

Matter of Parks v New York City Hous. Auth.

2012 NY Slip Op 31630(U)

June 11, 2012

Supreme Court, New York County

Docket Number: 402942/2011

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: ARLENE P. BLUTH
J.S.C. Justice

PART 4

Index Number : 402942/2011
PARKS, STACY
vs.
NYC HOUSING AUTHORITY
SEQUENCE NUMBER : 001
ARTICLE 78

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to 3, were read on this motion ~~to~~ ^{for} Article 78

Notice of ~~Motion~~ ^{Put} Order to Show Cause — Affidavits — Exhibits _____ | No(s) 1

Answering Affidavits — Exhibits _____ | No(s) 2

Replying ~~Affidavits~~ Statement (unsworn) _____ | No(s) 3

Upon the foregoing papers, it is ordered that this ~~motion~~ ^{petition} is

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION/ORDER

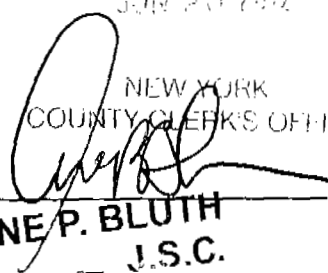
MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: _____

FILED

Jun 20 2012

NEW YORK
COUNTY CLERK'S OFFICE



ARLENE P. BLUTH
J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

FILED

SUPREME COURT OF THE STATE OF NY
COUNTY OF NEW YORK: PART 4

Index No.: 402942/11

In the Matter of the Application of
Stacy Parks,

Petitioner,

-against-

**DECISION, ORDER
AND JUDGMENT**

NEW YORK
COUNTY CLERK'S OFFICE

New York City Housing Authority,

Respondent.

Present: HON. ARLENE P. BLUTH

Upon the foregoing papers, it is ORDERED and ADJUDGED the petition is denied and the proceeding is dismissed. Petitioner, who is self-represented, seeks to reverse respondent New York City Housing Authority's (NYCHA's) determination to terminate her tenancy at the 110 East 99th Street, apartment 10G in Manhattan. Respondent NYCHA opposes the petition and contends that it acted reasonably, lawfully and properly in terminating petitioner's tenancy.

Petitioner commenced this proceeding challenging NYCHA's August 3, 2011 determination of status which upheld the hearing officer's decision after a hearing to terminate petitioner's tenancy on the grounds that, inter alia, (1) police executed two search warrants in her apartment and recovered crack cocaine on both occasions, (2) petitioner was arrested and convicted of possession of a controlled substance in the subject apartment, and (3) petitioner has refused to pay her share of the rent over several years. Petitioner contends, among other things, that she was not convicted of any crime, and that she suffers from mental disabilities.

Applicable law and procedures regarding criminal activity

Until her tenancy was terminated, petitioner was the tenant of record of an apartment which is part of a NYCHA development. Because NYCHA receives federal funds, it must

comply with the federal rules and regulations disseminated through the US Department of Housing and Urban Development.

These federal regulations are incorporated into the terms and conditions of NYCHA's leases, and specifically petitioner's lease, under the heading "Tenant Obligations". The lease (1) prohibits tenants, members of the tenant's household, guests, or other persons under tenant's control from engaging in "criminal activity that threatens the health, safety or right to peaceful enjoyment of the Development by other residents" or "[a]ny violent or drug-related criminal activity on or off the Leased Premises or the Development", and requires tenants to act in a manner "conducive to maintaining the Development in a decent, safe and sanitary condition (see exh A to answer, para.12).

Federal regulations empower NYCHA to terminate a tenancy if it determines that a tenant, any member of a tenant's household, a guest or another person under the tenant's control has engaged in criminal behavior, regardless of whether the person was "arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction." 24 CFR §966.4(1)(5)(iii).

Charges against petitioner

The police executed a search warrant in petitioner's apartment on November 14, 2009, arrested petitioner and an individual named Carlos/Charlie Fuentes, and recovered crack cocaine, marijuana and a scale with cocaine residue. In February 2010, the manager of petitioner's building offered petitioner two opportunities to meet to discuss the execution of the search warrant in her apartment and her chronic rent delinquency. After petitioner failed to appear for two scheduled appointments, the manager sent her written notice that he was referring the matter to the Tenant

Administrator for review and preparation of charges. NYCHA served these charges on petitioner, and set a hearing date of May 17, 2010; on that date, petitioner defaulted at the hearing. The following month, petitioner's application for a new hearing was granted, and she was told that she would be informed of the new date. While petitioner was awaiting notification of a new hearing date on the charges of non-desirability based on the drugs found in her apartment rent and chronic delinquency, the police again executed a search warrant in petitioner's apartment on November 19, 2010, and arrested petitioner for possession of crack cocaine.

The hearing and decision

A hearing was held before hearing officer Ester Tomacic-Hines on April 5, 2011 and May 26, 2011 on the charges of petitioner's non-desirability based on criminal activity in her apartment and breach of rules and regulations pertaining to payment of rent. A guardian ad litem appeared on behalf of petitioner; petitioner did not appear.

