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| <b>Matter of Bramble Weilders, Inc. v New York City<br/>Hous. Auth.</b>  |
| 2012 NY Slip Op 32181(U)   |
| August 10, 2012  |
| Supreme Court, New York County   |
| Docket Number: 112872/2011   |
| Judge: Peter H. Moulton  |
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PETER H. MOULTON**

**PRESENT:** \_\_\_\_\_

*Justice*

**PART** \_\_\_\_\_

Index Number : 112872/2011

INDEX NO. \_\_\_\_\_

BRANBLE WEILDERS, INC.

MOTION DATE \_\_\_\_\_

VS.

MOTION SEQ. NO. \_\_\_\_\_

NYC HOUSING AUTHORITY

SEQUENCE NUMBER : 001

ARTICLE 78

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_

No(s). *(initials)*

~~Cross motion~~  
Answering Affidavits — Exhibits \_\_\_\_\_

No(s). *(initials)*

~~Memorandum of Law~~

No(s). *(initials)*

~~Reply Affidavit In Opp.~~

Upon the foregoing papers, it is ordered that this motion is \_\_\_\_\_

*read Cross motion  
Motion is denied per*

*attested*

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

**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).

Dated: 8/13/12

*[Signature]*, J.S.C.  
**PETER H. MOULTON**

- |                                |   |   |
|--------------------------------|---|---|
| 1. CHECK ONE: .....            | <input checked="" type="checkbox"/> CASE DISPOSED                           | <input type="checkbox"/> NON-FINAL DISPOSITION                          |
| 2. CHECK AS APPROPRIATE: ..... | MOTION IS: <input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED | <input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER |
| 3. CHECK IF APPROPRIATE: ..... | <input type="checkbox"/> SETTLE ORDER                                       | <input type="checkbox"/> SUBMIT ORDER                                   |
|                                | <input type="checkbox"/> DO NOT POST  | <input type="checkbox"/> FIDUCIARY APPOINTMENT                          |
|                                |   | <input type="checkbox"/> REFERENCE                                      |

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 40 B

- - - - - X

In the Matter of the Application of  
BRAMBLE WEILDERS, INC.,

Index No. 112872/11

Petitioner,

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

-against-

NEW YORK CITY HOUSING AUTHORITY,

UNFILED JUDGMENT

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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).

Respondent.

- - - - - X

PETER H. MOULTON, J.S.C.:

Petitioner, a small landlord, brings this Article 78 proceeding to reverse the decision of Respondent New York City Housing Authority, ("NYCHA") to terminate a section 8 subsidy. Petitioner seeks to recoup \$12,535.27 in rental payments for the period October 1, 2010 through August 31, 2011. The subsidy was terminated effective October, 2010, after the apartment failed to meet federal housing quality standards. This proceeding was commenced more than one year later.

Respondent cross moves to dismiss the petition as time barred. Respondent attaches a copy of a letter addressed to petitioner, dated September 22, 2010, notifying her that various conditions needed to be repaired, and verified as repaired by respondent, or the subsidy would terminate on October 13, 2010.

The notice, referred to as an NE-1 letter, provided in relevant part:

[W]e will take action to suspend subsidy on October 13, 2010, unless we are properly notified (see below) that appropriate repairs have been made and we verify these corrective measures. If the above violations are not corrected, the Authority will offer the family a voucher to enable them to seek other housing and we will terminate the HAP Contract without further notice if the family is approved for a Section 8 transfer.

It further provided:

FAILURE TO COMPLETE REPAIRS, NOTIFY OUR INSPECTION UNIT, AND HAVE THE AUTHORITY VERIFY THAT THE REPAIRS ARE DONE **WITHIN 30 DAYS AFTER THE INSPECTION** SHALL RESULT IN SUSPENSION OF SUBSIDY. REINSTATEMENT OF SUBSIDY WILL NOT BE CONSIDERED UNTIL WE RECEIVE AND ACCEPT THE CERTIFICATION, OR UNTIL WE RECEIVE NOTIFICATION OF COMPLETED REPAIRS FROM YOU AND WE REINSPECT THE APARTMENT TO DETERMINE THAT THE UNIT COMPLIES WITH HQS.

The letter also notified petitioner that she might be entitled to reimbursement for some or all of the suspended subsidy if she could establish that the majority of the violations were caused by the tenant, or that access was delayed by the tenant. To seek such reimbursement, the letter instructed petitioner to call the customer service center, within 30 days of receipt of the notice, for a discussion about the policy requirements.

Petitioner admits getting the notice, and explains that after she received the notice, she called the inspection unit to advise them that the tenant refused access. She states that she took other steps after the "first missed payment in October 2010"

including personally visiting respondent's offices to explain that she could not gain access.<sup>1</sup> Petitioner contends that she maintained communication with respondent over the next several months. She also commenced a non-payment proceeding in 2011, and a stipulation was signed providing for access dates. To bolster her claims of lack of access, petitioner attaches a notice from New York City Department of Housing Preservation & Development, dated April 19, 2011, addressed to the tenant as "occupant" to provide access to correct violations. She also submits a letter from her home improvement contractor, dated July 12, 2011, stating that he could not gain access to the apartment to make repairs. Finally, she submits a letter dated October 14, 2011 to respondent reiterating that she has not been able to make repairs because the tenant did not provide access.

CPLR article 78 proceeding against a public "body or officer must be commenced within four months after the determination to be reviewed becomes final and binding" (CPLR 217 [1]). An agency determination is final when the petitioner is aggrieved by the determination (see *Matter of Biondo v New York State Bd. of Parole*, 60 NY2d 832, 834 [1983]). A petitioner is aggrieved once the agency has issued an unambiguously final decision that puts

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<sup>1</sup>Respondent states that its records indicate that petitioner appeared at the Customer Contact Center on or about July 20 2011 regarding termination of the subsidy.

the petitioner on notice that all administrative appeals have been exhausted; any ambiguity created by the agency as to whether the decision is final and binding is resolved against the agency (see *Matter of Carter v State of N.Y., Exec. Dept., Div. of Parole*, 95 NY2d 267 [2000]).

Petitioner concedes that she received the NE-1 notice, dated September 22, 2010, warning her of the termination of the subsidy on October 13, 2010. Petitioner also refers to the "first missed payment in October 2010" and obviously knew that she did not receive payments thereafter. Petitioner's purported contact with respondent regarding the alleged access problems, and the evidence submitted to demonstrate her attempts to gain access (many of which occurred more than nine months after termination of the subsidy) cannot salvage her claim. Petitioner knew or should have known that she was aggrieved after she stopped receiving subsidy payments, as warned in the unambiguous NE-1 notice (see *Matter of Baloy v Kelly*, 92 AD3d 521 [1st Dept 2012] [letter denying application for gun license was final and binding for the purposes of the four month statute of limitations because petitioner knew or should have known that he was aggrieved by it]).<sup>2</sup> Even if the decision was considered final and binding a few months after

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<sup>2</sup>Petitioner does not argue that the law or the contracts that she signed entitled her to any further notice indicating that the subsidy was terminated, or notice of the time limits in which to file an Article 78.

petitioner stopped receiving her first missed payment, the proceeding is time barred.

Accordingly, it is

ADJUDGED that cross motion to dismiss the petition as time barred is granted, without costs and disbursements; and it is further

ADJUDGED that the petition is denied as untimely and the proceeding is dismissed.

**This Constitutes the Decision and Judgment of the Court.**

Dated: August 10, 2012

ENTER:



J.S.C.

**HON. PETER H. MOULTON  
SUPREME COURT JUSTICE**

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