

Matter of Bull v New York City Hous. Auth.
2012 NY Slip Op 32330(U)
August 29, 2012
Supreme Court, New York County
Docket Number: 400612/2012
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 : 400612/2012
BULL, ALBERTHA MITCHELL
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 Art. 78

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 ^{petition} 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: 8/29/12

[Signature], 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**

Index No.: 4486/11

**In the Matter of the Application of
Albertha Mitchell Bull,**

Petitioner,

**DECISION, ORDER
AND JUDGMENT**

-against-

New York City Housing Authority,

Present: HON. ARLENE P. BLUTH

Respondent.

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 90 Avenue D, Apartment #7F 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 February 22, 2012 determination of status which upheld the hearing officer's action in sustaining the charges that petitioner filed false affidavits of income for eight years by intentionally concealing employment and social security income, resulting in her underpayment of rent. In support, petitioner simply states that she needs more time to get a new place to live (pet., para. 3).

Applicable law and procedures

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 ("HUD").

Specifically, NYCHA must certify annually to HUD that it has admitted individuals to public housing in accordance with HUD regulations. See USC §1437 *et. seq.*; 24 CFR §§ 960.201(a) & (c). HUD regulations further mandate that NYCHA regularly monitor family composition and income, and that this information be reexamined regularly.

Federal regulations empower NYCHA to terminate a tenancy for serious or repeated violations of the material terms of the lease; one of those material terms is the tenant's obligation to furnish complete and accurate income information. If a tenant (or household member) submits forms to NYCHA which contain misrepresentations, this conduct constitutes the crime of offering a false instrument for filing with a public authority in violation of state and federal law. *See, e.g.* 18 USC §1001 (felony fraud statute); Penal Law §175.35 (felony of offering a false instrument for filing with a public authority).

The hearing and decision

A hearing was held before hearing officer Joan Pannell on 7/15/11, 8/24/11 and 1/17/12 on the charges of petitioner's non-desirability, misrepresentation, non-verifiable income and breach of rules pertaining to income reporting.

At the hearing, NYCHA's Chief Investigator in the Office of the Inspector General testified that after his office discovered that petitioner used two different social security numbers, that for the period 1999 through 2007 (at a minimum), tenant was employed by the Jewish Home and Hospital for the Aged, and that petitioner received retirement benefits during that same period, the Inspector General arrested petitioner in May 2010. On November 17, 2010, petitioner,

* 4]

who was represented by counsel, pled guilty to grand larceny in the third degree (a class D felony) and acknowledged that she stole funds from NYCHA from 1999 through 2008 by not reporting her income and working with a social security number different from the one she supplied to NYCHA. The December 28, 2010 certificate of disposition, introduced into evidence, showed that petitioner was sentenced to five years probation and restitution in the sum of \$26,865.00.

Petitioner's evidence at the hearing merely consisted of testimony about her health, and that she was "on waiting lists" and would move out of the apartment when she can. She also noted that "everybody should have a second chance".

Petitioner now argues that the termination should be reversed because she has "6 places on the waiting list" (pet., para. 3).

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]).

An occupant in a public housing project can be evicted for concealing or under-reporting income received during the tenancy. *See Newton v Municipal Hous. Auth. for the City of Yonkers*, 47 AD2d 522, 363 NYS2d 28 (2d Dept 1975). As such, the penalty of termination has been found not to “shock the conscience” where the tenant concealed her husband’s income from NYCHA, thereby lowering the tenant’s rent. *See Smith v New York City Hous. Auth.*, 40 AD3d 235, 835 NYS2d 131 (1st Dept 2007). *See also Bland v New York City Hous. Auth.*, 72 AD3d 528, 901 NYS2d 158 (1st Dept 2010) (penalty imposed for egregious misrepresentation over a five-year period does not shock the conscience),

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, petitioner admitted she stole from NYCHA. 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. As the Hearing Officer Pannell noted in her decision:

Individuals who through misrepresentation obtain from the tax-paying public a greater subsidy than that to which they are entitled are not eligible for tenancy. The only appropriate disposition is termination.

[* 6]
Significantly, petitioner does not dispute that termination is the appropriate remedy for her fraudulent and criminal conduct.

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

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

Dated: August 29, 2012

New York, New York



HON. ARLENE P. BLUTH, JSC