At the hearing, NYCHA's resident services associate witness introduced various documents into evidence, and testified that petitioner had not paid her \$79 monthly share of her rent since 2008, and that as a result, she owed \$1,818.00. NYCHA's Associate Investigator Michael Santangelo, whose duties included obtaining police and court documents, testified at the hearing and introduced into evidence the search warrant. NYCHA's Associate Investigator Angelo Morgante offered testimony for the introduction of arrest report for Charlie Fuentes, the property clerk's invoice, certificate of disposition for Charlie Fuentes wherein he pled guilty to criminal possession of a controlled substance and plea minutes, petitioner's arrest record for November 19, 2010, and petitioner's certificate of disposition wherein she pled guilty to criminal possession of a controlled substance.

Petitioner's guardian ad litem submitted a post-hearing statement on petitioner's behalf in which he asserted that petitioner was merely present in the apartment on November 19, 2010 when Mr. Fuentes was arrested. As for the rent arrears, the guardian did not contest the amount of the arrears, but said that he would make a referral to Adult Protective Services so that it might assist petitioner with the payment of the arrears. The guardian also stated that termination of petitioner's tenancy would be unduly harsh and was not justified under the circumstances.

In her findings and conclusions, the hearing officer sustained the following charges:

- Charge 1 (non-desirability), that on November 14, 2009, in the petitioner's apartment, Charlie Fuentes did unlawfully possess, sell or attempt to sell crack cocaine which was recovered at the execution of a search warrant,
- Correlative charge 4 (breach of rules and regulations), because Charlie Fuentes was arrested in petitioner's apartment, where the drugs were found and recovered,
- Charge 5, chronic rent delinquency in that petitioner repeatedly failed to pay her portion (\$79) of the monthly rent,
- Charges 6 and 7 (non-desirability) as to petitioner's possession of a controlled substance in the apartment on November 19, 2010 based on the Certificate of Disposition and guilty plea.

The hearing officer did not sustain the charges pertaining to the recovery of other items relating to drug activity and the unauthorized occupancy of Charlie Fuentes in the apartment.

Finally, the hearing officer considered and rejected the guardian ad litem's request for leniency based on (1) the undisputed proof of Mr. Fuentes's and petitioner's arrest and conviction, and (2) the fact that for many years petitioner failed to pay her share of the rent, which was only

\$79 per month.

Petitioner now argues that the termination should be reversed because without this apartment she will be homeless, she was not convicted of “the crime”, Mr. Fuentes was not the tenant of record, NYCHA has failed to abate hazardous living conditions in her apartment, she has mental health “issues”, she has been a victim of domestic violence, and NYCHA failed to grant her “request for transfers” (pet., para. 3). The arguments concerning conditions in the apartment and her requests for transfers are waived as they were not raised below. As for petitioner’s claim that she was not convicted of the crime, the fact is that she pled guilty to Penal Law 220.03 (criminal possession of a controlled substance (crack cocaine) in the 7th degree) and sentence was imposed; see certificate of disposition (exh O to answer). Petitioner does not deny that drugs were found in her apartment on two separate occasions, or that she and Mr. Fuentes each were arrested and convicted of drug-related charges. Even after the apartment was already searched once and Mr. Fuentes was arrested and convicted, one year later illegal drugs were again found there and petitioner was arrested and convicted as a result.

Standard of review

In reviewing an administrative agency’s determination as to whether it is arbitrary and capricious under CPLR Article 78, the test is whether the determination “is without sound basis in reason and... without regard to the facts” (*Matter of Pell v Board of Education*, 34 NY2d 222, 231 [1974]). Moreover, the determination of an administrative agency, “acting pursuant to its authority and within the orbit of its expertise, is entitled to deference, and even if different conclusions could be reached as a result of conflicting evidence, a court may not substitute its

judgment for that of the agency when the agency's determination is supported by the record" (*Matter of Partnership 92 LP & Bldg. Mgt. Co., Inc. v State of New York Div. of Hous. & Community Renewal*, 46 AD3d 425, 429 [1st Dept 2007], *aff'd* 11 NY3d 859 [2008]).

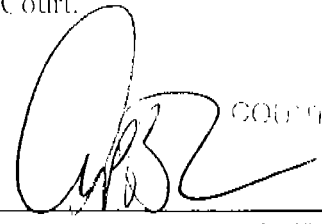
The Appellate Division, First Department routinely has upheld determinations to terminate tenancies for illegal drug activity when the charges are supported by substantial evidence. *See Rodriguez v New York City Hous. Auth.*, 84 AD3d 630 (1st Dept 2011). Based on its review of the record, the Court finds that a rational basis exists for NYCHA's decision to terminate petitioner's tenancy, and thus that decision cannot be disturbed by this Court. Here, at a minimum, the illegal drug activity in the apartment was admitted by petitioner's plea. Additionally, it is undisputed that petitioner has ignored her obligation to pay rent, has been in arrears for years and has failed to cure her delinquency despite being given opportunities to do so. As such, contrary to being arbitrary and capricious, NYCHA's decision to terminate petitioner's tenancy is in keeping with its statutory obligation to adhere to its procedures.

Accordingly, it is ORDERED and ADJUDGED that this Article 78 petition is denied and the proceeding is dismissed.

FILED

This is the Decision, Order and Judgment of the Court.

Dated: June 11, 2012
New York, New York



NEW YORK
COUNTY CLERK'S OFFICE

HON. ARLENE P. BLUTH, JSC

HON. ARLENE P. BLUTH