

Matter of Cepeda v New York City Hous. Auth.

2011 NY Slip Op 32385(U)

August 19, 2011

Sup Ct, NY County

Docket Number: 400352/11

Judge: Saliann Scarpulla

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

PRESENT: SALIANN SCARPULLA

PART 19

Index Number : 400352/2011

CEPEDA, IRIS J.

vs

NEW YORK CITY HOUSING

Sequence Number : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

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

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

motion and cross motion are decided in accordance with accompanying memorandum decision.

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: 8/19/11

SALIANN SCARPULLA *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: CIVIL TERM: PART 19

-----X
IN THE MATTER OF THE APPLICATION OF
IRIS J. CEPEDA,

Petitioner,

- against-

NEW YORK CITY HOUSING AUTHORITY,

Respondent.

Index No.: 400352/11

Submission Date: 6/22/2011

DECISION AND ORDER

Petitioner, Pro se:
Iris J. Cepeda
130 W. 228th Street, #1-A
Bronx, NY 10463

-----X
For Respondent:
Sonya M. Kaloyanides
New York City Housing Authority
250 Broadway, 9th Floor
New York, NY 10007

Papers considered in review of this petition:

- Verified Petition 1
- Verified Answer 2
- Aff in Opp 3
- Mem of Law 4

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HON. SALIANN SCARPULLA, J.:

In this Article 78 proceeding, petitioner Iris J. Cepeda ("Cepeda") challenges the October 20, 2009 decision of the respondent New York City Housing Authority ("NYCHA"), which terminated her Section 8 benefits. In her petition, Cepeda alleges that the determination was based on irrational arguments and provides an inadequate explanation, and requests that the determination be annulled that a new Section 8 voucher be issued.

Cepeda was a recipient of a Section 8 housing subsidy. By its own terms, Cepeda's voucher expired on May 25, 2009. However, NYCHA continued to process Cepeda's "rental package" for the voucher through September 2009. In her verified petition, Cepeda states that "[t]he agency further explained that petitioner had already been 'given an extension' and that the certification process had been allowed to continue by the agency provided that the inspection was passed without delay. Once they determined there would be a delay, the agency stated that the process could no longer be delayed and they promptly canceled the voucher." Cepeda then received a letter from NYCHA dated October 20, 2009, which stated in pertinent part, "On 5/29/09 your Section 8 Housing Choice Voucher expired without rental. We have, therefore, canceled the Voucher and your application has been removed from our active file."

On or about December 30, 2009, Cepeda commenced an Article 78 proceeding seeking to annul the October 20, 2009 determination. The Court (Justice Friedman) found that "it was irrational for NYCHA to make a determination that the voucher expired on May 29, without addressing that it had continued to process the voucher. The Court notes that NYCHA's failure to give a reason for the termination that addressed the facts fosters the unfortunate perception, which petitioner holds here, that the agency acted in an arbitrary fashion. . . . In the event petitioner seeks to challenge respondent's decision after the remand, she shall bring a new Article 78 proceeding." *In re Cepeda*, Index No. 400021/10, Sep. 20, 2010, at 2. As a result, Justice Friedman remanded the

matter to NYCHA for issuance of a determination stating the basis for retroactive cancellation of the order.

By letter dated November 3, 2010, NYCHA issued another letter to Cepeda, which provides in pertinent part:

The New York City Housing Authority did not enter into a HAP contract on your behalf for the rental package you submitted because you did not timely submit it before the expiration of your voucher. Although the Housing Authority began processing the untimely rental package, it did not enter into a HAP contract for the apartment because you did not provide access for the first two attempts to inspect the apartment, and the apartment failed the inspection on the third scheduled date. Because your rental package was not timely submitted and subsequently did not pass inspection, and Housing Authority policy does not provide for voucher extensions, we cannot enter a HAP contract on your behalf or provide you with a new Section 8 voucher.

Cepeda commenced this Article 78 on or about March 18, 2011, requesting that the Court reverse NYCHA's October 20, 2009 decision. In her verified petition, Cepeda, argues that the resolution by Justice Friedman "does not ultimately annul the order to cancel the voucher, leaving petitioner without remedy that is sought by petitioner, a remedy that she feels is rightfully hers."

