

Clay v New York City Dept. of Hous. Preserv. & Dev.
2012 NY Slip Op 32958(U)
December 12, 2012
Sup Ct, New York County
Docket Number: 401455/12
Judge: Manuel J. Mendez
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. MANUEL J. MENDEZ PART 13
Justice

DARLEENE CLAY,
Petitioner,

INDEX NO. 401455/12

- v -

MOTION DATE 11-14-2012

MOTION SEQ. NO. 001

THE NEW YORK CITY DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT, LINDSAY PARK,
and HPD HEARING OFFICER HELEN LEVY,
Respondents.

MOTION CAL. NO. _____

The following papers, numbered 1 to 3 were read on this petition. **UNFILED JUDGMENT**
Notice of Motion/ Order to Show Cause 1 and 2 of entry cannot be served by the County Clerk
Answering Affidavits — Exhibits 3 obtain entry, counsel or authorized representative must
Replying Affidavits 1, 2, 3 appear in person at the Judgment Clerk's Desk (Room 141B).

Cross-Motion: Yes No

Upon a reading of the foregoing cited papers, it is Ordered and Adjudged that the Petition is denied and the proceeding is dismissed.

In this Article 78 proceeding, Petitioner, Darleene Clay, seeks a judgment annulling Respondent, New York City Department of Housing Preservation and Development's (HPD), May 17, 2012 decision vacating the stay of execution of the Certificate of Eviction issued against Petitioner by HPD September 29, 2011.

Petitioner is the tenant/cooperator of record of 30 Montrose Avenue, Apt. 16M, Brooklyn, New York, 11206 (the "Apartment"). Respondent Lindsay Park is an Article II housing company and the landlord of the building located at 30 Montrose Avenue.

For some of the period relevant to this proceeding, Petitioner was relocated by Lindsay Park to another apartment due to damage which made the Apartment uninhabitable.

Respondent Lindsay Park commenced an administrative proceeding before HPD seeking a certificate of eviction on December 12, 2010, alleging that Petitioner violated a substantial obligation of her lease agreement by chronically and consistently failing to pay rent on time.

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

The administrative proceeding was settled pursuant to a stipulation dated February 16, 2011.

Lindsay Park brought a motion to restore the administrative proceeding on March 11, 2011, alleging that Petitioner had defaulted on the February 16, 2011 stipulation.

The administrative proceeding was again settled pursuant to a stipulation dated June 8, 2011.

Lindsay Park brought another motion to restore the administrative proceeding on June 21, 2011, alleging that Petitioner had defaulted on the June 8, 2011 stipulation.

HPD held an administrative hearing on August 17, 2011.

On September 13, 2011 HPD Hearing Officer Helen Levy issued a decision (the "HPD Decision"). The HPD Decision issued a certificate of eviction against Petitioner, but stayed the certificate for three years because, during the hearing, Petitioner submitted a notarized letter from her sister wherein Petitioner's sister guaranteed to pay Petitioner's rent. The HPD Decision made clear that if Petitioner (or her sister) failed to comply with any of the conditions imposed by the HPD Decision, the stay would be reconsidered.

On September 29, 2011, HPD Hearing Officer Helen Levy issued an amended decision (the "Amended Decision") which altered the HPD Decision by adding, "[T]his Certificate of Eviction and all conditions of the stay, as enumerated above, shall apply and be fully enforceable when Ms. Clay returns to her original apartment."

Lindsay Park commenced an Article 78 proceeding on November 17, 2011 seeking to reverse the Amended Decision.

According to Petitioner, she returned to her Apartment on January 17, 2012.

Lindsay Park brought a motion to restore the administrative hearing before HPD on February 17, 2012, alleging that Petitioner failed to comply with the conditions of the Amended Decision. Lindsay Park later withdrew this motion.

Lindsay Park brought another motion to restore the administrative hearing before HPD on March 7, 2012, again alleging that Petitioner failed to comply with the conditions of the Amended Decision.

The Article 78 proceeding initiated by Lindsay Park on November 17, 2011, was transferred to the Appellate Division, Second Department for

substantial evidence review on March 23, 2012. That Article 78 proceeding appears to be *sub judice* before the Appellate Division at this time.

HPD held an administrative hearing on May 1, 2012.

On May 17, 2012, HPD Hearing Officer Helen Levy issued a decision (the "Eviction Decision"). The Eviction Decision noted that Petitioner had made some, but not all, of the payments due since the Amended Decision. The Eviction Decision vacated the stay of execution of the Certificate of Eviction that had been granted in the Amended Decision.

Petitioner commenced the subject Article 78 proceeding on June 27, 2012 seeking to reverse the Eviction Decision. The basis for this Article 78 proceeding stated in Petitioner's papers is that Petitioner, "was under the impression [that] the last sentence in the Amended Decision meant [Lindsay Park] could not bring any petitions against [her] until after January 17, 2012, [her] official move in date back [to the Apartment]."

Respondent HPD Hearing Officer Helen Levy has requested that the instant proceeding be transferred to the Appellate Division, First Department, for a substantial evidence review per CPLR Section 7803(4).

