

Matter of Echevarria v Wambua
2013 NY Slip Op 32150(U)
September 10, 2013
Supreme Court, New York County
Docket Number: 102688/12
Judge: Peter Moulton
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. PETER H. MOULTON
SUPREME COURT JUSTICE
Justice

PART 40B

Index Number : 103396/2012
ECHEVARRIA, ALICIA
vs.
WAMBUA, MATTHEW M.
SEQUENCE NUMBER : 002
REARGUMENT/RECONSIDERATION

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

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

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

*Decided in Amalante
with the written decision
of this date*

FILED
SEP 12 2013
NEW YORK
COUNTY CLERKS OFFICE

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

Dated: 9/10/13

Peter H. Moulton, 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

Supreme Court: New York County
Part 40B

-----X

In the Matter of the Application of

ALICIA ECHEVARRIA

Petitioner,

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

-against-

Index No. 102688/12

MATTHEW M. WAMBUA, AS COMMISSIONER OF
THE CITY OF NEW YORK DEP'T OF HOUSING
PRESERVATION AND DEVELOPMENT; EAST
MIDTOWN PLAZA HOUSING CO.; MARK
ANDERMANIS and SANDRA ANDERMANIS,

Respondents.

FILED

SEP 12 2013

**NEW YORK
COUNTY CLERK'S OFFICE**

-----X

Peter H. Moulton, Justice

Respondent East Midtown Plaza Housing Company moves to reargue this court's decision dated April 22, 2013 ("April 22nd decision").

Petitioner Alicia Echevarria and respondents Mark and Sandra Andermanis are shareholders in a Mitchell-Lama cooperative complex located in Manhattan. Echevarria brought this Article 78 proceeding to annul the assignment of a four bedroom apartment to the Andermanises by respondents East Midtown Plaza Housing Company ("East Midtown") and the City's Department of Housing Preservation and Development ("HPD"). Petitioner sought the eviction of the Andermanis family from the apartment and the implementation of a

process to ensure that the apartment be awarded according to HPD's rules governing internal apartment transfers within a single Mitchell Lama development.

HPD cross-moved for a remand to the agency so that it could rescind the determination challenged herein, i.e. the assignment of the apartment to the Andermanises and proceed to assign the apartment in accordance with its own rules.

East Midtown moved to dismiss the petition, arguing that Echevarria did not have standing because she would not have gotten the apartment even had the Andermanises not been assigned the apartment. This motion was joined by the Andermanises.

In the April 22nd decision, familiarity with which is assumed, this court granted the petition to the extent of remanding the matter to HPD.

DISCUSSION

In the instant motion East Midtown first argues that the court erred in finding that petitioner had standing to bring this action. East Midtown simply repeats its prior argument, and makes no attempt to grapple with the authority cited by the court that demonstrates that Echevarria does have standing. As held in the April 22nd decision:

[f]or standing purposes, it is sufficient that the award of apartment 6D was given to an applicant outside of the chronological order set forth in HPD rules governing waiting

lists. For example, in Matter of Burke v Sugarman (35 NY2d 39) persons eligible for appointment off a civil service list were found to have standing to challenge illegal appointments, irrespective of the petitioners' position on the list. "Eligibility, and not certainty, of appointment [is] sufficient to confer standing." (Matter of New York State Ass'n of Community Action Agency Board Members v Shaffer, 119 AD2d 871.)

East Midtown's papers are bereft of argument or authority that could undermine this holding.

East Midtown's second argument is that it should have been given a chance to answer the petition after the court denied its motion to dismiss. East Midtown avers that it has arguments that were not considered on the motion to dismiss, which was focused on the issue of standing. However, it does not state what those arguments could be.

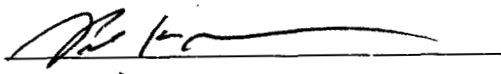
In the normal course, a respondent is given the opportunity to answer the petition after losing a pre-answer motion to dismiss. However, the court has the discretion to not wait for an answer before taking action. East Midtown did not oppose HPD's cross-motion for a remand. More importantly, the central, dispositive fact in this proceeding is not in dispute: the apartment was awarded to the Andermanises in derogation of HPD's rules. (See Intermor v Board of Trustees of Incorporated Village of Malverne, 286 AD2d 330.) East Midtown offers nothing in the instant motion that tends to contradict that fact. There is no reason to delay a remand of the matter to the agency decision maker, where, as here,

the agency has determined that its decision was made in derogation of its own rules and procedures.

As the agency charged with fairly allocating apartments according to those rules, HPD is not barred by estoppel in correcting an error. (Matter of New York State Med. Transporters Ass'n v Perales, 77 NY2d 126, 130.) This is true even where there are "harsh results." (Matter of Parkview Associates v City of New York, 71 NY2d 274, 282, cert denied 488 US 801.

The court noted in the April 22nd decision that HPD's initial error has had serious consequences for the Andermanises. They have expended funds in renovating the apartment. However, the question of whether they are entitled to compensation from their co-respondents for, inter alia, the amounts that they expended in renovation is not before the court on this Article 78 proceeding.

For the reasons stated the motion is denied. This constitutes the decision and order of the court.

DATED: September 10, 2013 

FILED J.S.C.
SEP 12 2013
NEW YORK
COUNTY CLERK'S OFFICE