

**Matter of Andrews v New York City Hous. Auth.**

2012 NY Slip Op 31797(U)

June 26, 2012

Sup Ct, New York County

Docket Number: 400231/12

Judge: Arlene P. Bluth

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

PRESENT: HON. ARLENE P. BLUTH  
*Justice*

PART 4

*In the Matter of  
Michael Andrews  
New York City Housing Authority*

INDEX NO. 400231/12  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 01

The following papers, numbered 1 to 2, were read on this motion to/for Art 78

Notice of <sup>Put</sup> Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s) 1  
~~Answering Affidavits~~ <sup>Cross Motion</sup> — Exhibits \_\_\_\_\_ | No(s) 2  
Replying Affidavits \_\_\_\_\_ | No(s) \_\_\_\_\_

Upon the foregoing papers, it is ordered that this <sup>petition + cross motion are</sup> motion is \_\_\_\_\_

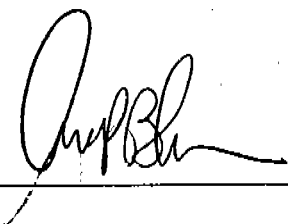
**DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION/ORDER**

### 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).

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

Dated: 6/26/12

  
\_\_\_\_\_, 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

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

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Index No.: 400231/12

**In the Matter of the Application of  
Michael Andrews,**

**DECISION, ORDER  
AND JUDGMENT**

*Petitioner,*

*-against-*

**Present: HON. ARLENE P. BLUTH**

**New York City Housing Authority,**

*Respondent.*

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Petitioner, who is self-represented, commenced this Article 78 proceeding to reverse respondent New York City Housing Authority's ("NYCHA") determination dated December 22, 2010<sup>1</sup> which dismissed his remaining family member grievance. NYCHA cross-moves to dismiss the proceeding on several grounds, including that it is time-barred. For the reasons set forth below, NYCHA's cross-motion is granted, the petition is denied and the proceeding is dismissed.

On December 22, 2010, after meeting with petitioner, NYCHA's Borough Manager dismissed petitioner's remaining family member grievance (exh J). That determination, the one-page District Summary Grievance, stated that petitioner's mother was the tenant of record of the subject apartment (apartment 9B at 1536 Lexington Avenue in Manhattan) until her death on April 21, 2010. It further stated that NYCHA's file showed that management never granted permission for petitioner to join the household, and as such, he was an unauthorized occupant of the apartment, and not entitled to succeed to his mother's public housing lease. Finally, the determination noted that petitioner was not current with the payment of use and occupancy.

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<sup>1</sup> On page one of the order to show cause, petitioner incorrectly refers to the determination dated "5/12/10"; in paragraph 3 of his petition, he incorrectly refers to the determination dated 12/8/10.

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Significantly, NYCHA's Borough Manager checked the box on the District Summary Grievance that the grievance was dismissed on the grounds that petitioner failed to make any showing to substantiate his claim. Because the grievance was dismissed, the form instructed the Manager to "cross out note to grievant in the box below". That note informed a grievant that he/she could request a hearing. However, under the circumstances presented here, that language was crossed out. Petitioner had no further right of appeal to a hearing officer, and there was nothing in the District Grievance Summary that told petitioner he had such right; accordingly, the December 22, 2010 determination is NYCHA's final determination.

The four month statute of limitations governing Article 78 proceedings which challenge an administrative determination begins to run on the date the determination becomes "final and binding" upon the petitioner, which is the date petitioner receives notice of the decision. *See* CPLR §217(1); *Matter of Metropolitan Museum Historic District Coalition v De Montebello*, 20AD3d 28, 796 NYS2d 64 (1st Dept 2005).

In support of its cross-motion, NYCHA submits the affidavit of Eneida Reveron, NYCHA's Borough Manager who prepared the District Summary Grievance and oversaw its mailing. Ms. Reveron states that in accordance with her office's regular business practice, one copy of the District Summary Grievance was sent by regular mail to "Barbara Reddick (Deceased) (TOR) and Michael Andrews" to the subject apartment and the other by certified mailing #7007 0710 0004 5188 5869 (exh 2) to petitioner at the subject apartment. Annexed as exhibit 3 to Ms. Reveron's affidavit is the USPS.com Track and Confirm printout for this item which shows the envelope containing the District Summary Grievance was delivered on January 7, 2011.

Accordingly, NYCHA has established its mailing of the District Summary Grievance, and

that petitioner received it. Therefore, the four month statute of limitations to commence an Article 78 proceeding challenging this determination expired four months after January 7, 2011, which would be on May 7, 2011. Petitioner did not commence this Article 78 proceeding until January 30, 2012, when he filed his petition, more than eight (8) months after the statute of limitations expired.

In his petition, petitioner admitted receipt of the District Grievance Summary (“on 12/22/10 Ms. Eneida Reveron dismissed me and said she can not help me. So I put in the 3 step at 250 Broadway and NYCHA told me it would come in the mail”, pet, para. 3). To the extent that petitioner alleges that a NYCHA employee misinformed him about NYCHA’s practices and he relied upon such statements, it is not a basis for reversing NYCHA’s December 22, 2010 determination, as an agency cannot be estopped from invoking its regulations; *see Taylor v New York State Dept. of Hous. & Comm. Renewal*, 73 AD3d 634 (1<sup>st</sup> Dept 2010). Moreover, petitioner’s claims are vague and lack detail; he does not say who allegedly made the statement, or where or when it was made. Most important of all, it is clear that petitioner could not have reasonably relied on such statement because the section about requesting a formal hearing was crossed out on the District Grievance Summary because petitioner had no further right of an appeal to a hearing officer.<sup>2</sup>

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<sup>2</sup>The Court notes that on September 7, 2011, petitioner signed a stipulation in Housing Court wherein he (1) consented to the entry of a final judgment of possession in favor of the NYCHA and (2) agreed to vacate the premises on or before 2/29/12. Significantly, the stipulation provided that it was “without prejudice to [petitioner] filing an Article 78 proceeding”. This meant that as of September 7, 2011, petitioner knew or should have known that he would not be entitled to a hearing and could only attempt to challenge the denial of his remaining family member grievance by filing an Article 78 proceeding. He still waited more than four more months to bring this proceeding.

Based on the foregoing, the Court need not address the other grounds for dismissal cited in NYCHA's motion papers (i.e., failure to serve a copy of the signed order to show cause on NYCHA, failure to state a cause of action).

Accordingly, because petitioner commenced this proceeding to challenge NYCHA's District Summary Grievance after the four month statute of limitations had expired, it is

ORDERED and ADJUDGED that the cross-motion to dismiss the petition is granted and the proceeding is dismissed. All stays are vacated.

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

Dated: June 26, 2012  
New York, New York



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HON. ARLENE P. BLUTH, JSC

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