While Cepeda acknowledges that the November 3, 2010 letter is NYCHA's reply to the prior order of this court, she notes that (1) it is not the remedy she sought, and (2) NYCHA still fails to adequately explain its rationale and actions. Cepeda accordingly "respectfully asks this court that the decision of the New York City Housing Authority

(NYCHA) dated 10/29/09 canceling petitioner's section 8 voucher # 0609962, be set aside, annulled and that a new Section 8 voucher be issued."

In its verified Answer, NYCHA asserts that Cepeda failed to submit her rental package until after her voucher had already expired, and that even if it had processed her late rental package, Cepeda's apartment did not pass its HQS inspection, a requirement for issuance of a Section 8 voucher. NYCHA argues that on at least two occasions, inspectors were not allowed access to the apartment. Once inspectors did gain access on September 24, 2009, Cepeda's apartment failed inspection because there was a hole in the living room floor, a door was missing from a kitchen cabinet, the towel rack was broke, and the bedroom light fixture had no pull cord. NYCHA also reiterates its position that it does not provide for voucher extensions.

Discussion

It is well settled that judicial review of an administrative determination pursuant to CPLR Article 78 is limited to a review of the record before the agency and the question of whether its determination was arbitrary or capricious and has a rational basis in the record. See CPLR §7803(3); *Gilman v. N.Y. State Div. of Hous. & Community Renewal*, 99 N.Y.2d 144 (2002); *Nestor v. New York State Div. of Hous. & Community Renewal*, 257 A.D.2d 395 (1st Dep't 1999). "In short, '[j]udicial review of an administrative determination is limited to the grounds invoked by the agency.'" *Matter of Rizzo v. DHCR*, 6 N.Y.3d 104, 110 (2005) (quoting *Matter of Aronosky v. Board of Educ.*,

Community School Dist. No. 22 of City of N.Y., 75 N.Y.2d 997, 1000 (1990)). An action is arbitrary and capricious, or an abuse of discretion, when the action is taken ‘without sound basis in reason and without regard to the facts.’” *Matter of Rohan v. New York City Housing Authority*, 2009 NY Slip Op 30177U, at *6-*7 (Sup. Ct. N.Y. Co. Jan. 23, 2009) (quoting *Matter of Pell v. Board of Education*, 23 N.Y. 2d 222,231 (1974)).

Cepeda has already argued to the Court that NYCHA’s October 20, 2009 failure to renew her voucher was arbitrary and capricious, and Justice Friedman agreed, holding that “it was irrational for NYCHA to make a determination that the voucher expired on May 29, without addressing that it had continued to process the voucher.” As a remedy, Justice Friedman remanded this matter to NYCHA to issue a determination explaining the basis for its termination of Cepeda’s voucher. As Justice Friedman has already determined that the October 20, 2009 letter was arbitrary and capricious, I cannot revisit this decision. *See Martin v. City of Cohoes*, 37 N.Y.2d 162, 165 (1975) (“The doctrine of the ‘law of the case’ is a rule of practice, an articulation of sound policy that, when an issue is once judicially determined, that should be the end of the matter as far as Judges and courts of co-ordinate jurisdiction are concerned”). The fact that Cepeda was not satisfied with Justice Friedman’s remedy is not a proper basis for a new Article 78 proceeding.

Cepeda also argues that the November 3, 2010 letter still fails to adequately explain NYCHA’s rationale and actions. However, the November 3, 2010 letter provides

explicit reasoning for NYCHA's actions. It clearly states that NYCHA did not renew Cepeda's Section 8 voucher because of Cepeda's failure to timely submit a rental package prior to expiration of her voucher and that although it had begun to process her late rental package, her apartment failed inspection which prevented NYCHA from renewing her voucher. Cepeda does not dispute that her apartment failed inspection.

Federal regulations provide that the "[Housing Authority] may not give approval for the family to lease a dwelling unit, or execute a HAP contract, until the [Housing Authority] has determined that . . . [t]he unit has been inspected by the [Housing Authority] and passes HSQ." 24 C.F.R. § 982.305(a)(2). NYCHA's determination is in line with federal regulations, and therefore is not arbitrary and capricious.


In accordance with the foregoing, it is hereby

ORDERED and ADJUDGED that the petition of Iris J. Cepeda to vacate the decision of respondent New York City Housing Authority on October 20, 2010, and to reinstate her Section 8 subsidy is denied.

This constitutes the decision, order and judgment of the Court.

Dated: New York, New York
August 19, 2010

ENTER:


Aliann Scarpulla, J.S.C.

UNFILED JUDGMENT

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