Lindsay Park commenced a holdover proceeding against Petitioner in New York Civil Court, Kings County, Housing Part.

The first question before this Court is whether the proceeding should be transferred to the Appellate Division, as this may obviate the need for a more detailed analysis of the proceeding. In her papers, HPD Hearing Officer Helen Levy states that the proceeding should be transferred because, "a CPLR [Section] 7803(4) substantial evidence review is required as the final agency determination challenged was made as a result of a hearing at which evidence was taken pursuant to direction of law." Respondent Levy's argument misstates the language and purpose of CPLR Section 7803(4). If what Respondent Levy proposes were the standard for transfer, there would be few cases where transfer was not mandated.

CPLR Section 7804(g) states that where a substantial evidence question, as specified in CPLR Section 7803, is raised, and there is not an objection which could otherwise terminate the proceeding, the court is directed to transfer the case to the Appellate Division.

CPLR Section 7803(4) defines the referred to substantial evidence question. A substantial evidence question is one where a party challenges, "whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence."

Respondent Levy's argument for transfer fails in two respects. First, simply because an agency determination is the result of a hearing does not necessitate transfer. Second, nowhere in her papers does Petitioner suggest that the Eviction Decision is not supported by substantial evidence.

Now the Court must consider Petitioner's basis for the subject proceeding. Petitioner's papers included two statements that purported to be her basis for the proceeding. The first statement was that Petitioner, "was under the impression the last sentence in the Amended Decision meant [Lindsay Park] could not bring any petitions against [Petitioner] until after January 17, 2012, [Petitioner's] official move in date back [to the Apartment]."

The second statement was that, "the reason for [the] requested reversal is due to the last line in [the] Amended Decision which clearly stated: 'The Certificate of Eviction and all its conditions of the stay as enumerated above shall apply and be fully enforceable WHEN Ms. Clay returns to her original [A]partment.'" As Petitioner offers no further explanation as to the second statement, this Court is left with only the fact that Petitioner bolded and underlined the word "when".

An administrative decision will withstand judicial scrutiny if it is supported by substantial evidence, has a rational basis and is not arbitrary and capricious. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 356 N.Y.S.2d 833, 313 N.E.2d 321 (1974); *Ansonia Residents Ass'n v. New York State Div. of Housing and Community Renewal*, 75 N.Y.2d 206, 551 N.E.2d 72, 551 N.Y.S.2d 871 (1989). Judicial review of an administrative determination under Article 78 is confined to the facts and record adduced before the agency. See *Featherstone v. Franco*, 95 N.Y.2d 550, 742 N.E.2d 607, 720 N.Y.S.2d 93 (2000); *Matter of Rizzo v. New York State Div. Of Hous. and Community Renewal*, 6 N.Y.3d 104, 843 N.E.2d 739, 810 N.Y.S.2d 112 (2005). An agency is to be accorded wide deference in the interpretation of its regulations and governing statutory law, however, it cannot engraft requirements or assume powers not found in the enabling legislation. See *Vink v. New York State Div. Of Hous. and Community Renewal*, 285 A.D.2d 203, 729 N.Y.S.2d 697 (N.Y.A.D. 1st Dept., 2001).

The facts and record adduced before HPD at the time of the May 17, 2012 hearing that resulted in the Eviction Decision demonstrate that Petitioner had not complied with the requirements listed in the Amended Decision. The record shows that Petitioner had paid all arrears due as of October 2011. However, Petitioner failed to make payments for November and December of 2011 or January of 2012. Petitioner did make a payment in February of 2012, but failed to do so in March of 2012.

The record adduced demonstrated that Petitioner had not complied with the Amended Decision's requirement that she "[make] all monthly maintenance

payments when due." Therefore, HPD had a rational basis for vacating the stay of execution of the Certificate of Eviction that had been granted in the Amended Decision.

Petitioner's statements regarding the basis for this Article 78 proceeding focus on the timing of the requirements imposed by the Amended Decision. The Amended Decision states that the requirements "apply and [are] fully enforceable when [Petitioner] returns to her original [A]partment." Petitioner states that she returned to her original Apartment on January 17, 2012. This means that when Petitioner returned to her original Apartment, the payments for November and December of 2011 would have been past due. According to the language of the Amended Decision, Petitioner would be required to pay these arrears within fifteen days of her return to the Apartment. Whether the payment for January 2012 would be a monthly maintenance payment due immediately or in arrears and due within fifteen days is not clear, but also not determinative.

By the time Lindsay Park brought the second motion to restore the administrative hearing before HPD on March 7, 2012, the fifteen day deadline to make the arrears payment(s) for November and December of 2011 and January of 2012 had long passed. Therefore this Court is not persuaded by Petitioner's statements regarding the timing of Lindsay Park's motion to restore the administrative hearing before HPD.

Accordingly, it is ORDERED and ADJUDGED that the Petition is denied, the proceeding is dismissed, and the stay on the holdover proceeding against Petitioner previously granted by this Court is vacated.

Dated: December 12, 2012

ENTER:

MANUEL J. MENDEZ
J.S.C.

MANUEL J. MENDEZ
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE