

Matter of Chandler v Rhea

2011 NY Slip Op 32864(U)

October 5, 2011

Supreme Court, New York County

Docket Number: 400071/11

Judge: Carol E. Huff

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

CAROL E. HUFF

PRESENT: _____
Justice

PART 32

Index Number : 400071/2011
CHANDLER, JEFFREY
vs.
RHEA, JOHN B.
SEQUENCE NUMBER : 001
ARTICLE 78

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

this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

FILED

Cross-Motion: Yes No

OCT 11 2011

Upon the foregoing papers, It is ordered that this motion

NEW YORK
COUNTY CLERK'S OFFICE

... in accordance
with accompanying memorandum decision

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

Dated: OCT 05 2011

CAROL E. HUFF^{JSC}

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG. SETTLE ORDER/ JUDG.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 32

-----X

In the Matter of the Application of : Index No. 400071/11
JEFFREY CHANDLER, :
Petitioner, :
For a Judgment Pursuant to Article 78 of the Civil Practice :
Law and Rules, :
- against - :
JOHN RHEA, as Chairman of the New York City Housing :
Authority and the NEW YORK CITY HOUSING :
AUTHORITY, :
Respondent. :

FILED

OCT 11 2011

NEW YORK
COUNTY CLERK'S OFFICE

-----X

CAROL E. HUFF, J.:

In this Article 78 proceeding, petitioner seeks to annul the Determination of respondent New York City Housing Authority (NYCHA) dated September 28, 2010, which terminated his tenancy at his subsidized apartment based on evidence of petitioner's criminal drug activity.

Under applicable Federal law and regulations, public housing authorities may terminate a tenancy when the tenant engages in criminal activity that threatens other residents' safety or peaceful enjoyment. 42 U.S.C. § 1437(d)(6); 24 C.F.R. §§ 966.4(f)(11) & (12). Termination is not mandatory. The public housing agency "may consider all circumstances relevant to a particular case such as the seriousness of the offending action, . . . and the extent to which the leaseholder has shown personal responsibility and has taken all reasonable steps to prevent or mitigate the offending action." 24 C.F.R. § 966(l)(5)(i)(B). "The procedures for terminating a

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tenancy permit but do not require termination upon a finding of nondesirability. The tenant may be given probation, where there is 'reason to believe that the conduct or condition which led to the charge of nondesirability many not recur or may have been cured, or that the tenant is taking or is prepared to take steps to correct or cure such conduct or condition.'" Vazquez v New York City Hous. Auth., 57 AD3d 360, 361 (1st Dept 2008), quoting New York City Hous. Auth.

Termination of Tenancy Procedures 14(a).

According to the petition and the uncontested facts of the Determination, petitioner is a single parent who has been a NYCHA resident since he was seven years old. His troubles began when his son was put into foster care in 2000. In 2002 he was diagnosed with bipolar disorder, and in 2004 he was diagnosed with schizophrenia. Following the removal of his son, petitioner engaged in substance abuse that became heaviest in 2008 and 2009. On September 11, 2008, he was arrested for criminal possession of a controlled substance, and pled guilty to the charge. On March 7, 2009 and September 4, 2009, he was arrested for the sale of heroin. Petitioner pled guilty to these charges and was incarcerated at Rikers Island for eight months. While at Rikers Island he enrolled in a substance abuse treatment program and received positive reviews. After his release from prison on May 3, 2010, petitioner enrolled in a program, EAC Link, for persons with criminal records and mental health problems. He also enrolled in an outpatient program, the Realization Center, for the treatment of chemical dependence. At his NYCHA hearing, evidence was presented from case managers that petitioner was participating regularly and successfully at both programs. Petitioner resumed his part-time employment at People's Choice Meat Warehouse, and his supervisor submitted a letter praising his personal qualities. Four community members who have known petitioner for years also submitted letters commending

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him. There are no allegations that petitioner has engaged in substance abuse since his release from prison.

In the Findings and Conclusions section of the Determination, the NYCHA hearing officer wrote:

The tenant appears to be moving forward in a positive direction since his near decade long decline into substance abuse culminating in his arrests and convictions for the sales of heroin and subsequent incarceration. . . . The evidence presented on behalf of the tenant in mitigation was considered and deemed inappropriate in view of the nature of the criminal conduct involved. . . . At least one of those sales [of heroin] took place in the tenant's development. The sale of illegal narcotics is highly non-desirable conduct which creates danger to the health and safety of the community. Although the tenant has made progress since his conviction, he has been out of prison for only four months; an insufficient amount of time has elapsed to reasonably conclude that his criminal conduct will not likely repeat in the future.

The NYCHA Determination to terminate petitioner's tenancy should be upheld unless it is shown that the determination "was affected by an error of law . . . or was arbitrary and capricious or an abuse of discretion." CPLR 7803(3). The test is whether the determination is "without sound basis in reason and is generally taken without regard to the facts." Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, 34 NY2d 222, 231 (1974). However, even when there is substantial evidence to support terminating a tenancy on nondesirability grounds, factors mitigating tenant behavior have led courts to overturn findings of termination. E.g., Vazquez, supra.

A key element of the Determination was that insufficient time had passed (four months since the release from prison) to determine whether NYCHA could "reasonably conclude" that petitioner would not repeat his criminal behavior. The possibility of a probationary period was not addressed. At this time, more than sixteen months have passed. If petitioner has continued

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with his rehabilitation, it would be unconscionable to uphold the Determination on the ground that the first four months was insufficient time to draw a conclusion. The devastating impact that termination would have on this tenant, who has struggled with mental illness and has been a NYCHA resident essentially his entire life, cannot be overstated.

Accordingly, it is

ADJUDGED that the petition is granted to the extent that the matter is remanded to respondents to reconsider the issue of termination, taking into account petitioner's conduct in the period of time that has elapsed since the hearing that led to the Determination, and the feasibility of a probationary period.

Dated: **OCT 05 2011**

FILED

OCT 11 2011

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COUNTY CLERK'S OFFICE


CAROL E. HUFF
J.S.C.