

Guidance Ctr. of Westchester v Artist

2023 NY Slip Op 34009(U)

November 13, 2023

City Court of Peekskill

Docket Number: Index No. LT-235-23

Judge: Reginald J. Johnson

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CITY COURT OF PEEKSKILL
COUNTY OF WESTCHESTER: STATE OF NEW YORK
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THE GUIDANCE CENTER OF WESTCHESTER,

Petitioner,

DECISION AND
ORDER

-against-

Index No. LT-235-23

TIARA ARTIST
JALAL BLACKMAN,

Respondents.

1773 Lincoln Terrace, Apt. 1
Peekskill, NY 10566

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Reginald J. Johnson, J.

The Respondent moves by Order to Show Cause (1) to stay the issuance or execution of a judgment and warrant pursuant to CPLR §2004, §2201, and RPAPL §753(1) or (4); (2) to restore the matter to the calendar so that the respondent may be heard; (3) to vacate the warrant of eviction and the judgment in favor of the landlord pursuant to RPAPL §749(3) and CPLR §5015(a); (4) to dismiss the petition for reasons set forth in the Respondent’s annexed affidavit; and (5) to grant any other relief as this Court deems just and proper. The Petitioner opposes the motion. The Petitioner is represented by Solomon Chouicha, Esq. from the firm of Gutman, Mintz, Baker & Sonnefeldt, LLP. The Respondent is represented by Mihaela Petrescu, Esq. from Legal Services of the Hudson Valley.

On July 25, 2023, Petitioner commenced this licensee holdover proceeding against the Respondent to recover the premises located at 1773 Lincoln Terrace, Apt. 1, Peekskill, New York, 10566 based on the following allegations:

Participants Taira Artist and Jalal Blackman, entered into possession as Participants in the Turning Point Program pursuant to a license granted by the Petitioner. The

Participants were discharged from the program by the Petitioner on or about December 16, 2020. The decision was appealed and upheld in an Article 78 proceeding. Copies of the Discharge Notices and the Article 78 decision are annexed hereto and made a part hereof as Exhibits “1” and “2” respectively. Although the Respondents’ license has been terminated, Respondents have failed and/or refused to vacate the Unit.

(Licensee-Petition at ¶2).

The parties were scheduled for their first appearance on August 22, 2023, at which the Respondent failed to appear. The Court issued a default judgment and a warrant with no stay. On October 4, 2023, the Respondent filed the instant Order to Show Cause. The Court signed the Order to Show cause and ordered its service on the opposing party be made no later October 6, 2023, with an appearance scheduled for October 17, 2023. On October 13, 2023, the Respondent’s counsel filed an Affirmation in Support of The Order to Show Cause. On October 16, 2023, Respondent filed an Amended Affirmation in Support to the Pro Se Order to Show Cause. On October 16, 2023, Petitioner filed a Notice of Rejection with a request to adjourn the appearance on the Order to Show Cause to October 31, 2023. On October 20, 2023, the Court set the following motion schedule: opposition due on October 31, 2023; and a reply, if any, due on November 7, 2023. On October 31, 2023, opposition papers were received. On November 6, 2023, reply papers were received and the Court marked the motion fully submitted.

Respondent claims that since this proceeding is a licensee holdover proceeding, she should have received 10-day notice, not 30-days’ notice; that the petition fails to state the fact upon which this proceeding is based and fails to plead the regulatory scheme governing the parties’ rights and obligations; that the petition only stated that was a participant in the Turning Point Program, which is vague; that although the Petitioner claims that it is entitled to possession because the Respondent

violated program rules, which the Supreme Court said she failed to timely appeal via Article 78, the Court did not reach the merits involving her termination from the program; that this Court should determine de novo whether her termination from the program was warranted; that since she has not been afforded an administrative hearing prior to the commencement of this licensee holdover proceeding, this Court has jurisdiction to provide the requisite due process and to entertain all legal and equitable defenses and claims; that even though she did not request an administrative hearing and did not timely challenge her termination from the program, Petitioner is obligated to show good cause for her termination from the program; that Petitioner failed to state in the petition that it exercised judgment and examined all of the extenuating circumstances in determining whether her violations were serious enough to warrant termination; that she failed to meet with her case manager because of the COVID pandemic and that therefore her termination from the program was an extreme measure, which is unfair and threatens to render her family homeless; that the Petitioner must show its compliance with Supportive Housing Guidelines; that even if this Court were to grant the eviction, the warrant should be stayed for 30 days to allow the Respondent to correct the breach, pursuant to RPAPL §753(4); and that the Petitioner must prove its compliance with HUD rules and with Supportive Housing Guidelines. (Petrescu Affirm at ¶¶2,4-10, 23-26, 32, 34-35).

Petitioner opposes each of Respondent's claims and argues, among other defenses, that on February 9, 2022, Respondent commenced an Article 78 proceeding in New York Supreme Court, Westchester County, to contest her discharge from the Turning Point Program. Petitioner states:

In the Article 78 case, Petitioner provided Ms. Artist with a copy of its administrative record which detailed her failure to meet with her housing case manager in accordance with the rules of the Turning Point Program. A true copy of the administrative record is attached hereto and incorporated herein as **Exhibit "3"**.

The Court dismissed Ms. Artist's Article 78 Petition finding that her petition was untimely. See Exhibit "1" at pp. 22-25.

(Chouicha Affirm at ¶11) (Emphasis in the original).

Petitioner also argues that "the petition sufficiently pleads the regulatory scheme that is applicable to Respondent's residency in the subject premises and Respondent's termination from the Turning Point Program was in compliance with the CoC regulations" [Id. at ¶¶39-41].

To vacate a default judgment, the defaulting party must demonstrate both a reasonable excuse for the default and a potentially meritorious defense to the action (see *Eugene Di Lorenzo, Inc. v. A.C. Dutton Lar. Co.*, 67 NY2d 138, 141 [1986]; *NYCTL 2005-A Trust v. 2137-2153 Nostrand Ave Assocs.*, 69 A.D.3d 697 [App. Div. 2d Dept. 2010]; *Rodgers v. 66 East Treamont Heights Hou. Develop. Fund Corp.*, 69 A.D.3d 510 [App. Div. 1st Dept. 2010]). The defaulting party is not required to establish its defense as a matter of law; it need only set forth sufficient facts to make out prima facie showing of a meritorious defense (see *Quis v. Bolden*, 298 A.D.2d 375 [App. Div. 2d 2002]; *Energy Sav. Products v. Milici*, 168 A.D.2d 415 [App. Div. 2d Dept. 1990]; *Bergen v. 791 Park Ave. Corp.*, 162 A.D.2d 330 [App. Div. 1st Dept. 1990]). Finally, what constitutes a reasonable excuse for a default lies within the sound discretion of the Court (see *Martinez v. D'Alessandro Custom Builders & Demolition, Inc.*, 52 A.D.3d 786, 787 [App. Div. 2d Dept. 2008]; *Matter of Gamardella v. Ortov Lighting, Inc.*, 278 A.D.2d 494, 495 [App. Div. 2d 2000]; *Parker v. City of New York*, 272 A.D.2d 310, 311 [App. Div. 2d Dept. 2000]).

The Court of Appeals said that,

Collateral estoppel comes into play when four conditions are fulfilled: (1) the issues in both proceedings are identical; (2) the issue in the prior proceeding was actually litigated and decided, (3) there was a full and fair opportunity to litigate in the prior

proceeding, and (4) the issue previously litigated was necessary to support a valid and final judgment on the merits.

