

**Matter of New York Found. for Senior Citizens v
Rhea**

2012 NY Slip Op 32902(U)

November 26, 2012

Supreme Court, New York County

Docket Number: 102613/2012

Judge: Louis B. York

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

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

PRESENT: LOUIS B. YORK
J.S.C. Justice

PART 2

NY Foundation For Senior Citizens, Guardian Services Inc., Et Al. -v-

INDEX NO. 102613/12

MOTION DATE _____

MOTION SEQ. NO. 1

MOTION CAL. NO. _____

John B. Rhea, Et Al.

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

FILED

NOV 26 2012

NEW YORK COUNTY CLERK'S OFFICE

Dated: 11/26/12

Luy
LOUIS B. YORK J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

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

**Supreme Court of the State of New York
County of New York**

Index No. 102613/2012

Part 2

In the Matter of the Application of
THE NEW YORK FOUNDATION FOR SENIOR
CITIZENS, GUARDIAN SERVICES, INC., as the
Mental Hygiene Law Article 81 Guardian for,
Melody Coleman

Decision/Order

Petitioner,

Present:
Hon. Louis B. York
Justice, Supreme Court

– against –

JOHN B. RHEA, as Chairperson of the
New York City Housing Authority, and
the NEW YORK CITY HOUSING
AUTHORITY (NYCHA),

FILED

NOV 26 2012

Respondents.

**NEW YORK
COUNTY CLERK'S OFFICE**

In this proceeding, petitioner Melody Coleman, through her Article 81 guardians, The New York Foundation for Senior Services, Guardian Services, Inc. ("the Guardian"), seeks to have her section 8 subsidy reinstated and to have a transfer voucher issued on her behalf. Respondents John B. Rhea, as Chairperson of the New York City Housing Authority, and the New York City Housing Authority (NYCHA) oppose the petition and also cross-move to dismiss the proceeding. After careful consideration of all the papers and after researching the pertinent issue, the Court denies the cross-motion.

During the period in question, Melody Coleman was a tenant in Apartment 1R at 45 Cleveland Street, Staten Island, New York. In addition, she received an NYCHA

section 8 voucher which enabled her to afford the apartment. Around February 2, 2010, during a routine inspection of the premises, NYCHA discovered that the Landlord was guilty of several Housing Quality Standard violations; the contract required the residence to be kept in a minimum state of repair in order for the Landlord to qualify as a section 8 residence. Apparently the landlord did not make the repairs and lost the section 8 subsidy. In addition, Ms. Coleman was supposed to complete recertification paperwork regarding her income qualifications; if violations existed at her residence, she had the option of requesting a transfer voucher so she could live in a conforming apartment. Due to her failure to complete the paperwork, she received a notice of termination of her section 8 subsidy. Allegedly, Ms. Coleman received a "T-3 Notice" in December 2009, notifying her that her benefits would be terminated due to her default.¹

Tragically, during the period in question and for several years prior – apparently since around 2006 – Ms. Coleman had been battling cervical cancer and had suffered serious side effects from her treatment. Among other physical effects, she had a colostomy. In addition, and more pertinent to the case at hand, she suffered and continues to suffer physical pain, necessitating the use of pain medications which impede her ability to function at full capacity; and she suffers from ongoing depression and other mental health problems.

In direct response to these problems, and in particular to the danger of eviction

¹It is unclear whether this occurred prior to or after the inspection of the premises. The paperwork is dated 2009, prior to the inspection. However, from statements in the documents as well as in the affirmation in support of the petition and other supporting documents, it seems the termination of her benefits may have occurred after the apartment failed inspection. For the purpose of this decision, the Court finds the issue irrelevant.

Ms. Coleman faced due to her failure to complete her section 8 recertification papers, Robert Doar, as Commissioner of Social Services of the City of New York, commenced an Article 81 proceeding on Ms. Coleman's behalf. In the petition, which petitioner has annexed in her opposition to the cross-motion, the Commissioner alleged that Ms. Coleman "is incapacitated in that she is unable to provide for her personal needs and property management and cannot adequately understand and appreciate the nature and consequences of such inability." Verified Pet. ¶ 3. This allegation was supported by a finding of Adult Protective Services, a division of the Department of Social Services, which conducted the examination because of the danger of eviction. The petition also pointed to the evaluation of Dr. Greg Lacchini, a psychiatrist, who indicated that Ms. Coleman suffered from an unspecified cognitive disorder and opioid dependence, the latter apparently related to her pain medication. Dr. Lacchini also commented on her cervical cancer and colostomy, stated she was thin, frail and increasingly ill upon successive evaluations.

In addition, the petition stated that Ms. Coleman was "unable to perform his {sic} activities of daily living including: Defending his/her tenancy, Finding alternate housing, Housekeeping, Relocating on his/her own, Shopping, Bathing, Toileting {sic}, Bathing {sic}, Grooming, Driving, Banking, and Managing her money." Verified Pet. ¶ 8. The petition further alleged that Ms. Coleman was unable to grasp the nature and consequences of these problems, including the risk of eviction and homelessness, and this inability was likely to result in harm to her.

