

**Matter of Kunyoung Lee v Office of Temporary
Disability Assistance (Emergency Rental
Assistance Program)**

2024 NY Slip Op 31313(U)

March 18, 2024

Supreme Court, Kings County

Docket Number: Index No. 519535/2022

Judge: Ingrid Joseph

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At an IAS Term, Part 83, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 18th day of March, 2024.

PRESENT:

HON. INGRID JOSEPH,
Justice.

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In the Matter of the Proceeding under Article 78 of the CPLR for a Writ of Mandamus,

KUNYOUNG LEE,
Petitioner,

Index No. 519535/2022

-against-
OFFICE OF TEMPORARY DISABILITY ASSISTANCE (EMERGENCY RENTAL ASSISTANCE PROGRAM),

DECISION & ORDER

Respondents.

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The following e-filed papers read herein:

NYSCEF Doc. Nos.:

Motion Seq. No. 1 Order to Show Cause/Petition/Affirmation and Affidavit in Support/ Exhibits.....	1 – 10
Motion Seq. No. 2 Notice of Motion/Affirmation and Affidavit in Support/Exhibits.....	13 – 22
Motion Seq. No. 3 Notice of Cross-Motion/Affirmations in Support/Exhibits.....	23 – 33

Upon the foregoing papers, Petitioner Kunyoung Lee (“Petitioner”), pursuant to Article 78 of the Civil Practice Law and Rules, seeks a writ of mandamus to compel Respondent New York State Office of Temporary and Disability Assistance (“Respondent”), sued herein as Office of Temporary Disability Assistance (Emergency Rental Assistance Program), to follow Emergency Rental Assistance Program protocol (Mot. Seq. No. 1). Petitioner’s landlord 2 North 6th Place

Property Owner, LLC (“Landlord”) filed a motion seeking an order vacating the stay¹ and permitting Landlord to proceed with the nonpayment proceeding against Petitioner in Housing Court under Index No. 82639/2019 (Mot. Seq. No. 2). Landlord’s motion is unopposed. Respondent cross-moves for an order dismissing the petition, pursuant to CPLR 3211 (a) (2), 7804 (c) and 7804 (f) (Mot. Seq. No. 3).²

This Article 78 proceeding arises out of Petitioner’s application for rental assistance through the Emergency Rental Assistance Program (“ERAP”). Petitioner’s application was partially approved, and 12-months rent was paid directly to Landlord in October 2021. Petitioner asserts that Respondent denied the portion of Petitioner’s application seeking an additional three-months rent and utilities. Petitioner claims that he was unaware of Respondent’s decision until March 30, 2022, when he received an electronic notice. That same day Petitioner filed his appeal electronically. Petitioner contends that Respondent denied his request because the appeal was submitted beyond the 30-days from the date of their decision on October 21, 2021. The instant Article 78 petition avers that Respondent has refused to carry out the ministerial and non-discretionary functions of complying with the appellate procedures for ERAP and seek a writ of mandamus compelling Respondent to allow Petitioner to file his appeal.

In its cross-motion, Respondent asserts that on or about July 20, 2022, it notified Petitioner that his appeal was being reopened. Following the appeal, Respondent issued an additional ERAP payment constituting three months’ prospective rent. Respondent seeks dismissal of the petition on the basis that the requested relief—compel Respondent to allow Petitioner to file his appeal from the ERAP decision of March 30, 2022—has already been obtained. Thus, Respondent contends that the petition is moot, even if Respondent denied the utilities application since that denial was not the basis for the March 2022 appeal. According to Respondent, Petitioner appealed the initial determination denying the three months’ prospective rent, but only raised the issue of unpaid utilities for the first time on appeal.³ Petitioner filed an affidavit in opposition to the cross-

¹ Portions of Landlord’s counsel’s affirmation do not appear to be tailored to this case. For instance, the affirmation states that an order was issued on October 14, 2014, staying Pathways to Housing landlords from any actions to evict its clients (NY St Cts Elec Filing [NYSCEF] Doc No. 14, ¶ 4).

² Petitioner filed an affidavit in opposition to the cross-motion on April 24, 2023, two days prior to the return date. Since it was filed untimely, the Court will not consider the affidavit. Thus, it is unnecessary for the Court to analyze the contents therein.

³ On February 10, 2023, Respondent denied Petitioner’s utilities application (NYSCEF Doc No. 33). The notification stated that Petitioner did not apply for utilities assistance on the ERAP application and the request for such assistance was untimely because it was made after the ERAP rental assistance payment was issued (*id.*).

motion that was procedurally defective and will not be considered by this Court.

Additionally, Landlord seeks to vacate the stay of a nonpayment proceeding it commenced against Petitioner in Housing Court.⁴ Landlord claims that the nonpayment proceedings should not be stayed since Landlord only seeks payment of rental arrears. Since Petitioner received the entire amount of arrears permitted by ERAP, Landlord contends that the stay should be lifted.

“Mandamus lies to compel the performance of a purely ministerial act where there is a clear legal right to the relief sought” (*Legal Aid Soc. of Sullivan County, Inc. v Scheinman*, 53 NY2d 12, 16 [1981]). Further, “to the extent that [petitioners] can establish that [respondents] are not satisfying nondiscretionary obligations to perform certain functions, they are entitled to orders directing [respondents] to discharge those duties” (*Klostermann v Cuomo*, 61 NY2d 525, 541 [1984]).

The notice that was electronically sent on March 30, 2022 indicates that Petitioner’s ERAP application was “approved for a rental payment” (NYCEF Doc No. 5). The notice further advised that if Petitioner “applied for assistance to help pay for utilities and are approved for a utility payment, [he] will receive a separate notice” (*id.*). Accordingly, it is clear on the face of the March 2022 ERAP determination that it only concerned the payment of rental arrears.

Petitioner specifically requested an order compelling Respondent to “allow petitioner to file his appeal from the ERAP decision that was emailed to him on March 30, 2022.” It is undisputed that Respondent reopened Petitioner’s appeal and ultimately awarded an additional payment constituting three months’ rent (NYSCEF Doc Nos. 31-32). Since Petitioner’s request for relief was limited to the appeal of the March 30, 2022 decision and such appeal was allowed to proceed and granted, Petitioner was afforded the full relief sought in his petition. Thus, the Court finds that the petition is moot (*see Matter of Kirkland v Annucci*, 150 AD3d 736, 738 [2d Dept 2017] [“[S]ince the petitioner received the ultimate relief he was seeking, the Supreme Court properly concluded that the proceeding had been rendered academic”]; *Matter of Feltz v State*, 108 AD3d 950 [3d Dept 2013]).

Accordingly, it is hereby

ORDERED, that the instant Article 78 Petition is denied as moot; and it is further

⁴ On July 11, 2022, the Court signed an order to show cause staying the Housing Court proceeding against Petitioner, pending a hearing on the OSC (NYSCEF Doc No. 10).

ORDERED, that 2 North 6th Place Property Owner, LLC's motion for an order seeking to vacate the stay of the Housing Court action (Mot. Seq. No. 2) is granted; and it is further

ORDERED, that Respondent's cross-motion (Mot. Seq. No. 3) for an order dismissing the petition is granted without opposition.

All other issues not addressed are either without merit or moot.

This constitutes the decision and order of the Court.



HON. INGRID JOSEPH, J.S.C.

Hon. Ingrid Joseph
Supreme Court Justice