

Matter of Kovalevich v Rhea
2013 NY Slip Op 32473(U)
September 27, 2013
Supreme Court, New York County
Docket Number: 402392/2010
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: LUCY BILLINGS
Justice

PART 46

Index Number : 402392/2010
KOVALEVICH, MARCIA
vs.
RHEA, JOHN B.
SEQUENCE NUMBER : 002
RESTORE ACTION TO CALENDAR

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

The following papers, numbered 1 to 2, were read on this motion to/for reverse respondents' order

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). _____

Upon the foregoing papers, it is ordered that ~~this motion is~~ and adjudged that:

This proceeding is restored pursuant to the accompanying stipulation and order. Upon restoration, the court grants the petition to the extent set forth and otherwise denies the petition and dismisses this proceeding. C.P.L.R. §§ 7803(3) and (4); 7806.

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).

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

Dated: 9/27/13

Lucy Billings, 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 OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

-----X

In the Matter of the Application of
MARCIA KOVALEVICH,

Index No. 402392/2010
(Billings, J.)

002

Petitioner,

For Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules

**STIPULATION AND
ORDER TO RESTORE
CASE TO THE CALENDAR**

-against-

JOHN B. RHEA, as Chairperson and Member of
THE NEW YORK CITY HOUSING AUTHORITY,
and THE NEW YORK CITY HOUSING
AUTHORITY,

Respondents.

-----X

KAC

IT IS HEREBY STIPULATED AND AGREED, by and between the parties to this action,

by their respective attorneys, that:

1. This proceeding is restored to the calendar *in Part 46 5/14/13 at 9:30 a.m.*

2. The parties entered into a stipulation of settlement in April 2012 (hereinafter "the Stipulation") that was subject to the approval of the Board of the Respondent New York City Housing Authority.


3. Pursuant to the terms of the Stipulation, this proceeding may be restored to the Court's calendar by stipulation in the event the Board does not approve the Stipulation.

4. In March 2013, the Respondent Housing Authority's Board rejected the Stipulation.


5. Facsimile signatures on this document shall be deemed sufficient, and any party may file this document.

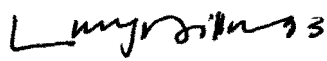
Dated: New York, N.Y.
April 1, 2013

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By: 
Samuel Veytsman

So Ordered: 
Lucy Billings, J.S.C.

LUCY BILLINGS
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

-----x

In the Matter of the Application of

MARCIA KOVALEVICH,

Petitioner,

Index No. 402392/2010

DECISION and ORDER

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

- against -

JOHN B. RHEA, as Chairperson and member
of the NEW YORK CITY HOUSING AUTHORITY,
and the NEW YORK CITY HOUSING AUTHORITY,

Respondents

-----x

LUCY BILLINGS, J.:

According to the uncontroverted opinions of petitioner's treating psychiatrist and therapist, petitioner needs a dog living with her to provide emotional support as an accommodation to ameliorate her psychiatric disability. Although the rules of respondent New York City Housing Authority, petitioner's landlord, prohibit pit bulls unless a pit bull is a service dog, which petitioner's pit bull is not, respondents have treated petitioner's emotional support dog as the equivalent and therefore permitted petitioner to keep her pit bull Cheyenne. Inherent in the emotional support that a particular animal provides to its owner is that the particular animal, here Cheyenne, becomes the owner's companion.

In a decision adopted by respondents, an Administrative Law Judge (ALJ) found, and petitioner does not dispute, that Cheyenne

bit another tenant in the building where petitioner resides. Instead of prohibiting petitioner from keeping a dog as a consequence of her offense and condition of her continued tenancy, as an accommodation for her psychiatric disability the ALJ prohibited the offending dog Cheyenne, but allowed petitioner to replace Cheyenne with another dog of a comparable size and breed, even another pit bull.

This punishment is unnecessarily harsh, Wise v. Morales, 85 A.D.3d 571, 572 (1st Dep't 2011); Davis v. New York City Dept. of Hous. Preserv. & Dev., 58 A.D.3d 418, 419 (1st Dep't 2009); Robinson v. Martinez, 308 A.D.3d 355, 356 (1st Dep't 2003), and fails to accommodate petitioner's need for a dog that has become her companion to provide her emotional support. 42 U.S.C. § 3604(f)(3)(B); N.Y. Exec. Law § 296(18)(2); N.Y.C. Admin. Code § 8-107(15); Mozaffari v. New York State Div. of Human Rights, 63 A.D.3d 643, 644 (1st Dep't 2009); Taylor v. Harbour Pointe Homeowners Ass'n, 690 F.3d 44, 49 (2d Cir. 2012). See Overlook Ave. Corp. v. New York State Div. of Human Rights, 8 A.D.3d 286, 287 (2d Dep't 2004). To serve respondents' purpose of protecting other tenants, occupants, and invitees in the public housing development, it is necessary only that petitioner's dog be prevented from biting those persons to whom respondents owe a duty of reasonable protection. Cheyenne does have the history of one recent bite, but no history of any other vicious propensity such as rushing or jumping at persons. Allowing petitioner to keep Cheyenne, but requiring petitioner to keep a muzzle and

leash on Cheyenne whenever the dog is inside petitioner's apartment with its entrance door open or outside the apartment on respondents' premises, is adequate to meet their purpose. 42 U.S.C. § 3604(f)(9). E.g. Robinson v. Martinez, 308 A.D.3d at 356. See Wise v. Morales, 85 A.D.3d at 573. Respondents have not shown that this accommodation will impose undue financial or other hardship on them. N.Y.C. Admin. Code §§ 8-102(18), 8-107(15(a)); Phillips v. City of New York, 66 A.D.3d 170, 181-82 (1st Dep't 2009); Taylor v. Harbour Pointe Homeowners Ass'n, 690 F.3d at 49; Shapiro v. Cadman Towers, Inc., 51 F.3d 328, 335 (2d Ci.r 1995).

Consequently, the court reverses respondents' determination to the extent of allowing petitioner to keep her current dog Cheyenne as follows. C.P.L.R. § 7803(3) and (4). As conditions of petitioner's continued tenancy as long as petitioner keeps her current dog, petitioner shall maintain a muzzle and leash on the dog whenever the dog is inside petitioner's apartment with its entrance door open or outside the apartment anywhere on the premises of her public housing development. Petitioner also shall keep Cheyenne registered and otherwise in compliance with respondents' Pet Policy. V. Answer Ex. 19. If petitioner violates any of these conditions, respondents may proceed to terminate her tenancy. Davis v. New York City Dept. of Hous. Preserv. & Dev., 58 A.D.3d at 419. This decision constitutes the court's order and judgment granting the petition to the extent

set forth and otherwise denying the petition and dismissing this proceeding. C.P.L.R. § 7806.

DATED: September 27, 2013

Lucy Billings

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
(C.M.)

UNFILED JUDGMENT

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