After reviewing the petition and annexed documents, including the medical records and doctor's statement, Justice Thomas P. Aliotta of the Supreme Court of New

York County determined that Ms. Coleman needed a guardian. In particular, he stated that petitioner "adduced their proof by clear and convincing evidence" so that, to the satisfaction of the Court, it appeared that "the alleged incapacitated person is likely to suffer harm because the alleged incapacitated person is unable to provide for her personal needs and property management and cannot adequately understand and appreciate the nature and consequences of such inability." In re Coleman, Index No. 80249/2010 (Sup. Ct. N.Y. County March 15, 2011), at p 2. The Court endowed the guardian with numerous powers and duties, including the responsibility for maintaining Ms. Coleman's eligibility for all government and private benefits, and choosing a residence and paying all bills associated with her home.

Due to the cancellation of her section 8 benefits, her failure to request a transfer voucher, and her failure to pay rent, Ms. Coleman was evicted from her residence in early June 2011. Shortly thereafter, on June 13, 2011, the Guardian wrote to NYCHA and asked it to reinstate Ms. Coleman's section 8 benefits and issue a transfer voucher to her. NYCHA did not respond to the Guardian's request. It is not clear whether the Guardian made any additional efforts on Ms. Coleman's behalf until April 20, 2012, when it prepared this Article 78 proceeding. In the proceeding, as in the June 2011 letter, Ms. Coleman seeks the reinstatement of her subsidy and a transfer voucher.

Respondents Rhea and NYCHA oppose the Article 78 proceeding and cross-move to dismiss on the basis of its untimeliness. Under Article 78, Ms. Coleman had 4 months to challenge the NYCHA determination. Ms. Coleman, through the Guardian, claims that her application is timely because due to her incapacity the statute of limitations was tolled. It does not appear that respondents allege any prejudice due to

the delay.

The insanity toll of CPLR 208 protects those parties who cannot protect their legal rights due to their general inability to function in society. *Ferreira v. Maimonides Medical Center*, 43 A.D.3d 856, 858, 841 N.Y.S.2d 678, 680 (2nd Dept. 2007) “[T]he condition of an individual’s mental capabilities is largely a factual question” *Anonymous v. Anonymous*, 154 Misc. 2d 46, 51, 584 N.Y.S.2d 713, 719 (Sup. Ct. Suffolk County 1992). To determine the applicability of the toll, courts evaluate “all relevant facts and circumstances keeping in mind the manifest purpose of the tolling provision – to relieve from the strict time restrictions any person who actually lacks the ability and capacity, due to mental affliction, to pursue his lawful rights.” *Id.* Though the determination does not have to be based on medical or psychological classifications, *id.*, a doctor’s uncontroverted statement as to an individual’s capacity to function also has persuasive weight. See *Barnes v. County of Onondaga*, 65 N.Y.2d 664, 491 N.Y.S.2d 613 (1985). Moreover, if the toll applies it remains in effect even if 1) there is a guardian appointed, see *Giannicos v. Bellevue Hosp. Med. Center*, 42 A.D.3d 379, 379-80, 840 N.Y.S.2d 327, 328 (1st Dept. 2007), 2) the plaintiff has an attorney, see *Ferreira*, 43 A.D.3d at 858, 841 N.Y.S.2d at 680, 3) another party has power of attorney, *Bookstein v. Republic Ins. Co.*, 266 A.D.2d 113, 698 N.Y.S.2d 683 (1st Dept. 1999), or 3) another lawsuit has been commenced on the individual’s behalf. See *Montepiedra v. Hon*, 93 A.D.3d 770, 940 N.Y.S.2d 322 (2nd Dept. 2012).

If there had been no prior evaluation of Ms. Coleman’s mental state, this Court would hold a hearing to determine her competency under the statute. Here, however,

there already has been an adjudication by a Supreme Court Justice of concurrent jurisdiction, in which that Justice decided a guardian was necessary because of Ms. Coleman's inability to function. That ruling was based in part on the uncontroverted medical testimony of Dr. Greg Lacchini and the statements in the application of Adult Protective Services, a division of the Department of Social Services – an arm of the City, as is co-defendant NYCHA. The Court also had an obligation, under Article 81, to “undertake a detailed analysis . . . of the physical, mental and financial health” of Ms. Coleman. See *In re Lichtenstein*, 223 A.D.2d 309, 313, 646 N.Y.S.2d 94, 97 (1st Dept. 1996). Moreover, those Justices who hear guardianship cases have developed an expertise in this area and their decisions are entitled to some deference. Therefore, the insanity toll can be applied without the need for a duplicative hearing in this Court.

Based on the above, this Court finds that the proceeding is timely and respondents' argument for dismissal fails. Therefore, it is

ORDERED that the cross-motion is denied; and it is further

ORDERED that respondents shall have 30 days from service of this order with notice of entry to serve and file their answers to the petition; and it is further

ORDERED that along with their answers respondents shall file a copy of this order with entry with the County Clerk, who is directed to send the entire file to this Part so that it may schedule the Article 78 proceeding for oral argument.

FILED

NOV 26 2012

ENTER:

[Handwritten Signature]

NEW YORK
COUNTY CLERK'S OFFICE

Louis B. York, J.S.C.

**LOUIS B. YORK
J.S.C.**

Dated: 11/26/12