

Matter of Wardrett v Wambua
2012 NY Slip Op 31051(U)
April 16, 2012
Sup Ct, NY County
Docket Number: 402954/11
Judge: Carol E. Huff
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: CAROL E. HUFF
Justice

PART 32

WARDRETT, MARINA

INDEX NO.

402954/11

MOTION DATE

- v -
MATHEW WAMBUA, ETAL.

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 ...

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ~~motion~~

motion is decided in accordance
with accompanying memorandum decision

FILED

APR 18 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: APR 16 2012

CEH
CAROL E. HUFF

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: PART 32

-----X

In the Matter of the Application of : Index No. 402954/11
MARLINA WARDRETT,

Petitioner, :

For a Judgment Pursuant to Article 78 of the Civil Practice :
Law and Rules,

- against - :

MATHEW WAMBUA, as Commissioner of the New York :
City Department of Housing Preservation & Development;
the NYC DEPARTMENT OF HOUSING :
PRESERVATION AND DEVELOPMENT; and :
SEA PARK EAST LP, :

Respondents. :

FILED

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CAROL E. HUFF, J.:

In this Article 78 proceeding, petitioner seeks to annul the determination of respondents dated October 22, 2010, which terminated her Section 8 housing subsidy. Petitioner commenced this proceeding by order to show cause (with a temporary restraining order enjoining her eviction) dated November 10, 2011. Respondents New York City Department of Housing Preservation and Development, and its commissioner Mathew M. Wambua (together, "HPD") cross move to dismiss the petition on the ground that it is barred by the statute of limitations.

The petition alleges the following facts.

Petitioner has lived in her apartment at 2970 West 27th Street, Brooklyn, New York, for more than seventeen years. She suffers from severe arthritis, high blood pressure, diabetes and diabetic retinopathy which leaves her with extremely poor vision. She resides in the apartment

with her unemployed adult nephew. Petitioner receives approximately \$761 per month in disability income. Without her Section 8 subsidy, her rent would be \$1,026 per month. With the subsidy it would be \$169.

On November 6, 2009, an HPD inspector conducted a Housing Quality Standards (“HQS”) inspection of her apartment. Her HPD file contains a “Notice of Tenant Non-Compliance – Housing Quality Standards Failure” dated November 10, 2009, which is addressed to petitioner, although no HPD mail log or note entry records any evidence of it having been sent to petitioner. The notice states: “The following conditions caused the failure: “4.4” and “8.4”. Nothing in the notice indicates what those numbers mean.

The apartment was inspected again on December 28, 2009, and subsequently a “Pre-Termination Notice of Section 8 Non-Compliance,” dated January 15, 2010, was allegedly mailed by regular and certified mail to petitioner. This notice stated that she had failed to correct the condition and that she had fifteen days from the date of the notice to request a conference. The certified mail tracking reveals that the certified letter was never picked up. There is no evidence in petitioner’s HPD file that a regular mailing had occurred.

An HPD internal document shows that a decision to terminate petitioner’s Section 8 subsidy was made February 17, 2011, effective March 31, 2011, referencing “HQS Double Tenant Failure” and “Large amount of debris.” A note in the HPD file indicates “Termination letters sent to client via regular and certified mail,” but no evidence of such mailings are in the file.

Petitioner was unaware that her subsidy had been terminated until her landlord served her with a rent demand in August 2011, and stated that it had not received a Section 8 subsidy since

April 2010. HPD, conceding that there was no documentation in their files indicating that termination notices had been sent, issued a directive dated September 26, 2010, from HPD director Evelyn Ruiz, which directed that petitioner be “reinstated and re-terminated if the unit remains in HQS failure.”

By notice dated October 15, 2010, HPD informed petitioner that her Section 8 subsidy had been restored and that the arrearages would be paid to her landlord. In a document dated October 22, 2010, HPD director Ruiz issued a document approving re-termination of the subsidy effective November 11, 2010. There is no indication in the HPD file that a re-inspection was made or attempted.

Petitioner apparently received the new termination notice on October 25, 2010. She filled out the form for a hearing, requesting another inspection. She held on to the form because she knew she was to meet with a Section 8 representative in Housing Court two days later, in connection with the eviction procedure her landlord had commenced.

In court on October 27, 2010, petitioner states that the Section 8 representative assured her that the subsidy had been restored. This is confirmed in the Stipulation of Settlement entered into between petitioner and her landlord that day. Petitioner states that the Section 8 representative did not indicate that petitioner’s subsidy had been re-terminated.

Petitioner thus mistakenly believed that the new termination notice was an error, but nevertheless she mailed her appeal notice on November 8, 2010 by certified mail. The October 22 notice had provided twenty-one days in which to file an appeal, or until November 12, 2010.

The certified mail tracking of petitioner’s notice of appeal shows that it took the Post Office ten days to deliver the item. Petition, Ex. W. Because it was received by HPD on

November 18, six days late, HPD, by notice dated November 19, 2010 (the Determination), denied the request for appeal and proceeded with the termination of petitioner's Section 8 subsidy. Petitioner seeks to annul the Determination in this proceeding.

HPD contends that because this proceeding was not commenced until November 10, 2011, it is well beyond the four-month limitation period of CPLR 217 and is time barred.

Petitioner states that the Determination only provided that she could appeal it in "an appropriate judicial proceeding," and that she did not understand what that meant. She wrote HPD on December 2, 2010, asking for reconsideration and received no response. On January 5, 2011, she returned to Housing Court in connection with another matter related to her landlord, and the landlord did not indicate that it had stopped receiving her subsidy again. In June 2011, she first learned that her subsidy had been re-terminated when the landlord sued her again for nonpayment. She wrote HPD asking clarification on June 16, 2011, but received no response. The eviction proceeding was adjourned to July 25, 2011, when a Section 8 representative appeared and confirmed the re-termination.

Petitioner then appealed to her local congressman, who contacted HPD. HPD notes indicate that on August 15, 2011, petitioner's case was presented before "the Review Committee . . . based on the tenant's disability." HPD requested documentation of petitioner's disabilities, and on September 19, 2011, issued a letter confirming the termination of her subsidy, stating only that her appeal of the Determination had not been received within the required timeframe. At some point after that, petitioner contacted South Brooklyn Legal Services for representation.

Counsel for petitioner's landlord, while taking no position on this application, notes that HPD's refusal to grant petitioner an informal hearing is "drastic and harsh" and "inequitable."

The Court notes the comment in another HPD case where a Section 8 subsidy was terminated because of purported HQS violations: “[T]he agency has favored adherence to rigid, technical, procedures in complete disregard of the reasons and policies behind why the regulations were enacted in the first place, rather than to actually ascertain whether the environment is safe and wholesome.” Dupont v Donovan, 21 Misc3d 1130(A), 3 (Sup Ct NY County, 2008).

The petition is granted because the Court finds that petitioner’s mailing of her appeal of the Determination on November 8, 2010, was reasonably calculated to provide timely notice to HPD of her appeal, and that it was through no fault of her own that the mailing was delayed and not delivered for ten days. The harm to petitioner is immeasurably greater than that to HPD, whose delay, inefficiency and disregard for the well being of its subsidy recipient had already extended the matter far beyond any rational justification.

Accordingly, it is

ORDERED that cross motion to dismiss is denied and the parties are directed to file an answer and a reply; and it is further

ORDERED that the stay of proceedings on the part of respondent landlord Sea Park East LP is continued.

FILED

APR 18 2012

Dated: **APR 16 2012**

NEW YORK
COUNTY CLERK'S OFFICE


CAROLE E. HUFF
J.S.C.