

Torres v Bova-Hiatt

2026 NY Slip Op 31904(U)

May 4, 2026

Supreme Court, New York County

Docket Number: Index No. 452939/2025

Judge: Phaedra F. Perry-Bond

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

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DAVID TORRES

Petitioner,

- v -

LISA BOVA-HIATT, as Commissioner of New York City
Housing Authority

Respondent.

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INDEX NO. 452939/2025
MOTION DATE 10/14/2025
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

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

Upon the foregoing documents, the Petition is granted. Petitioner is a senior citizen who has lived at 5360 Broadway, Apartment 02L, Bronx, New York (the "Apartment") for the past 63 years. The Apartment is owned by NYCHA and Petitioner lives there pursuant to a lease. In 2017, Petitioner lost his job, and he stopped receiving unemployment benefits in July of 2018. Based on prior information allegedly given by NYCHA to Petitioner, he believed his right to live in a NYCHA apartment required him to show proof of income. Petitioner was unable to secure employment and alleges the job rejections and fears that he would lose his home caused him to experience depression and anxiety so severe that he could not bring himself to open any mail from NYCHA. Nonetheless, Petitioner consistently paid his rent on time.

Because Petitioner was not opening his mail, he was unaware that NYCHA brought charges against him for failure to verify his income, causing him to breach NYCHA's rules and regulations. On May 8, 2024, a termination of tenancy hearing regarding Petitioner's tenancy was held at the Office of Impartial hearings, with NYCHA hearing Officer Christopher Stephens

terminating Petitioner's tenancy on default. That decision was endorsed by NYCHA on August 1, 2024. Petitioner did not learn his tenancy was terminated until he received housing court papers shoved under his door at the end of 2024. Petitioner retained counsel in housing court and then worked with his building's management office to submit his missing annual income recertifications.

On May 5, 2025, Petitioner submitted an application to vacate his default to the Office of Impartial Hearings. The application was unopposed. Nonetheless, on June 12, 2025, Petitioner's application was denied on the basis that it was not made in a reasonable amount of time and on the basis that Petitioner failed to proffer a reasonable excuse for his default. The Hearing Office also found that there was no defense proffered because Petitioner's admission that he was submitting belated certifications was proof that he violated NYCHA's rules. Petitioner now sues CPLR 7803 seeking to annul the June 12, 2025 decision and order on the basis it was arbitrary and capricious, an abuse of discretion, constituted a penalty so disproportionate to Petitioner's actions that it shocks the conscience, and violative of public policy. Respondent opposes and argues that the penalty of termination does not shock one's sense of fairness and serves as a deterrent. Respondent also argues the decision was rational because Petitioner did not move to vacate his default within a reasonable time, failed to proffer a reasonable excuse, and failed to proffer a meritorious defense.

In an article 78 proceeding, judicial review is limited to determine whether an administrative decision is arbitrary and capricious, or an abuse of discretion (*Slesinger v Department of Housing Preservation and Development of City of New York*, 39 AD3d 246 [1st Dept 2007]). An administrative sanction must be upheld unless it so shocks the judicial conscience as to constitute an abuse of discretion as a matter of law due to being so disproportionate to the

alleged offense (*see Mirza v College of Mount Saint Vincent*, 241 AD3d 1163, 1164 [1st Dept 2025] quoting *Matter of Zirino v Diamond*, 259 AD2d 443, 443 [1st Dept 1999]).

Here, Respondent's refusal to vacate Petitioner's default, the consequences of which resulted in a senior citizen on limited income who consistently paid rent losing his home of 63 years, shocks the judicial conscience (*see Cabrera v New York City Hous. Auth.*, 30 Misc.3d 1231[A] at *2-3 [Sup. Ct., New York County 2011] [Mendez, J.] citing *Vasquez v New York City Housing Auth.*, 57 AD3d 360 [1st Dept 2008]). The fact that Petitioner's application to vacate his default was unopposed, and that Petitioner was in the process of curing his failure to certify his income, only further shocks this Court's sense of fairness (*see also Matos v Hernandez*, 79 ad3d 466, 466-467 [1st Dept 2010]; *Peoples v New York City Housing Auth.*, 281 AD2d 259, 259-260 [1st Dept 2001]).

The First Department's decision in *Gray v. Donovan*, 58 A.D.3d 488 (1st Dept. 2009) is on point. There, the First Department found that the Department of Housing Perseveration and Development's decision to terminate a tenant's housing subsidy on the ground that she failed to report income, despite her unblemished record for thirty years, where the result would likely lead to homelessness for the tenant and her 13-year-old son, was so shockingly disproportionate to the offense that nullification of the decision was required. Similar to *Gray*, Petitioner is a tenant with a 64 year record showing little, if any evidence of prior offenses, whose tenancy will be terminated simply because he did not certify his income in the past, the result of which will likely lead to homelessness.

Petitioner's excuse for the failure to certify, which he attributes to his struggles with depression after losing his job and the death of his mother, his failure to find another job, and his fear of losing his long-term home, is reasonable given the circumstances (*see, also Ruiz v*

Laophermsook, 211 AD3d 496 [1st Dept 2022] [vacating pro se's default where pro se demonstrated hardships including loss of job, financial constraints, mental and emotional distress, and other legal issues]).

Moreover, that Petitioner was trying to rectify his mistakes and that Respondent would not even allow Petitioner to present his case on the merits is shocking and unfair, especially considering New York's public policy in resolving cases on the merits (*see, e.g. Genao v Salcedo Maintenance Corp.*, 168 AD3d 528, 528-529 [1st Dept 2019]). Respondent also fails to show how it faces any prejudice by affording Petitioner an opportunity to challenge the charges at a hearing on the merits (*Genao, supra* citing *Silverio v City of New York*, 266 AD2d 129 [1st Dept 1999]). The lack of any prejudice is clear based on NYCHA's decision not to oppose Petitioner's request to vacate his default. Moreover, the delay in seeking to vacate his default is not unreasonable as within six months of learning that he was facing eviction, petitioner retained an attorney, began defending the eviction proceedings, began to cure his breach of failing to certify past income, and then moved to vacate his default judgment at the Office of Impartial Hearings. This is not a case where Petitioner sat idly by for over a year before moving to vacate his default.

Simply, Petitioner, a senior citizen who has lived in the Apartment for decades, only asked for a chance to challenge the determination that his tenancy should be terminated on the merits. The decision to terminate a senior citizen's tenancy based on picayune technicalities, where the senior citizen has been a resident of the Apartment for decades, and the senior citizen's limited resources means termination of their tenancy will likely lead to homelessness, is truly shocking and disproportionate to the alleged offense of failing to certify certain income. Therefore, the Petition is granted.

Accordingly, it is hereby,


ORDERED and ADJUDGED that the Petition is granted in its entirety, and Respondent's administrative decision denying Petitioner's application to vacate his default judgment at the Office of Impartial Hearings dated June 12, 2025 is annulled, and Petitioner's default is vacated, and it is further

ORDERED and ADJUDGED within sixty days of this Decision and Order, Respondent and the Office of Impartial Hearings shall conduct a hearing on the merits of the Non-Verifiable Income and Breach of Rules and Regulations charges brought against Petitioner by NYCHA, and said hearing shall be conducted before a different Hearing Officer than the Hearing Officer who denied Petitioner's application to vacate his default; and it is further

ORDERED that within ten days of entry, counsel for Petitioner shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

5/4/26
DATE


HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:

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|-------------------------------------|----------------------------|--------------------------|-----------------------|
| <input checked="" type="checkbox"/> | CASE DISPOSED | <input type="checkbox"/> | NON-FINAL DISPOSITION |
| <input checked="" type="checkbox"/> | GRANTED | <input type="checkbox"/> | GRANTED IN PART |
| <input type="checkbox"/> | SETTLE ORDER | <input type="checkbox"/> | OTHER |
| <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | <input type="checkbox"/> | REFERENCE |
| | | <input type="checkbox"/> | DENIED |
| | | <input type="checkbox"/> | SUBMIT ORDER |
| | | <input type="checkbox"/> | FIDUCIARY APPOINTMENT |

APPLICATION:

CHECK IF APPROPRIATE: