

**Matter of Dukes v New York City Dept. of Hous.
Preserv. & Dev.**

2011 NY Slip Op 33452(U)

December 22, 2011

Sup Ct, NY County

Docket Number: 402565/2011

Judge: Alice Schlesinger

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: ALICE SCHLESINGER
Justice

PART IA PART 16

DUKES, ROSINA

INDEX NO. 402565/11

- v -

N.Y. HOUSING PRESERVATION
AND DEVELOPMENT, ET AL.

MOTION DATE _____

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

Article 78 petition is denied and the proceeding is dismissed in accordance with the accompanying memorandum decision.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

DEC 22 2011

Dated: _____

Alice Schlesinger
ALICE SCHLESINGER J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
In the Matter of the Application of

ROSINA DUKES,
Petitioner,

Index No. 402565/11
Motion Seq. No. 001

-against-

NEW YORK CITY DEPARTMENT OF HOUSING
PRESERVATION and DEVELOPMENT and
VERITAS PROPERTY MANAGEMENT LLC.,

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141B).

Respondent.

-----X
SCHLESINGER, J.:

Until her eviction in or about August of 2011, petitioner Rosina Dukes was residing in Apartment 3W at 307 West 11th Street, New York, NY. The building is owned by 307 West 111th Street HDFC, a low-income cooperative corporation. In February of 2009, Ms. Dukes had submitted to respondent New York City Department of Housing Preservation and Development (HPD) an application for rental assistance pursuant to the Section 8 program for low-income tenants. The application was approved, and HPD thereafter began paying a portion of the rent. Pursuant to federal law, an individual such as Ms. Dukes who is receiving Section 8 benefits is obligated to complete a recertification package each year to confirm that she continues to be eligible to receive Section 8 benefits.

In this proceeding, Ms. Dukes challenges the December 30, 2010 decision by HPD terminating her Section 8 rent subsidy based on her failure to submit the recertification package that had been mailed to her on July 28, 2010. In the decision (Exh E to HPD Answer), HPD notified Ms. Dukes that her benefits would be terminated

effective January 31, 2011 if she failed to act. Further, in bold print in all capital letters, the notice advised Ms. Dukes that she had twenty-one (21) calendar days from the date of the December 30 notice — until January 20, 2011 — to request a hearing to challenge the proposed termination of benefits.

Ms. Dukes did not comply with that January 20 deadline. Instead, she waited about seven months, until about August 25, 2011, before she sent a letter to HPD requesting an appeal. There she claimed that she had not received from HPD the recertification package that had earlier been sent or the various notices sent by HPD advising Ms. Dukes that she was required to recertify to maintain her benefits. By letter dated August 30, 2011, HPD denied the appeal as untimely, emphasizing that the termination notice had clearly stated the January 20 deadline and that the August 25 appeal was decidedly late (Exh G). Ms. Dukes then commenced this Article 78 proceeding. Both HPD and the owner vigorously oppose.

The primary claim by Ms. Dukes is that she never received the recertification package or notices from HPD because they were mistakenly delivered to the tenant in her former apartment on the first floor, rather than to her current apartment 3W. That first floor tenant was allegedly ill for some time and did not forward the mail to Ms. Dukes. Ms. Dukes claims that she first learned of the problem when another tenant was helping to clear out the first floor apartment and found the recertification package there.

This claim by Ms. Dukes is completely incredible and is belied by the documentation in the record. When Ms. Dukes completed her application for Section 8 benefits in the first instance, she correctly listed her current apartment 3W. She had not been living on the first floor for several years, and the application nowhere even refers

to a first floor apartment. What is more, all the notices sent by HPD to Ms. Dukes regarding her need to recertify were correctly sent to apartment 3W. Ms. Dukes has failed to present a single document to this Court confirming that HPD somehow used the wrong address.

What is more, Ms. Dukes knew, or should have known, that action was needed to maintain her Section 8 benefits because of action taken against her by the owner for nonpayment of rent. Specifically, as demonstrated by the owner in detail in counsel's well-documented Affirmation in Opposition to the petition, the cooperative commenced a nonpayment proceeding against Ms. Dukes in December of 2010 for unpaid maintenance due from September 2009 through December 31, 2010 in the amount of \$4,146.30. Ms. Dukes did file an answer and appear in court. When she did, she was directed to subpoena HPD's Section 8 Unit in an effort to resolve the issues related to the termination of her benefits. Not only did she fail to do that, but Ms. Dukes failed to conscientiously follow through in Housing Court, resulting in her eviction from the apartment in August of 2011.

What is more, Ms. Dukes was in Housing Court in January 2011, during the window period to appeal HPD's termination decision. Had she acted at that time, she may well have succeeded in having her benefits reinstated.

In sum, the documentation provided by the respondents disproves the claim by Ms. Dukes that she never received notice from HPD about her obligation to recertify and that she was unaware for well over a year of the need to take action. The decision by HPD to terminate Ms. Dukes' benefits is anything but arbitrary and capricious. No basis whatsoever exists for this Court to annul it.

Accordingly, it is hereby

ADJUDGED that the Article 78 petition filed by Rosina Dukes is denied in its entirety, all stays previously ordered by this Court are vacated, and the proceeding is dismissed. The Clerk is directed to enter judgment in favor of the respondents dismissing the proceeding with prejudice.

Dated: December 22, 2011

DEC 22 2011



J.S.C.
ALICE SCHLESINGER

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