(*Conason v. Megan Holding, LLC*, 25 N.Y.3d 1, 17 [2015] [internal quotation marks omitted]; see *CitiMortgage, Inc. v. Ramirez*, 192 A.D.3d 70, 72 [2020]). Collateral estoppel “scans the first action and takes note of each decided in it. Then if the second action, although based on a different cause of action, attempts to reintroduce the same issue, collateral estoppel intervenes to preclude its relitigation and to bind the party, against whom the doctrine is being invoked, to the way the issue was decided in the first action” [David Siegel, *New York Practice* §443, at 748-749 (4th ed)].

“The quasi-judicial determinations of administrative agencies are entitled to collateral estoppel effect where the issue a party seeks to preclude in a subsequent civil action is identical to a material issue that was necessarily decided by the administrative tribunal and where there was a full and fair opportunity to litigate before that tribunal” (*Acqui v. Seven Thirty One Ltd. Partnership*, 22 N.Y.3d 246, 255 [2013]; *Kowalsky v. County of Suffolk*, 139 A.D.3d 903, 904 [2016]; *Akgul v. Prime Time Transp., Inc.*, 293 A.D.2d 631, 633 [2002]; *Ryan v. New York Tel. Co.*, 62 N.Y.2d 494, 499 [1984]). The Court of Appeals has made clear that “[t]here must be an identity of issue which has necessarily been decided in the prior action and is decisive of the present action, and there must have been a fully and fair opportunity to contest the decision now said to be controlling” (*Buechel v. Bain*, 97 N.Y.2d 295, 303-304 [2001] [citations omitted]; *Simmons v. Trans Express, Inc.*, 37 N.Y.3d 107, 112 [citations omitted])[collateral estoppel applies where “the issue in the second action is identical to an issue which was raised, necessarily decided and material in the first action,” and the party who is being estopped “had a full and fair opportunity to litigate the issue in the earlier action”].

It is well settled that “[o]nce an administrative agency has decided a matter, based upon a proper factual showing and the application of its own regulations and precedent, the parties to that matter are entitled to have the determination treated as final” (*Matter of Peckham v. Calogero*, 54 A.D.3d 27 [1st Dept. 2008]). In the case at bar, the undisputed record indicates that the Petitioner served the Respondent with a 10-day Notice to Cure (dated October 23, 2020) and a 30-day Notice of Discharge (dated November 16, 2020). In the discharge notice, Respondent was clearly advised of her right to appeal the Petitioner’s decision to terminate her from the program. However, the Respondent elected not to challenge the decision to terminate her from the program until roughly 14 months later and well beyond the statute of limitations (see Chouicha Affirm at Exhibit “2”, Decision and Order, J. Neary at p. 3).

Whether collateral estoppel should be applied in a particular case turns on ““general notions of fairness involving a practical inquiry into the realities of the litigation”” (*Jeffreys v. Griffin*, 1 N.Y.3d 34, 41 [2003], *quoting Matter of Halyalkar v. Board of Regents of State of N.Y.*, 72 N.Y.2d 261, 268 [1988]). Collateral estoppel “ ‘is applied more flexibly’ ” in the context of the determinations of administrative agencies [*Jeffrey*, 1 N.Y.3d at 40, *quoting Allied Chem. V. Niagara Mohawk Power Corp.*, 72 N.Y. 271, 276 (1988)]. In that regard, “among the factors bearing on whether an administrative decision is ‘quasi-judicial’ are ‘whether the procedures used in the administrative proceeding...were sufficient both quantitatively and qualitatively, so as to permit confidence that the facts asserted were adequately tested, and that the issue was fully aired’” [*Jeffrey*, 1 N.Y.3d at 40-41, *quoting Allied Chem. V. Niagara Mohawk Power Corp.*, 72 N.Y. at 276-277). There is nothing in the Court record or filings of the parties that indicate that the administrative procedure employed by the Petitioner was “quantitatively and qualitatively” insufficient, and Justice Neary did not make any finding to that effect and apparently, he had

confidence that the facts asserted by the parties could have been adequately tested and aired, but for Respondent's default. Therefore, this Court finds that the administrative procedure utilized by the Petitioner provided Respondent with due process; that the procedures utilized were "quantitatively and qualitatively" sufficient; and that the facts asserted by the parties would have been adequately tested and fully aired, but for Respondent's default.

