZ,

Respondents.

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INDEX NO. 161078/2020

MOTION DATE 02/24/2021

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, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

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

ORDER

Upon the foregoing documents, it is

ADJUDGED that the petition is denied, the motion to dismiss of respondents is granted, and the proceeding is dismissed, with costs and disbursements to respondents; and it is further

ADJUDGED that respondents, having an address at , do recover from petitioner, having an address at , costs and disbursements in the amount of \$ , as taxed by the Clerk, and that respondent have execution therefor.

DECISION

In this proceeding, petitioner seeks mandamus relief compelling respondents to make payments and restore respondent tenant Ramirez as a participant of the housing subsidy program under the federal laws and regulations, 24 CFR §§ 882.104, 882.206, 887/101, et seq., ("Section 8").

In lieu of filing an answer, respondents moved to dismiss the petition pursuant to CPLR 7804(f) (objection in point of law), and CPLR §§ 3211(a)(1) (defense based on documentary evidence), (5) (time-barred under the statute of limitations), (7) (failure to state a cause of action), and CPLR 7804(f) (petitioner lacks standing to sue). On such motion grounded upon objection in point of law, this court must assume the truth of the allegation of the petition and consider no facts alleged in support of the motion, see Hondzinski v Erie County, 64 AD2d 684 (4<sup>th</sup> Dept 1978), except with respect to irrefutable documentary proof.

With respect to irrefutable documentary evidence, petitioner fails to rebut

- the September 25, 2017 NE-17 Notice (NYSCEF Document Number 12) that respondents delivered to petitioner, which states:

A. Tenant Info: ELBA RAMIREZ  
1920 Walton Avenue Bronx, NY

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D. Dear Owner:

Kitchen: Refrigerator/Freezer Kitchen Refrigerator Door Shelf Bracket(s) - Broken Or Missing; Kitchen: Ceiling Condition Kitchen Ceiling - Bubbling, Chipping, Cracking, Damaged, Peeling; Kitchen: Wall Condition Kitchen Wall - Bubbling, Chipping, Cracking, Damaged, Peeling (severe); Bathroom: Tub/Shower in Unit Bathroom Bathroom Tub/shower-hot Water Scalding (temp Above 120 Degrees); Living Room: Lead/Defective Paint Living Rm Peeling Window-curling, cracked, scaled, flaked, blistered, chipped; General: Signs of Infestation Infestation - Evidence Of Mice; Bedroom: Window Condition Other Rooms Window - Chipped, Cracked, Loose, Missing Severe; or

- the May 1, 2018 NE-1 Notice (NYSCEF Document Number 15)

that respondents delivered to petitioner, which states:

A. Tenant Info: ELBA RAMIREZ  
1921 Walton Avenue Bronx, NY  
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D. Dear Owner:

The New York City Housing Authority (the "Authority") has determined that you have failed to maintain the above-listed premises in the accordance with federal Housing Quality Standards ("HQS") for the Section 8 program

On 05/01/2018 , our staff inspected the above premises and found the following HQS violations:

Stove/Range & Oven Kitch Stove/range/oven- No Gas Landlord Supplies;  
Ceiling Condition Kitchen Ceiling- Hole(s) in Ceiling Large;  
Fixed Wash Basin/Lav Bath Rm Bathroom Sink- coming Loose From Wall (severe)"; or

- the May 30, 2018 NE-1 Notice (NYSCEF Document Number 22) that respondents sent to petitioner, and which listed many of the identical HQS violations set forth in the May 1, 2018 notice, as follows:

Stove/Range & Oven Kitchen Stove/range/oven - No Gas Landlord Supplies;  
Stove/Range & Oven Kitchen Stove/range/oven - Hot Plates Used In Lieu Of Stove Or Oven;  
Refrigerator/Freezer Kitchen Refrigerator Door Shelf Bracket(s) - Broken Or Missing;

Petitioner likewise fails to allege in its petition that it ever corrected the HQS violations on the subject premises, including either before the fire in the building that took place on September 27, 2017, or after either of the inspections on May 1, or May 30, within the 60-day period of respondents' suspension of Housing Assistance Program ("HAP") payments. The petition merely alleges that the vacate order was removed when the premises were made habitable and respondent Ramirez restored to possession after the fire, but does not assert that petitioner ever corrected the HSQ violations within the 60-day time frame set forth in such notices. Therefore, petitioner fails to state a cause of action for relief. See Flosar Realty LLC. V New York City Hous. Auth., 127 A.D.3d 147, 151 (1st Dept. 2015) ("No subsidy payments may be made for a unit that fails to meet HQS unless the owner corrects the defect within a period specified by NYCHA and NYCHA verifies the correction.")

Moreover, respondents are correct that, as of commencement of this proceeding, the irrefutable documentary evidence establishes that no HAP contract existed between petitioner and respondent NYCHA, not only because such contract automatically

terminated, on December 31, 2017, after the HAP subsidy was suspended for 60 days, but also, by operation of law and on such contract's own terms, such contract terminated, effective May 31, 2018, because no HAP payments had been issued for 180 consecutive days. See 24 CFR § 982.455; HAP contract, Part B, ¶4(b)(5) (NYSCEF Document Number 10).

Likewise, respondents are correct that the petition herein is time-barred as petitioner failed to commence this proceeding, either within four months of its receipt of notice that the premises failed the second post-fire inspection of May 30, 2018 or, within four months of February 2018, when petitioner knew it was not receiving subsidy payments after respondent Ramirez, post fire, was restored to possession. See CPLR §§ 217(1) and 304; and Vuksan Realty, LLC v Olatoye, 179 AD3d 465 (1<sup>st</sup> Dept. 2020).

Finally, this court concurs with respondents that the irrefutable documentary evidence demonstrates that, upon the termination of the HAP contract and the expiration of the transfer voucher issued to respondent Ramirez, respondent Ramirez ceased to be a Section 8 program participant. Irrefutably, by notice dated May 7, 2018 (NYSCEF Document Number 16), respondent NYCHA advised petitioner that respondent Ramirez's subsidy would be terminated effective May 31, 2018, for such tenant and the subject premises. As petitioner is not

the terminated tenant, it has no standing to seek such tenant's/respondent Ramirez's restoration to the Section 8 program. See Lakins v. New York City Hous. Auth., 67 A.D.3d 604, 604 (1st Dept. 2009) ("Although petitioner-appellant Diana Lakins was the wife of the tenant of record Wesley Lakins and was an occupant of the subject apartment, she does not have standing to pursue this appeal since she was not a co-lessee of the apartment.")

*Debra A. James*

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4/19/2022

DATE

DEBRA JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE