

East River Hous. Corp. v Aaron

2013 NY Slip Op 31553(U)

July 17, 2013

Civil Court, New York County

Docket Number: 87932/2012

Judge: Sabrina B. Kraus

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART C

EAST RIVER HOUSING CORP., X

Petitioner

-against-

DECISION & ORDER
Index No.: L&T 87932/2012

HON. SABRINA B. KRAUS

STEPHANIE AARON
573 Grand Street, Apt D1501
NEW YORK, NY 10002

Respondent

“JOHN DOE” AND “JANE DOE”
Respondents-Occupants

X

BACKGROUND

The summary holdover proceeding was commenced by **EAST RIVER HOUSING CORP** (Petitioner) against **STEPHANIE AARON** (Respondent) the proprietary lessee for 573 Grand Street, Apt D1501, NEW YORK, NY 10002 (Subject Premises) based on the allegation that Respondent was violating her lease by harboring a dog in the Subject Premises.

PROCEDURAL HISTORY

Petitioner issued a ten day notice to cure on September 14, 2012, requiring a cure by October 2, 2012. A notice of termination issued on October 18, 2012, and the proceeding was initially returnable on November 29, 2012.

Respondent appeared by counsel, and the proceeding was adjourned through and including April 30, 2013 for motion practice. New counsel for Petitioner substituted in on January 17, 2013.

On March 27, 2013, Petitioner moved for summary judgment. On April 30, 2013, Respondent cross-moved for a stay pending the outcome of Respondent's discrimination complaint at the New York State Division of Human Rights (DHR). On April 30, 2013, the court denied Respondent's motion for a stay per order which provided "... based on April 23, 2013 determination by New York State Division of Human Rights that there is no probable cause to believe landlord engaged in any discriminatory practice." On the same date, the court granted Petitioner's cross-motion for summary judgment, awarding Petitioner a final judgment of possession and staying issuance of the warrant through and including May 31, 2013 "... to afford Resp an opportunity to cure by permanently removing the dog from the Subject Premises."

On June 11, 2013, Respondent moved for renewal of this court's denial of her motion for a stay pending a final determination of HUD and the New York State Division of Human Rights. On July 10, 2013, the court heard argument and reserved decision.

FACTS

Respondent is the proprietary lessee of the Subject Premises pursuant to a lease agreement executed November 24, 2003. Article 27 of the house rules annexed to the proprietary lease states that Pets are prohibited and that compliance with said provision is a substantial obligation of Respondent's tenancy.

As noted above Petitioner issued a notice to cure in this proceeding on September 14, 2012. On September 19, 2012, Dr. Lori Plutchik a psychiatrist, wrote a letter to Petitioner. The

letter asserts that Respondent has been under Dr. Plutchik's care for treatment of depression and anxiety since September 2008, and that Respondent had been taking takes medication for these conditions. The letter asserts Respondent's condition had improved substantially, and that the medications were no longer required. The letter acknowledges that Respondent adopted a dog in August or September 2012, and that the adoption of the dog led to significant improvement in Respondent's mental state. The letter asserts that after the receipt of the Notice to Cure, Respondent was so devastated that she needed to resume anti-anxiety medication.

The notice of termination issued on October 18, 2012, and Respondent's tenancy was terminated effective November 6, 2012.

On November 15, 2012, Respondent's counsel wrote a letter to Petitioner's counsel which transmitted Dr. Plutchik's letter. The letter from counsel further asserted :

Please be advised that Ms. Aaron suffers from and receives medical treatment for the diagnosed mental impairment of serious chronic depression. As such, she is disabled pursuant to the definitions in the federal Fair Housing Act, the New York State Human Rights Law and the New York City Civil Rights Law.

As a disabled person, she is entitled to a reasonable accommodation to facilitate her dealing with the limitations of her disabling conditions. Such a reasonable accommodation can include the non-enforcement of a rule such as a "no pet" clause.

The petition issued and the proceeding was originally returnable on November 29, 2012.

On or about December 11, 2012, Respondent filed a complaint alleging discrimination by Petitioner with HUD.

On April 23, 2013, DHR issued a Determination After Investigation which set forth:

After investigation and following opportunity for review of rebated information and evidence by the named parties, the Division has determined that there is NO PROBABLE CAUSE to believe that (petitioner) has engaged or is engaging in the unlawful discriminatory practice complained of. This determination is based on the following:

The evidence is not sufficient for a probable cause determination. The evidence does not support that Complainant's dog is necessary as opposed to helpful, to the use and enjoyment of her home. The evidence reveals that Complainant, who had been diagnosed with depression and anxiety as of 2008, was living without medication or seeing a therapist for about a year before finding the dog. Complainant did not obtain the dog to deal with her disability, but rather found the stray dog and then found the dog to be helpful in alleviating her depression and anxiety. The complainant's physician indicates the dog is a 'source of healing and emotional support' but does not state the animal is necessary for Complainant use and enjoyment of her housing.

The determination concludes by stating that the complaint is therefore ordered dismissed and the file is closed.

On May 22, 2013, DHR issued a "REOPENING" which stated that DHR, upon its own motion, had reviewed the determination and found that the proceeding should be reopened and remanded to the Regional Director for reconsideration.

On or about June 4, 2013, HUD issued a letter to Petitioner advising that DHR had determined that HUD should reactivate the complaint. The letter provided that reactivation would allow HUD to continue to investigate and pursue remedies under applicable federal statutes.

On or about June 6, 2013, HUD issued a written request for a stay of the eviction proceeding which is annexed to Respondent's supplemental affirmation and directed to the court. The letter provides as follows:

The United States Department of Housing and Urban Development (the Department) respectfully requests a stay of proceedings in the above referenced eviction action. The Department is not a party to and is not formally appearing in the above referenced action. However, in the interest of justice, the Department asks that this court issue a stay pending the resolution of a housing discrimination complaint that Ms. Aaron has filed with the Department against her landlord, East River Housing Corp. The Department is currently investigating this complaint.

The Department respectfully requests that a stay of eviction proceedings be granted here pending the completion of the investigation. The Department seeks this stay in order to ensure that East River Housing Corp. does not evict Ms. Aaron from her apartment before the

Department has had an opportunity to fully investigate her complaint. The issues in the complaint investigation are related to the eviction proceedings.

The letter is signed by the Regional Director of the Office of Fair Housing and Equal Opportunity of HUD.

DISCUSSION

A motion for renewal pursuant to CPLR § 2221(e) must be based on new facts not previously offered on the prior motion that warrant a change in determination along with a reasonable justification for not having presented said fact on the prior motion.

Respondent has met this standard. The court's decision denying the stay on April 30, 2013, was largely based on the fact that DHR had made a determination of no probable cause on Respondent's discrimination complaint. DHR's subsequent reopening of the proceeding and remanding for reconsideration by the Regional Director, is a new fact that could not have been offered previously, which warrants a change in this court's determination.

There is certainly authority which supports the granting of a stay of a summary holdover proceeding where a discrimination complaint is pending before DHR or HUD [*Rutherford Tenants Corp v Schmidt* NYLJ Aug 3, 1994, p.26, col. 3 (*granting stay of holdover proceeding pending determination of discrimination claim before DHR*); *90-10 149th St. v Badillo* NYLJ Mar. 8, 2000, p.30, col. 5 (*granting stay of holdover proceeding pending outcome of complaint before DHR*); *Boca Broadway Realty v Naim*, June 8, 1995, NYLJ , p.31, col.5 (App Term, 1st Dept)(*holding it was reversible error for court to deny stay of execution of possessory judgment in a holdover proceeding pending outcome of gender discrimination complaint before DHR*); *Society of NY Hosp v San Filippo* 92 AD2d 496 (*holding it was proper exercise of discretion for trial court to stay holdover proceeding pending outcome of discrimination complaint with DHR*).

As noted above, in this proceeding HUD has specifically asked that this court exercise its discretion and grant such stay.

Based on the foregoing, Respondent's motion for renewal is granted. On renewal, the court withdraw's its previous denial of Respondent's motion for a stay, and grants the motion to the extent of staying enforcement of the final judgment of possession and issuance of the warrant of eviction pending a determination by HUD on the pending complaint. Moreover, Respondent's time to cure the breach by permanently removing the dog from the Subject Premises shall be stayed until the date of a determination by HUD.

HUD advised in its June 4, 2013 letter to Petitioner that the complaint would be investigated within 100 days if practicable, and that if the investigation was not completed within 100 days, Petitioner would be advised in writing of the reasons for the delay. If there has been no determination by HUD by September 30, 2013, Petitioner may move to vacate the stay. Additionally, the stay is conditioned on the timely payment of ongoing maintenance charges by Respondent.

This constitutes the decision and order of this court.

Dated: July 17, 2013
New York, New York

Hon. Sabrina Kraus

ROSENBERG & ESTIS, PC
Attorneys for Petitioner
BY: Bradley S. Silverbush, Esq..
733 Third Avenue
New York, New York 10017
212.867.6000

KAREN COPELAND
Attorney for Respondent
521 Fifth Avenue, #1700
New York, New York 10175
212.560.7154