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

PRESENT: LOBIS Justice PART 6

CHARLES GOODSON
-v-
NYCHA

INDEX NO. 400164/12
MOTION DATE 7-10-12
MOTION SEQ. NO. 001
MOTION CAL. NO.

The following papers, numbered 1 to 26 were read on this motion to/for annul determination.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1-11
Answering Affidavits — Exhibits	12-26
Replying Affidavits	

Cross-Motion: ☐ Yes ☑ No

Upon the foregoing papers, it is ordered that this motion

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).

THIS MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION

Order and Judgment

Dated: 9/28/12

JBL
JOAN B. LOBIS 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
NEW YORK COUNTY: IAS PART 6

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In the Matter of the Application of
CHARLES GOODEN, For a Judgment
Pursuant to C.P.L.R. Article 78

Petitioner,

Index No. 400164/12

-against-

Decision, Order, and Judgment

JOHN RHEA, as Chairman of the New York City Housing Authority, and the NEW YORK CITY HOUSING AUTHORITY,

Respondents.

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JOAN B. LOBIS, J.S.C.:

Petitioner Charles Gooden brings this special proceeding under Article 78 of the C.P.L.R., by order to show cause, seeking an order reversing and annulling the decision of the New York City Housing Authority ("NYCHA") to deny his application to reopen a default. NYCHA answers the petition and asserts that the denial of petitioner's application to vacate his default was rational and consistent with the law.

Petitioner lives in the Van Dyke Houses, a public housing project operated by NYCHA. In August 2009, NYCHA charged petitioner with chronic delinquency in the payment of rent, in that he had repeatedly failed to pay his rent when due from September 2008 through August 2009, and failure to furnish income verification information. By a notice addressed to petitioner dated August 31, 2009 (the "Notice of Hearing"), NYCHA notified petitioner of the charges against him; that a hearing on those charges would be held on October 22, 2009, at 10:45 a.m.; and that petitioner could appear in person, with witnesses, and be represented by counsel or other representatives of his choice. Petitioner failed to appear at the hearing and Hearing Officer Arlene

Ambert issued a default determination against him. In June 2010, NYCHA commenced a holdover proceeding against petitioner. Petitioner then hired an attorney from the Legal Aid Society to represent him in the holdover proceeding.

In September 2011, petitioner, through his attorney, applied to the hearing officer to reopen his default. Petitioner asserted that he had not received the Notice of Hearing, that he only found out about the hearing when he received the default disposition of the hearing, and that he had been very surprised to learn that his tenancy in public housing had been terminated on default. Petitioner further set forth that even had he known about the hearing, he would have been unable to attend, because he was enrolled in and attended mandatory classes in a 900-hour electrical technician vocational training program, which did not permit absences. Additionally, petitioner maintained that he had already provided NYCHA with the outstanding income verification information. Further, he asserted that he had only fallen behind on his rent because of erroneous sanctions imposed by the New York City Human Resources Administration ("HRA"), but was unable to remedy the sanctions because the statute of limitations had expired by the time he had hired an attorney. He stated that from July 2009 through November 2010, he had worked hard to complete his vocational training (required by HRA), had received his certificate, and was now employed. He asserted that of the nearly $1,500 he owed in rent arrears though September 2011, he had contributed $600 towards the arrears and had been granted oral approval for a "one-shot" grant for the remainder. Petitioner mainained that he was now employed and was being paid a living wage, that he no longer needed to rely on public assistance, and that he could timely pay rent going forward. Based on these factors, petitioner requested that his default be vacated.

NYCHA argued that petitioner's application to reopen his default should be denied because, inter alia, petitioner had waited two years before moving to vacate; he had failed to establish that he was not properly notified of the hearing; he still had not verified his income; he continued to be chronically late in the payment of rent; and he still owed $1,776.56 in outstanding rent. NYCHA presented evidence indicating that the Notice of Hearing had been properly mailed to petitioner. NYCHA also pointed out some inconsistencies in petitioner's statements about why he had fallen behind on rent.

In September 2011, Hearing Office Ambert denied petitioner's application to reopen his default. She determined that petitioner had failed to establish an excusable default because NYCHA had presented proof that the Notice of Hearing had been mailed to tenant via certified and regular mail on August 31, 2009. Further, she determined, in the event that petitioner had received the Notice of Hearing and was unable to attend due to a commitment with HRA, it was petitioner's responsibility to request an adjournment or have a representative appear on his behalf. As to petitioner's defense, Hearing Officer Ambert determined that petitioner had failed to submit his income verification information, failed to become current in his rent, and failed to explain his inability to pay his rent while he was gainfully employed, which meant that there were "no assurances" that petitioner would "embrace his basic tenancy obligations and pay the rent in a timely fashion."

