

Matter of Moroney v New York City Hous. Auth.

2012 NY Slip Op 31798(U)

July 2, 2012

Sup Ct, New York County

Docket Number: 400458/12

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

Index Number : 400458/2012
MORONEY, PATRICIA
vs.
NYC HOUSING AUTHORITY
SEQUENCE NUMBER : 001
ARTICLE 78

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

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

ps
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s) 1
Answering Affidavits — Exhibits _____ No(s) 2
Replying Affidavits _____ No(s) _____

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

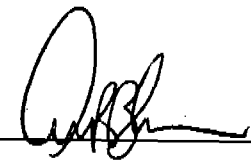
**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION/ORDER**

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 1412).

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

Dated: 7/2/12


_____, 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
In the Matter of the Application of
Patricia Moroney,

Index No.: 400458/12

Petitioner,

-against-

New York City Housing Authority,

Respondent.

**DECISION, ORDER
AND JUDGMENT**

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 845 Columbus Avenue, apartment 18B in Manhattan based on her chronic rent delinquency on the grounds it was "not fair" (petition, para. 3). Respondent NYCHA opposes the petition.

Petitioner commenced this proceeding challenging NYCHA's November 30, 2011 determination of status which upheld the hearing officer's November 16, 2011 decision after a hearing (which took place in the sessions- 8/17/11, 10/6/11 and 10/27/11) before hearing officer

UNFILED JUDGMENT

Joan Pannell.

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The hearing and decision

NYCHA charged petitioner with chronic rent delinquency in that she repeatedly failed to timely pay her portion of the rent for the period August 1, 2010 through July 1, 2011. At the hearing, NYCHA submitted into evidence the following: petitioner's lease, her September 2010 annual affidavit of income (which showed that petitioner received public assistance and child support), NYCHA's call-in letters offering petitioner an chance to discuss the problem, and

NYCHA's ledger card which showed that petitioner owed \$2,551.00 in rent (calculated at the rate of \$513 per month, with the last payment made in June 2011) and detailing when payments were received. Additionally, a NYCHA employee testified that petitioner generally paid the rent with "one-shot deals", and that a warrant had been requested.

Petitioner testified that her current income includes child support paid directly to her 20 year old daughter, SSI payments to another daughter and \$200 per month from an uncle. She further testified that she had applied for public assistance "a couple of times" but conceded that "every time I get on Public Assistance and they approve me, they cut me off because they want me to go to work" (exh J, T. at 21-22). The hearing officer gave petitioner an additional opportunity (post-hearing) to submit proof (until November 10, 2011) that she was current with the rent, or that Public Assistance had made a commitment to pay the arrears. Petitioner never provided either item. Instead, she simply submitted two notes showing that she had appointments with the Bureau of Eligibility Verification Review and the Office of Child Support Enforcement later that month.

In her findings and conclusions, the hearing officer sustained the charge that petitioner had not paid rent for the period August 2010 thorough July 2011 as petitioner failed to demonstrate that she had become current in rent, or that she had obtained a commitment from an agency to pay the arrears. The hearing officer noted that the Ledger Card showed that public assistance made several payments in May and June 2011 which reduced the arrears; she speculated that if these payments were due to a "one-shot deal" petitioner would not be eligible for another one-shot deal.

Article 78 Petition

Petitioner now argues that the decision to terminate her tenancy should be reversed because it “is not fair....I’ve been sanctioned or cut off from welfare because they want to send to work (sic), but unfortunately at this time I can’t. But I always manage to get back on, I’ve went three different times to get One-Shot deal for owing back rent and I’ve got accepted.” (Pet., para. 3). Thus petitioner has admitted that whatever rent she has paid has been through a series of “one shot” deals, which essentially admits that the rent is not paid as it is due.

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]).

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. It is clear that petitioner has ignored her obligation to timely pay her portion of the rent, has been in arrears for years and has failed to cure her delinquency despite being given

opportunities to do so. In fact, petitioner admits that she does not pay her rent and relies on getting repeated “one-shot deals”; certainly this is not a defense to paying rent on time. Contrary to being arbitrary and capricious, this admission demonstrates that the hearing officer’s decision was reasonable and based upon the facts.

Moreover, NYCHA’s decision to terminate petitioner’s tenancy is in keeping with its statutory obligation to adhere to its procedures. While petitioner asserts that it “is not fair” that NYCHA terminated her tenancy, the court in *Florence v New York City Hous. Auth.*, 28 Misc.3d 1213(A), 2010 WL 2921626 (Table) (Sup. Ct, NY Co. 2010) noted that “a failure to impose the penalties associated with the applicable rule violations is unfair to other tenants and enforcement is essential for respondent to maintain its federal funding”.

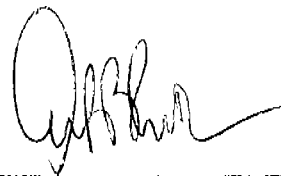
Finally, while NYCHA makes reference to a summary nonpayment proceeding involving petitioner, that is not before the Court in this Article 78 proceeding; only hearing officer Pannell’s determination is before the Court.

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

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

Dated: ^{7/2} ~~June 18~~, 2012

New York, New York



HON. ARLENE P. BLUTH, JSC

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