

**Matter of Hector v New York City Hous. Auth.,
Sedgwick Houses**

2012 NY Slip Op 32945(U)

December 6, 2012

Sup Ct, NY County

Docket Number: 400716/12

Judge: Barbara Jaffe

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

PRESENT: BARBARA JAFFE *Jaffe*
J.S.C. Justice

PART 5

Index Number : 400716/2012
HECTOR, ARCHIBALD
vs.
NYC HOUSING AUTHORITY
SEQUENCE NUMBER : 001
ARTICLE 78 *2nd. #58*

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 001

The following papers, numbered 1 to 3, were read on this motion to/for Article 78 review

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s). <u>1</u>
Answering Affidavits — Exhibits _____	No(s). <u>2</u>
Replying Affidavits _____	No(s). <u>3</u>

Upon the foregoing papers, it is ordered that this motion is

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION ~~ORDER~~ JUDGMENT**

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: 12/6/12
DEC 06 2012

BJ
_____, J.S.C.
BARBARA JAFFE
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

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 5

-----X
In the Matter of the Application of

Index No. 400716/12

ARCHIBALD HECTOR & ELLA HECTOR,

Argued: 7/31/12

Petitioners,

Motion Seq. No.: 001

Calendar No.: 74

DECISION & JUDGMENT

For a Judgment under Article 78 of the Civil Practice
Law and Rules,

-against-

UNFILED JUDGMENT

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NEW YORK CITY HOUSING AUTHORITY,
SEDGWICK HOUSES,

Respondent.

-----X
BARBARA JAFFE, JSC:

For petitioners:

Archibald Hector, self-represented
Ella Hector, self-represented
140 West 174th Street, Apt. 5E
Bronx, NY 10453
347-824-5496

For respondent:

Andrew M. Lupin, Esq.
Kelly D. Macneal
Acting General Counsel
New York City Housing Authority
250 Broadway, 9th Fl.
New York, NY 10007
212-776-5183

By notice of petition dated March 28, 2012, petitioners bring this Article 78 proceeding seeking an order vacating and annulling respondent New York City Housing Authority's (NYCHA) May 20, 2009 determination terminating their tenancy. Respondent opposes, and by notice of cross-motion dated May 23, 2012, moves pursuant to CPLR 3211 and 7804(f) for an order dismissing the petition.

I. BACKGROUND

For over 30 years, petitioners have been the tenants of record of apartment 5E at 140

West 174th Street in the Bronx, a NYCHA-owned apartment building. (Affirmation of Andrew M. Lupin, Esq., in Support of Cross-Motion, dated May 23, 2012 [Lupin Aff.], Exhs. A, D).

Their lease provides, in pertinent part, that they are obligated to maintain their apartment in “a clean, sanitary, and safe condition” and to “dispose of all garbage, rubbish, and other waste . . . in a sanitary, safe and lawful manner.” (*Id.*, Exh. A). NYCHA’s Termination of Tenancy Procedures reflect that a tenancy may be terminated for failure to comply with these rules. (*Id.*, Exh. B).

On August 14, 2008, petitioners were charged with failing to maintain their apartment in a “clean, safe and sanitary manner,” “stockpil[ing] numerous flammable items in [their] apartment, including clothes,” permitting an insect infestation to exist, and failing to dispose of their garbage in a “safe, sanitary and lawful manner.” (*Id.*, Exh. C). A hearing on the charges was scheduled for September 11, 2008 and then adjourned, as petitioners requested additional time to clean their apartment. (*Id.*, Exhs. C, D).

At the hearing, held on April 7, 2009, during which petitioners explained that their apartment was cluttered with boxes because they had packed up their belongings in order to clean it and could not finish unpacking as Archibald works full-time and Ella’s health problems limit her mobility. (*Id.*, Exh. D). They also asserted that the apartment’s storage space is insufficient and that many of the boxes are filled with clothing that they intend to donate rather than throw out. (*Id.*). The hearing officer thus permitted the record to remain open until May 15, 2009 so that petitioners could clean the apartment and provide proof of it. (*Id.*).

By decision dated May 20, 2009, having received no proof that petitioners had cleaned their apartment, and noting that they had been given multiple opportunities to do so, the hearing

officer sustained the charges against them and recommended termination of their tenancy. (*Id.*).

On June 3, 2009, NYCHA approved the hearing officer's determination and terminated petitioners' tenancy. (*Id.*, Exh. E).

On March 28, 2012, petitioners commenced the instant proceeding.

II. CONTENTIONS

Petitioners assert that although they began to clean their apartment in May 2009, their ability to finish the process was compromised by the presence of visitors in their apartment in July 2009, an injury Archibald sustained in September 2010, their daughter's hospitalization and death in 2011, Ella's ongoing health problems, and Archibald's full-time work schedule. (Pet.). They claim to have contacted Adult Protective Services in March 2012 seeking assistance in moving heavy items out of their apartment and again seek additional time to clean. (*Id.*).

In opposition, and in support of its cross-motion, respondent observes that as the instant proceeding was commenced nearly three years after NYCHA terminated petitioners' tenancy, it is untimely. (Lupin Aff.).

In reply, petitioners reiterate that they intend to clean their apartment and require additional time to do so. (Affidavit of Archibald and Ella Hector in Reply, dated July 25, 2012).

III. ANALYSIS

Article 78 review of an administrative determination is limited to whether the decision "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed." (CPLR 7803[3]). Pursuant to CPLR 217(1), an Article 78 proceeding must be commenced within four months after the challenged determination becomes

final and binding on petitioners.

As almost three years elapsed between NYCHA's termination of petitioners' tenancy and the commencement of the instant proceeding, it is untimely. In any event, even if petitioners had timely commenced this proceeding, as they failed to maintain their apartment as required by their lease, even after having been provided multiple opportunities to clean it, the hearing officer's determination is neither arbitrary nor capricious. And, while the events that occurred after the April 7, 2009 hearing undoubtedly caused them hardship and compromised their ability to clean their apartment, as the scope of my review is limited to record adduced before the hearing officer (*Matter of Featherstone v Franco*, 95 NY2d 550, 554 [2000]; *Matter of Yarbough v Franco*, 95 NY2d 342, 347 [2000]; *Matter of Torres v New York City Hous. Auth.*, 40 AD3d 328, 330 [1st Dept 2007]; *Matter of Patrick v Hernandez*, 309 AD2d 566, 566 [1st Dept 2003]), there is no legal basis for vacatur of her decision.

IV. CONCLUSION

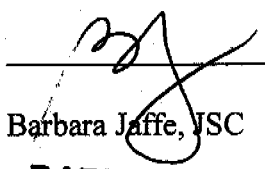
According, it is hereby

ORDERED and ADJUDGED, that the petition is denied and the proceeding is denied in its entirety.

ENTER:

UNFILED JUDGMENT

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Barbara Jaffe, JSC
BARBARA JAFFE
J.S.C.

DATED: December 6, 2012
New York, NY
DEC 06 2012