Since the Respondent concedes that she "did not request an administrative hearing and did not challenge the termination from the program timely" (Petrescu Affirm at ¶24), that a subsequent Article 78 proceeding commenced by her was dismissed with a finding that her challenge to her termination from the Turning Point Program was approximately 14 months late and barred by the statute of limitations (Chouicha Affirm, Decision & Order, Exhibit 2), that she defaulted in the instant licensee holdover proceeding resulting in the issuance of a judgment and warrant, that she forfeited her right to have a full and fair opportunity to contest her termination from the program by not requesting an administrative hearing, and that the issue decided by the Petitioner, ruled on and dismissed by the Supreme Court, and pending in the instant holdover proceeding are identical: the propriety of her termination from the Turning Point Program, the Court finds that the Respondent would not be prejudiced with its finding that she is collaterally estopped from relitigating the issue of her termination from the Turning Point Program (see *Cheslowitz v. Board of Trustees of the Knox School*, 156 A.D.3d 753 [2d Dept. 2017]). Contrary to Respondent's argument that this Court should decide de novo the propriety of her termination from the Turning Point Program (Petrescu Affirm at ¶23; Petrescu Reply Affirm at ¶18), after the Petitioner terminated her from the program with notice of her right to appeal, and she did not contest the termination or timely challenge the termination via Article 78, the Petitioner's termination decision

became final and entitled to collateral estoppel treatment (see *Matter of Peckham v. Calogero*, supra).

The Court of Appeals said:

Under the doctrine of collateral estoppel, however, [Respondent] should not be allowed in this action to raise any of the issues [she] unsuccessfully litigated in [her] prior CPLR article 78 proceeding. Collateral estoppel or issue preclusion, “precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party ***, whether or not the tribunals or causes or action are the same.”

(*Parker v. Blauvelt Volunteer Fire Co., Inc.*, 93 N.Y.2d 343, 349 [1999] [citations omitted]).

Here, the Respondent unsuccessfully litigated the issue of her termination from the program in a prior Article 78 proceeding, so she is hereby precluded or collaterally estopped from relitigating that issue in this proceeding. Since the Petitioner’s termination decision is entitled to be treated as final and since the Respondent is collaterally estopped from challenging the termination decision, the Court finds that although she has articulated an excusable default [she claims she could not attend court on the return date of the petition because her children were sick (Petrescu Affirm at ¶3)], she has not presented a meritorious defense to the instant licensee holdover proceeding because, contrary to her claim, the Petitioner did state the statutory scheme which governs the rights and obligations of the parties, that the 30-day notice was sufficient, that she has not shown that the Petitioner has engaged in any misconduct, fraud, or duress against her, and that since she elected not to request an administrative hearing or timely appeal the termination decision, she waived her right to challenge the propriety or finality of the termination decision, and therefore she lacks a meritorious defense to the licensee holdover proceeding.

Considering the Court's decision, the Court need not address the other issues raised by the parties.

In accordance herewith it is hereby:

ORDERED that the Order to Show Cause seeking (1) to stay the issuance or execution of a judgment and warrant pursuant to CPLR §2004, §2201, and RPAPL §753(1) or (4); (2) to restore the matter to the calendar so that the respondent may be heard; (3) to vacate the warrant of eviction and the judgment in favor of the landlord pursuant to RPAPL §749(3) and CPLR §5015(a); and (4) to dismiss the petition for reasons set forth in the Respondent's annexed affidavit is DENIED,

ORDERED that a new warrant be issued and stayed for 30 days from the date of this Decision and Order,

and it is further,

ORDERED that the parties' scheduled appearance on December 5, 2023, is hereby cancelled.

Dated: November 13, 2023

Peekskill, New York

Reginald J. Johnson

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