

Matter of Reyes v Office of Temporary & Disability Assistance

2023 NY Slip Op 35084(U)

November 14, 2023

Supreme Court, Bronx County

Docket Number: Index No. 3650/2023

Judge: Paul L. Alpert

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 26

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In the Matter of the Application of
Darileen Reyes,

Index No.: 3650/2023

Petitioner,

DECISION/ORDER

-against-

Office of Temporary and Disability Assistance (ERAP)

Respondent.

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Recitation, as required by CPLR §2219(a), of the papers considered in the review of the order to show cause as indicated below:

Papers	Numbered
Order to Show Cause, Affidavit in Support & Exhibits.....	1
Cross-Motion, Affirmation in Support & Exhibits.....	2
Memorandum of Law in Support of Cross-Motion.....	3
Affidavit in Opposition to Cross-Motion & Exhibits.....	4
Reply Memorandum of Law in Support of Cross-Motion.....	5

Upon the foregoing cited papers the Decision/Order on this motion is decided as follows:

The petitioner commenced this Article 78 proceeding on July 17, 2023 to challenge the decision made by the Office of Temporary and Disability Assistance, (hereinafter "OTDA") denying her application for the Emergency Rental Assistance Program (ERAP). The petitioner did not respond to the respondent's demand for a change of venue which was served on August 28, 2023 before they filed their answer. The respondent cross-moved to change venue on September 19, 2023 and the petitioner opposes the motion.

The petitioner's application for ERAP was denied by OTDA and she appealed the decision. On April 4, 2023 OTDA determined that their original decision was correct based on insufficient information provided by the petitioner in her application and that she did not

demonstrate a valid landlord-tenant relationship existed.

Pursuant to CPLR § 510 the court, upon a motion may change the place of a trial where (1) the county designated for that purpose is not a proper county; or (2) there is reason to believe that an impartial trial cannot be had in the proper county; or (3) the convenience of material witnesses and the ends of justice will be promoted by the change (CPLR § 510).

CPLR § 511(b) provides that “the defendant shall serve a written demand that the action be tried in a county he specifies as proper. Thereafter the defendant may move to change the place of trial within fifteen days after service of the demand, unless within five days after such service plaintiff serves a written consent to change the place of trial to that specified by the defendant”.

CPLR § 506 (b) states that " A proceeding against a body or officer shall be commenced in any county within the judicial district where the respondent made the determination complained of or refused to perform the duty specifically enjoined upon him by law, or where the proceedings were brought or taken in the course of which the matter sought to be restrained originated, or where the material events otherwise took place, or where the principal office of the respondent is located".

The respondent's motion to change venue was timely served on September 12, 2023, fourteen days after the demand for change of venue was served.

In support of its motion the respondent argues that CPLR § 506(b) mandates that this proceeding be held in Albany County because that is where OTDA made the determination to deny the petitioner's application. OTDA annexed an affidavit from Rajni Chawla, the Deputy Commissioner for Audit and Quality Improvement for the OTDA. He states he was involved in

the day-to-day oversight of ERAP. He avers that OTDA has its principle office at 40 North Pearl Street, Albany, New York. All of the OTDA officials and staff responsible for implementing, administering and overseeing ERAP are located in Albany. Eligibility determinations are made pursuant to the rules of OTDA and are made by the OTDA's ERAP staff in Albany, NY and the OTDA Commissioner. The denial of the petitioner's ERAP application and the appeal determination upholding the original denial were made in Albany County. The petitioner opposes the motion and states that testimony has not started and this court is fully capable of making a determination. She claims that Albany County would be a "serious inconvenience" to her.

Courts have routinely transferred Article 78 proceedings relating to ERAP and another similar program, the New York State Covid-19 Landlord Rental Assistance Program ("LRAP") to Supreme Court in Albany County (see *Bamboo Hills Corp., v. N.Y. State Office of Temp. & Disability Assistance*, Sup. Ct. Kings County, August 7, 2023, Rothenberg, J., index No. 534348/2022; *Rachel Bernstein v. Tietz, N.Y. State Office of Temp. & Disability Assistance*, Sup. Ct. New York County, April 25, 2023, Kelley, J., index No. 453250/2022; *In the Matter of the Application of Wendy Levitt v. Teitz et al.*, Sup. Ct. Bronx County, January 6, 2023, Wilson, J., index No. 810366/2022E).

OTDA has demonstrated through the affidavit of Rajni Chawla that this special proceeding should have been commenced in Albany County pursuant to CPLR § 506 (b). The motion to change venue is granted pursuant to CPLR § 506(b), 510(1) and 511(b).

Based on the foregoing, it is hereby:

ORDERED AND ADJUDGED, that the respondent's motion for a change of venue is

granted, and it is further,

ORDERED AND ADJUDGED, that upon service by the respondent of a copy of this order with notice of entry and payment of any appropriate fees, if any, the Clerk of the Court in Bronx County shall transfer the papers on file in this proceeding to the Clerk of the Supreme Court, Albany County for assignment to a Justice of that court, and it is further,

ORDERED AND ADJUDGED, that the respondent shall serve a copy of this decision and order upon the petitioner within twenty (20) days of notice of entry.

This constitutes the decision and order of the court.

Dated: November 14, 2023



Hon. Paul L. Alpert, J.S.C.