Petitioner now seeks an order reversing NYCHA's determination not to reopen his default on the grounds that the determination was arbitrary and capricious, contrary to law, and an

abuse of discretion. He no longer asserts that he did not receive the Notice of Hearing. He maintains that instead of appearing at the hearing, he "elected to attend class under the reasonable belief that he could not reconcile the demands of NYCHA with the rules of [HRA]." Petitioner argues that the hearing officer evaluated his excuse under a "heightened standard" because, instead of accepting his reasonable excuse, she determined that his excuse was not the "most" reasonable excuse. He argues that this heightened standard is contrary to the law. Further, he explains that HRA stopped sending his shelter payments of $283 per month to NYCHA, which is why he fell behind in his rent. He annexes a notice of approval of his request to HRA for rental assistance in the amount of $1,176.65, and maintains that he tendered, and NYCHA accepted, the $1,776.56 that was due. He maintains that he has cured the delinquency. Further, with respect to the determination that petitioner did not submit documentation required for income verification, petitioner argues that the hearing officer failed to consider the fact that housing managers routinely refuse to accept annual review documentation from a tenant whose tenancy has been terminated on default until the default is vacated and the tenancy is restored. Petitioner denies having failed to submit income verification documents but maintains that he is ready to submit any outstanding income verification documents if NYCHA will accept them. Finally, he argues that the termination of his tenancy was an excessive and disproportionate punishment, as he has lived in the subject premises for nearly twenty-seven years, his record is otherwise unblemished, he is a young father of three children, and he is now gainfully employed and earns a living wage.

NYCHA, in opposition, argues that Hearing Officer Ambert properly denied petitioner's application to reopen his default because he failed to establish a reasonable excuse for

his failure to appear at the hearing or a meritorious defense to the charges. NYCHA maintains that in his underlying application to reopen his default, petitioner failed to attach any proof that he did not receive the Notice of Hearing. NYCHA also argues that petitioner's claim in the underlying application that he failed to receive the Notice of Hearing is undermined by the claim in his petition that he chose to attend class instead of the hearing. As to his purported meritorious defense to the charges, NYCHA makes the following points: petitioner conceded he was delinquent in his rent; HRA's decision to stop paying petitioner's rent does not release him from his obligation to pay rent; petitioner's claim that he was approved for a one-shot grant is not a meritorious defense because the amount allegedly approved by HRA was insufficient to cure the rental arrears; petitioner's pursuit of a one-shot deal is an inadequate defense to his history of chronic rent delinquency. Additionally, NYCHA sets forth that even since filing his petition in January 2012, despite his claim that he is employed and has the ability to make his monthly rent payments, petitioner failed to pay his rent in January, February, or March 2012. NYCHA also points out that petitioner's tenancy is not "otherwise unblemished" because in 2007 he was charged with chronic rent delinquency and failure to verify his income. The court notes that from the documents submitted by NYCHA, it appears that petitioner initially defaulted in the hearing scheduled in 2007 and had to make an application to reopen the hearing.

In a proceeding under Article 78 of the C.P.L.R., the standard of review is whether the administrative decision on the issue was made in violation of lawful procedures, whether it was arbitrary or capricious, or whether it was affected by an error of law. In re Pell v. Bd. of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County, 34 N.Y.2d

222, 231 (1974). A determination is considered arbitrary and capricious when it is made "without sound basis in reason or regard to fact." In re Peckham v. Calogero, 12 N.Y.3d 424, 431 (2009), citing Pell, 34 N.Y.2d at 231. If the agency's determination is rationally supported, the court must sustain the determination "even if the court concluded that it would have reached a different result than the one reached by the agency." Peckham, 12 N.Y.3d at 431 (citation omitted).

Here, it cannot be said that the hearing officer's determination to deny the request to reopen the hearing was arbitrary, capricious, or otherwise irrational. NYCHA has been repeatedly upheld by the courts in requiring a tenant to establish both an excusable default and a meritorious defense in seeking to vacate a default. In the underlying application, petitioner's primary argument was that he did not receive the Notice of Hearing, which was rebutted by NYCHA's demonstration that the Notice of Hearing was duly mailed. Thus, it was rational for the hearing officer to find that petitioner's unsupported claim of non-receipt was not a reasonable excuse. Petitioner's alternative argument—that even if he had known about the hearing, he had to attend a mandatory class—was rationally rejected by the hearing officer because petitioner did not contact NYCHA to reschedule the hearing and did not send a representative to the hearing on his behalf. Even if the court could go beyond the underlying administrative record and consider petitioner's present statement that he felt he needed to attend the mandatory class rather than appear at the hearing, NYCHA's present submissions indicate that petitioner has defaulted at a scheduled hearing in the past. Thus, it cannot be said that petitioner was ignorant of the consequences of failing to seek an adjournment or failing to appear by a representative. As to petitioner's offered defense in his underlying application, although petitioner submitted a plan to pay off his arrears and to stay current on his rent based on

his recent gainful employment, petitioner failed to explain why he had been unable to pay rent during the period he was purportedly gainfully employed. Therefore, it was rational for the hearing officer to conclude that NYCHA could not be assured that petitioner would continue to pay his rent. This point is further driven home by petitioner's failure to remain current on his rent since filing this petition. As to whether the punishment of termination of tenancy is too extreme, since this court is not reviewing the underlying determination to terminate the tenancy, any argument that the penalty in light of all the circumstances is shocking to one's sense of fairness cannot be reviewed. See Pell, 34 N.Y. at 233. This court is limited to a review of the denial of the request to reopen the hearing. In re Yarbough v. Franco, 264 A.D.2d 740 (2d Dep't 1999).

The court is constrained to deny the petition. Accordingly, it is hereby

ORDERED and ADJUDGED that the petition is denied and the proceeding is dismissed.

Dated: Sept. 28, 2012

ENTER:

JOAN B. LOBIS, J.S.C.